REPORT OF THE TRIBUNAL SET UP UNDER ARTICLE 134 (2) OF THE CONSTITUTION OF THE REPUBLIC OF SEYCHELLES TO INQUIRE INTO THE INABILITY OF JUDGE DURAI KARUNAKARAN TO PERFORM THE FUNCTIONS OF THE OFFICE OF JUDGE ON GROUNDS OF MISBEHAVIOUR AUGUST 2017.

Complaints Against a Puisne Judge of the Supreme Court of Seychelles by the Honourable Chief Justice to the Constitutional Appointments Authority (30th day of September 2016)

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INTRODUCTION

A Tribunal was appointed by the Constitutional Appointment's Authority (hereinafter referred to as "CAA") under Article 134 (2) (a) and (b) of the Constitution to inquire into the matter of Judge Karunakaran as per the complaint lodged before the CAA by the Honorable Chief Justice and to report on the facts thereof to the CAA and recommend to the President whether or not Judge Karunakaran ought to be removed from office.

It is appropriate at this stage to set out the provisions of Article 134 (2) (a) (b) of the Constitution**:-**

> *"134. (2) Where the Constitutional Appointments Authority considers that the question of removing a Justice of Appeal or Judge from office under clause (1) ought to be investigated*
>
> *(a) the Authority shall appoint a tribunal consisting of a President and at least two other members, all selected from among persons who hold or have held office as a Judge of a Court having unlimited original jurisdiction or a Court having jurisdiction in appeals from such a Court or from among persons who are eminent jurists of proven integrity; and*
>
> *(b) the tribunal shall inquire into the matter, report on the facts thereof to the Authority and recommend to the President whether or not the Justice of Appeal or Judge ought to be removed from office."*

By letters dated the 7th day of October 2016, the CAA appointed the following Judges as President and Members of the Tribunal. (Annexure 1).

President:-
Honourable Justice Mr. Frederick Egonda-Ntende
(Justice of the Court of Appeal of Uganda and former Chief Justice of Seychelles)

Members:-
Honourable Justice Mr. Mohan Niranjit Burhan
Puisne Judge of the Supreme Court of Seychelles

Honourable Justice Mrs. Samia Govinden
Puisne Judge of the Supreme Court of Seychelles

In order to assist the said Tribunal in its inquiry the following persons were also appointed.

Counsel to the Tribunal:
Mr. Elvis Chetty
Attorney-at-Law

Secretaries to the Tribunal:-
Mrs. Jacqueline Simeon
Ms.Maryvonne Gabriel

On the 12th of October 2016 the Terms of Reference **(Annexure (4)** was received by the Tribunal. The CAA further on the same date forwarded to Judge Karunakaran a letter **(Annexure 2)** stating the substance of the complaint, where it was alleged inter-alia that Judge Karunakaran's professional conduct fell short under the requirements of the Constitution and the Principles contained in the Seychelles Code of Judicial Conduct. Full substance of Complaint **(Annexure 3)**.

The Tribunal commenced its proceedings on the 7th of February 2017 with the excused absence of Judge M. Burhan due to family bereavement and with Learned Counsel for the Tribunal Mr. Elvis Chetty being present and in the presence of Judge Karunakaran who was present and duly represented by Learned Senior Counsel Mr. Philip Boulle (hereinafter referred to as "Senior Counsel"). In view of a lack of proper quorum the parties were informed of an adjournment of the proceedings to a date whereby the full quorum would be constituted and that was on the 14th of February 2017 on which date Learned Senior Counsel moved the Tribunal on a motion for stay of the proceedings of the Tribunal pending an appeal of a Judgment of the Supreme Court rejecting his Judicial Review Application.

The Tribunal by way of Ruling No. 1 dated 16th February 2017 **(Annexure 6),** dismissed the preliminary points and motion as raised by Learned Senior Counsel (more particularly illustrated in the Summary of events) and directed Judge Karunakaran and Counsel to the Tribunal to file a list of witnesses that would be called before the Tribunal together with a list of documents that are intended to be adduced as exhibits not later than 31st March 2017. Likewise, Judge Karunakaran was directed to file his list of witnesses and intended documents not later than 30th April 2017. The Tribunal further directed that the commencement of the hearing of evidence would be from 22nd May 2017 and will proceed from day to day until the completion of the hearing.

Indeed, the hearing of the evidence before the Tribunal commenced on 22nd May 2017 and continued till the 5th June 2017. Thereafter Learned Counsel for the Tribunal tendered his submissions.

PROCEDURAL HISTORY AND SUMMARY OF EVENTS

It appears on the documentation received by the Tribunal and the evidence led before it that following the Complaint lodged by Honourable Chief Justice with the CAA on the 30th day of September 2016, on the 7th day of October 2016, Judge Karunakaran was served with a letter from the CAA informing him that certain complaints of misbehaviour contrary to Article 134 (1) of the Constitution had been made against him by the Honourable Chief Justice and that the CAA was of the view that it was necessary to inquire into his ability to perform the functions of the office of Judge. Hence pursuant to Article 134 (2) of the Constitution a Tribunal of inquiry consisting of 3 members would be appointed and that he would be formally notified of the contents of the complaints.

