

Half Day Symposium

The Role of the Judiciary in the Constitutional Governance of Seychelles from 1993 to 2013: A Review of the Performance of the Judiciary and a Prognosis for the Future

17th June 2013 at the Palais De Justice Auditorium

Opening Remarks by the Chief Justice FMS Egonda-Ntende

It is my singular privilege and honour to welcome all of you to this half day event, the precursor to this evening's event, the official opening of the Palais De Justice, the new home of the Court of Appeal and Supreme Court. I would like to welcome the visiting delegations from Mauritius, Tanzania and Uganda. Mauritius Delegation is here as part of our fraternal bilateral relationship between the 2 Judiciaries which involves annual exchange of visits between our 2 judiciaries.

I would like in particular to welcome the visiting Chief Justices of Tanzania and Uganda. Thank you for honouring us by accepting my invitation to participate in our activities this week. Our invitation was not accidental. It sprang from your personal support for the work of the Judiciary in Seychelles. I am glad that you have managed to fit this event in your very busy schedules.

I wish to welcome our key note speakers, Founding President of the Seychelles, Sir James Mancham and the Honourable Mr Justice Francis MacGregor, the President of the Court of Appeal of Seychelles. You will agree with me that our key note speakers fit the bill given the pivotal role that each one has played and continues to play, as a statesman and jurist respectively, in the constitutional development of Seychelles.

The choice of panellists for the panel discussion is not less illustrious. We have selected sons and a daughter of the soil who have been significant players in the constitutional development of this country. We therefore have a rich offering this morning and I am confident we shall be treated to a scintillating examination of the subject at hand that will echo way beyond these walls, probably into the annals of the history of Seychelles.

I welcome all the distinguished participants both from the legal profession, civil society and governmental agencies. You have done us proud by accepting our invitation to come and discuss this seminal subject, close to the heart of many a Seychellois. I am confident that you will not be disappointed.

In organising this morning's event we at the Judiciary have been conscious of the need to reflect on our own organisational performance but through the prism of multi focal lenses that can help us understand the past and the present and provide a prognosis for the future. I do not want to pre-empt the presentations this morning. About 4 years ago today a day after announcement of my appointment as Chief Justice, a political party, or more accurately, the leader of the opposition at the time, issued a statement in the National Assembly, calling upon the appointing authority to revoke that appointment. If nothing else this alerted my wife and I to the choppy

waters we were destined to. It was clear that there were grave problems associated with the Judiciary in Seychelles at the time. Four years have gone by and my tenure has hardly a year left to run. I trust that I will shortly be passing on the baton.

It is not for me to say whether I have run a good race. I leave that to you and posterity. You be the Judges. The programme this morning will provide you with an opportunity for a post mortem examination. It is up to you to seize it. A study of the jurisprudence on the constitution since 1993 to-date would definitely be informative. Equally a case data based appraisal of the performance of the Judiciary would be illuminating. An evidence based approach whichever the line of inquiry would be useful in understanding the past, present and charting a course for the future.

As I leave you to proceed with your task this morning I thought it pertinent to share with you some remarks by other people and organisations that provide some of the perspectives that abound in relation to the Judiciary of Seychelles for the period under review.

United Nations Office on Drugs and Crime [UNODC] produced a report on October 2009 assessing Seychelles's readiness to take on piracy trials and it stated in part,

‘‘56. The defence and the Bar Association are of the view that the judiciary is on the verge of collapse. They are of the view that the courts cannot cope with the volume of cases and do not have the necessary technology for case management.

58. The view was expressed that the addition of the piracy cases may lead to a collapse due to the shortage of courts and judges and the cost of detaining piracy suspects and of unplanned legal aid.’¹

In 2010 the US Department of State Human Rights Report on Seychelles partly opined,

‘The constitution and law provide for an independent judiciary; however, the judiciary was inefficient and subject to executive influence. Both civil and criminal court cases generally lasted years. There were no reports of judicial corruption, although there was a widespread public perception that some judges were corrupt.’²

The 2012 report published about 6 weeks ago, states in part,

‘The constitution and law provide for an independent judiciary, and the judiciary was generally independent and

¹ UNODC Counter Piracy Seychelles Assessment Report October 2009

² US Department of State Human Rights Report for Seychelles, 2009

impartial. However, court processes were inefficient, and both civil and criminal court cases generally lasted years. Authorities did not always respect court orders.

Two Supreme Court judges, two appeals court judges, and four magistrate court judges were citizens by birth. All other justices were either naturalized citizens or citizens of other Commonwealth countries. **Judges were generally impartial.** According to Freedom House, however, there were reports that the executive branch interfered in the recruitment of foreign justices, who sometimes were hesitant to rule against the executive branch for fear of losing their jobs.

During the year the chief justice, who was appointed in 2009, continued efforts to increase judicial efficiency by increasing the number of judges, introducing alternative dispute resolution techniques, and automating judicial records.’³

Today, 4 years after the UNODC Country Assessment Report the Judiciary of Seychelles has not collapsed. It has tried the largest number of cases of piracy in the region since then to date. Out of a total of 17 such cases filed in the Supreme Court, 13 have been completed within less than one year of filing. If efficiency is the rate and cost at which inputs are converted into a final output or outputs I must say that the completion rate compares favourably with the best performing jurisdictions.

The Judiciary is now perceived as independent and impartial by some observers who previously held a different point of view not so long ago! In response to the remarks ascribed to Freedom House that expatriate judges may be fearful of losing their jobs there is no empirical support for such a view in the cases that have been decided in the courts during my tenure. A study of the jurisprudence of our courts should dispel such a view without difficulty. If there is evidence to the contrary it would be helpful if it is brought to light.

A new Palais De Justice, an ultra modern justice complex, will be opened later this evening that provides a total of 10 courtrooms. The foundation for a Supreme Court Annex that will provide an additional two court rooms is being built next door and is due for completion next year.

The Judiciary has a fully automated and computerized case administration system known as CCASS thanks to a free offer from the Chief Justice of Uganda that saved Seychelles some US\$600,000 the cost of such a programme from commercial developers, in addition to the time of development estimated to be anywhere between 2 and 5 years. It has undergone local adaptation to Seychellois needs and conditions.

Seychelles Legal information Institute, known by its short acronym Seylii, an online portal publishing Seychelles law [case law, legislation and secondary legal literature] is up and running. This is the only online portal dedicated to free access to Seychelles Law. It is managed by the Judiciary of Seychelles.

³ US Department of State Human Rights Report for Seychelles, 2012 accessed on 12 June 2013 at <http://allafrica.com/stories/201304231124.html?viewall=1>

Obviously much remains to be done. I am confident that you in this Symposium will point the Judiciary of Seychelles in the right direction.

Thank you for listening to me.

I now have the pleasure to declare this Symposium open.