

Speech given at the Mauritius National Day Reception 2019

Old Parliament House

15 March 2019

Chief Justice Murrell

I acknowledge the traditional custodians of this land and pay my respects to their elders, past, present and emerging, and to the first nations' peoples of all nations, especially those who may be present today.

Your Excellency High Commissioner Christelle Sohun, Mr Speaker, Members of the Diplomatic Corps, other distinguished guests and other friends of Mauritius,

It is an honour to be invited to make some short remarks at this celebration of Mauritius National Day.

Your Excellency the High Commissioner is, of course, a lawyer. And it is through the agency of the international sisterhood of lawyers that I find myself here.

One fine Canberra evening in November of last year, I enjoyed the hospitality of the then Nepalese Ambassador. There I met your Excellency, two senior judges from the Supreme Court of Nepal and several women ambassadors. After dinner, at the instigation of two of these ambassadors, the dancing began. All who were present enjoyed the international music selection; the dancing queens particularly enjoyed the Swedish segment. I hasten to add that her Excellency and I were late recruits to the dance floor; we share the characteristic sobriety of lawyers from the common law jurisdictions.

But before the frivolity began, there was much serious discussion about the place of women in our countries, particularly within our judiciaries and wider legal systems. Unsurprisingly, those discussions revealed far more similarities than differences.

The following day, her Excellency joined the Nepalese Ambassador and Judges on a tour of the new, state-of-the-art ACT Supreme Court courthouse, and participated in discussions with ACT judges and senior court staff on topics including judicial independence and court administration. She also joined in discussions with the National Judicial College of Australia, the NJCA, our national judicial education body (which I chair), concerning the delivery of judicial education in Australia and internationally.

Since then, we have had further discussions about how the NJCA could facilitate Mauritius and Australia sharing their ideas and experiences in judicial education and court administration.

But we are not here to talk about judicial education or court administration. We are here to celebrate Mauritius.

This year is the 51st anniversary of the independence of Mauritius from British rule on 12 March 1968, and the 27th anniversary of Mauritius becoming a republic on 12 March 1992.

It has been 49 years since Australia established diplomatic relations with Mauritius, and 42 years since Mauritius established a diplomatic mission in Canberra, in 1977. In 1978 I came to Canberra to take up my first job as a lawyer. Consequently, I can well imagine how your first High Commissioner must have felt when he (presumably) arrived here. Plucked from the idyllic, historic and bustling city of Port Louis and transplanted to a remote, barren and dusty town, lacking even the temptation of a decent shop, and with no apparent sign of human life after business hours.

Fortunately, we have all grown up, including our fair city of Canberra. It is now a most congenial city for both residents and diplomats.

Over the last four decades, our countries have enjoyed a friendly and cooperative relationship. We have so much in common. We are island nations that sit on the periphery of the hothouse of the East, but with a western heritage and system of government. We are yet to fully process our colonial inheritance; in the case of Australia, the modern nation's relationship with its first nations' peoples remains deeply troubled. As a stark illustration, in the ACT, 2% of the population is Indigenous but as we stand here this evening 27% of the ACT prison population is Indigenous.

In important respects, Mauritius sets an example to Australia. Not for Mauritius a seemingly endless debate about whether to embrace republicanism or include a bill of rights in the constitution. Today, we celebrate the Republic of Mauritius. The Mauritian Constitution includes a Bill of Rights and guarantees that the Supreme Court has jurisdiction to enforce those rights.¹ On the gender front, on superior courts in Australia, only about one third of judges are women. But among the Mauritian judiciary, women are the dominant gender (you must have a merit-based selection process!).²

A key attribute that our nations share is that we both have the means to flourish and to influence our regions for the better. In her Australia Day speech, the Australian High Commissioner to Mauritius, Jenny Dee, observed that both our countries cherish peace and prosperity.³ And we both strive to be a free and open democracy that respects the rule of law and human rights.

Our legal systems are quite similar. The common law tradition is a legacy of our British colonial past. As is the case in Australia, the Mauritian judiciary have security of tenure⁴ – a feature that we regard as integral to judicial independence and the rule

¹ *Constitution of the Republic of Mauritius* ch II and s 17.

² Republic of Mauritius, *Annual Report of the Judiciary 2017* (2018) 55

<[https://supremecourt.govmu.org/pubabout/Annual%20Report%20Of%20The%20Judiciary%202017%20\(3\).pdf](https://supremecourt.govmu.org/pubabout/Annual%20Report%20Of%20The%20Judiciary%202017%20(3).pdf)>.

³ Jenny Dee, 'Australian Day Speech' (Speech delivered at the 2019 Australian Day reception at the Australian High Commission at Mauritius, Port Louis, 25 January 2019)

<<https://mauritius.embassy.gov.au/plut/AustraliaDay2019HOMSpeech.html>>.

⁴ *Mauritius Constitution* s 78; *Australian Constitution* s 72.

of law. Most importantly, the core value of both legal systems is the rule of law; that the law applies equally to everyone and no one is above the law.

The rule of law is not confined within a State's sovereign territory or tied to domestic jurisdictions. It is just as important in the international sphere. In an increasingly interconnected and interdependent world, adherence to the international rule of law is critical to regulating relationships between States, and by extension, to the peaceful co-existence of all peoples on this crowded planet.

International law enshrines values that many of us believe to be essential for a morally prosperous global society, including human rights.⁵

The principle of equal rights and self-determination of peoples, especially of indigenous peoples, are peremptory norms of international law from which no derogation is permitted.⁶ Similarly, under international law, States are obligated to settle their disputes by peaceful means so as to preserve international peace, security and justice.⁷ As we all know, in the very recent advisory opinion of the International Court of Justice on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*,⁸ the Court reemphasised the fundamental importance of respecting the right of self-determination (including that of the displaced Chagossians),⁹ and determined that the process of decolonisation of Mauritius was not lawfully completed.¹⁰

This opinion was for a victory for the international rule of law.

Today, Mauritius has cause to celebrate its many achievements since independence while looking to the future with confidence. No doubt, that future will include further advancing the position of women in the law and government, reinforcing the rule of law both domestically and internationally, and sharing learnings with friends, including Australia.

⁵ See, eg, the *International Covenant on Civil and Political Rights*.

⁶ *UN Charter* arts 1, 55-56; *Declaration on the Granting of Independence to Colonial Countries and Peoples*, UN Doc A/Res/1514(XV) (14 December 1960); *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations*, UN Doc A/Res/25/2625 (24 October 1970) annex; See also *East Timor (Portugal v Australia) (Judgment)* [1995] ICJ Rep 90 [29].

⁷ *UN Charter* art 2(3).

⁸ (*Advisory Opinion*) (International Court of Justice, General List No 169, 25 February 2019).

⁹ *Ibid* [180]-[181].

¹⁰ *Ibid* [174].