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The Status of Women and the Law

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By Mr Andre Sauzier

Translated from the original French text into English by Mrs Nichole Tirant-Gherardi

I will be talking to you about the legal status of women in Seychelles.

Equality between the sexes in Seychelles has been achieved since independence in 1976 and confirmed upon liberation in 1977. One can say that, strictly speaking, there is no such thing as the laws relating to women in Seychelles today. The only legal texts which specifically refer to women are those in which she is granted privileges.

For example, the legal texts in which the woman is specifically mentioned are those that grant her maternity leave or that make it illegal to employ her at night in certain industrial activities, or again that facilitate the legal process in case of a non-cohabitation order or an order to pay a pension from her husband.

The Seychellois woman enjoys total freedom in law and, in practice, plays an important role in all fields, social, economic, cultural and political. The only practical limitations that the Seychellois woman experiences are those to be found in traditional custom or habit, such as for example, customary rules that dictate that a certain activity is not traditionally the work of a woman. But even these obstacles tend to disappear and are not insurmountable.

It would be interesting in my view to retrace the path taken in Seychelles in achieving the present level of equality between the sexes.

A review of History is necessary. Seychelles and Mauritius shared the same history until 1903, the year when the administration of Seychelles was detached from that of Mauritius and Seychelles became a crown colony of the United Kingdom in its own right. This was followed by independence in 1976 and liberation in 1977.

In the same manner as Mauritius and La Réunion, Seychelles adopted the French Civil Code, the Code Napoleon, in 1805. Until 1903, therefore, Seychelles benefited from the same amendments to the Napoleonic Code as were made in Mauritius but after 1903, as a result of the administrative separation of the two countries, the evolution and changes to the Code were made independently of each other and followed separate courses.

As far as the woman was concerned, the most decisive change was made in 1948 when the Status of Married Women Act became law in Seychelles on 3rd May 1948. This law became effectively the Charter of Liberation for the Seychellois woman. The preamble of this law states as follows:

“Considering that the time is opportune for the emancipation of the married woman from her perpetual status of dependency and the suppression of her legal burden that the dispositions of the Napoleonic Civil Code in force in this colony since 1804 be amended with regard to the legal status of the married woman.

It may be surprising to note that the law refers only to the married woman. Why one may ask? This stems from the very conception of the Civil Code.

A minor is an individual of one or other sex. The age of majority is set at twenty one. At this age, one is considered to be capable of assuming all acts and actions required in day to day life except that there are restrictions resulting out of marriage. It is this provision set out in Article 448 of the Civil Code which throws us back to the restrictive provisions set out in Article 213 to 226 of the Napoleonic Civil Code relating to the married woman.

A married woman cannot be brought to justice nor can she draw up any act without the specific consent of her husband. It is only if she is a public merchant that she is allowed certain freedoms. And yet as a single woman, she is not subject to any restrictions and is allowed total freedom.

If you refer to the debates that preceded the passing of the Civil Code of 1804, it is clear that the legislator sought to protect the married woman from her own inexperience in business. It is also obvious that all those who wrote legal opinions on the law at the time that it was passed were men who had their own male-dominated personal opinions on the role of women in society of the day. One could not expect any better of them.

This law of 3rd May 1948 therefore served to destroy the fabric that society had woven around the married woman. She was now totally liberated.

She now suddenly found herself with all the rights of a single woman. A “Femme sole”. Good riddance to Article 213 of the Code through which her husband had the duty to protect her and she had the obligation to obey him. Good riddance too to Article 214 which obliged the wife to live with her husband and follow him wherever he chose to live.

All the matrimonial regimes were abolished. The community of property between the parties was dissolved and spouses who had been married under this regime became co-owners in equal shares of community property.

In the case of a second marriage, the woman could now remarry immediately upon the dissolution of the first marriage there being no longer any obligation to respect a waiting period.

Other amendments followed this liberation of the married woman but it would be time consuming to go into detail here.

All of these changes brought with them a degree of euphoria. The legislator had not fully thought out all the implications of the negative aspects of the amendments.

The abolition of the regime of common property automatically deprived the wife of half of the property of her husband purchased during the subsistence of the marriage. Upon the death of her husband the wife had only the right to a subsistence pension which the estate must provide her with. But the laws of succession were highly unfavourable to her. She had to wait until 1964 before this law was amended and the surviving spouse became entitled to half the inheritance where the deceased spouse had not drawn up a will and had died intestate. The surviving spouse is an heir without the protection of a "reserve" of the estate.

In the political sense, there has never been any discrimination in Seychelles between the sexes. The qualification to vote was initially linked to ownership of property or to the payment of direct taxes. This qualification applied equally to both men and women and to both husband and wives who had the required qualifications. This was the status until 1967 when universal suffrage was introduced in Seychelles.

The same rules as for voters applied also to those standing for public office. I believe that the Seychellois woman entered the political arena before the Mauritian woman.

In as far as employment is concerned, under the British administration, i.e. before independence in 1976, the woman was always paid less for the same work as her male counterpart. Consequently, the salaries of government workers showed a difference depending on whether the worker was a man or a woman. The basic salaries of workers was set in accordance with whether the worker was a man or a woman and fixed by the employment law. These differences were removed completely after Liberation in 1977. Before I conclude, I would like to touch on an area where I feel women could well be at a disadvantage if not enough thought is given to the subject.

In our modern society, many legal and unofficial unions of couples are being set up and are coming apart at an ever-increasing rate. This is a social phenomenon of the end of the 20th Century which is set to increase. Seychelles as, I am sure the other island states of the Indian Ocean will also be affected by this phenomenon.

It is when such unions fall apart that problems will arise, especially in the case where the woman has stayed at home and has not worked. The question which will arise is this. Will the woman be able to claim a part of property purchased during the subsistence of the marriage or during the time that the parties were cohabiting in an unofficial union when the union breaks down.

In the United Kingdom a special law has been passed to deal with the settlement and redistribution of matrimonial property upon dissolution of the marriage through divorce or judicial separation. In France, the judges in the case of unofficial unions apply the principles of partnerships "société de fait" or the action of "de in rem verso". In my view both of these solutions are too artificial and are unable to produce satisfactory results. Judges will have to be freed from all shackles and granted the power to share out the property in the best possible circumstances with the same powers that are available to the judges in the United Kingdom to

deal with such matters in instances of divorce or judicial separation.

For the time being, it is only through the powers of the judiciary that solutions will be found to these problems which the legislator has failed or is afraid to act upon in not granting to the parties in an unofficial union that is now a part of modern day society the legal status .

I trust that you will have found this presentation of some interest.

André Sauzier

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Court of Appeal of Seychelles.*

Antananrivo, July 1989

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