On the 12th day of October 2016 the CAA further following their former communication with Judge Karunakaran, forwarded to him a letter stating the substance of the Complaints made against him to the CAA wherein it was inter alia alleged that Judge Karunakaran's professional conduct fell short of the requirements of the Constitution and the principles contained in the Seychelles Code of Judicial Conduct.

The full substance of the complaint as outlined in the said letter of 12th October 2016 are referred to in Annexure 11.

Judge Karunakaran was further informed of the appointment of the Tribunal in terms of Article 134 (2) (a) of the Constitution consisting of Justice Egonda-Ntende as its President and two other members namely Judges M. Burhan and S. Govinden. He was further invited to answer the specific allegations and lodge a response to the Secretary of the Tribunal within 21 days thereon.

The Tribunal was appointed by the CAA on the 7th day of October 2016 by virtue of letters of appointment sent to the President and members herein before mentioned, to inquire into the ability of Judge Karunakaran to perform the functions of the office of Judge in line with Article 134 (2) (a) of the Constitution and to forthwith inquire into the matter and report on the facts thereon to the CAA and to recommend to the President of the Republic of Seychelles whether or not Judge Karunakaran should be removed from office. The Tribunal was further informed that the President of the Republic had been informed of the appointment of the Tribunal and that he may suspend Judge Karunakaran forthwith.

By way of letter of the 10th of October 2016 (Annexure12), the Tribunal was notified by the President of the Republic of Seychelles that Judge Karunakaran had been suspended from performing the functions of Judge with immediate effect until the full and final determination of the inquiry by the Tribunal and this in pursuance to the provisions of Article 134 (4) of the Constitution.

Further by way of letter of the 12th day of October 2016, the CAA referred to the Tribunal its terms of reference. On the 19th day of October 2016 Learned Senior Counsel acknowledged receipt of letter dated 12th day of October 2016 to Judge Karunakaran from the CAA and made clear his intention of awaiting to hear "from the Tribunal regarding all matters pertaining to its jurisdiction whilst his client Judge Karunakaran also reserved his right to challenge the appointment of its

members in due course." It is to be further noted that in the same letter of reply Learned Senior Counsel acknowledged that the correct procedure was for the complaint from the Chief Justice to be forwarded to his client by the Tribunal duly set up by the Constitution and as it being "fully independent, impartial and free from any outside influence."

In furtherance to Learned Counsel's response, the Tribunal on the 9th day of November 2016 through its Counsel Mr. Elvis Chetty on the instructions of the Tribunal forwarded to Judge Karunakaran a notice of complaint made by the Chief Justice against him including supporting documents. The Tribunal further directed Judge Karunakaran to respond to the same within 21 days from the date of the service of same. The Tribunal Rules of Procedure (as per Annexure 5) promulgated on the 04th day of November 2016 were also attached for his perusal and action. In that light it is to be pointed out that the Rules of Procedure as promulgated by the Tribunal was to ensure that all parties to the inquiry have full and ample opportunity to be heard; arguments and evidence to be disclosed and presented in a timely and efficient manner; and all proceedings before the Tribunal be conducted as informally and expeditiously as possible. The Rules as it was indicated further were to be liberally applied so as to advance its purposes as set out. It is also paramount to note that the Rules indicated clearly that it is was not exhaustive and that the Tribunal retained the jurisdiction to decide any matter not provided for by the Rules.

On the 28th day of November 2016 the Tribunal received a reply from Learned Senior Counsel on behalf of Judge Karunakaran acknowledging the receipt of the Notice of complaint of the 9th day of November 2016 by the Tribunal and chose to reply thereto by denying the complaint and sought for time to file his reply thereto (Annexure 13).

Attached to the letter of Learned Senior Counsel was a motion for stay of proceedings entitled Application No. 1 of 2016 Ex Parte Durai Karunakaran Judge of Supreme Court of Seychelles residing at Belle Vue La Misère as applicant.

On the 2nd day of December 2016, Learned Counsel for the Tribunal acknowledged receipt of letter of Learned Senior Counsel on 28th November 2016 **(Annexure 17)** and further informed that in line with the Rules of Procedure of the Tribunal and in the spirit of natural justice the Tribunal had granted Judge Karunakaran's motion for an extension of time to file his response to the Complaints against him. In doing so, the Tribunal specifically took cognizance of Judge Karunakaran's absence from Jurisdiction. Judge Karunakaran was further directed that the 7th day of February 2017 was the day fixed for preliminary hearing where he would be afforded the opportunity to raise the ancillary matters suggested in his above mentioned letter. He was further required to lodge a reply on the merits of the Complaint as served on him by the Tribunal by the 7th February 2017 the latest.

On the 7th day of February 2017 the Tribunal convened and informed Learned Senior Counsel Mr. P. Boulle that the matter be fixed for hearing of the preliminaries as raised above on the 14th day of February 2017.

On the 14th day of February Learned Senior Counsel appeared with Judge Karunakaran before the Tribunal and submitted that as per his reply to the Tribunal of the 28th November 2016 he was going to raise 3 pertinent issues to the Tribunal namely number one being a motion for recusal in

respect of Judge Burhan; secondly stay of proceedings of the Tribunal; and thirdly on a constitutional issue regarding the complaint. Learned Senior Counsel was duly informed by the Tribunal that the recusal by Judge Burhan ought to have been submitted by way of a motion with supporting affidavit which was lacking and Learned Senior Counsel indicated that the point was well taken and then he would ask for leave at the appropriate time to file the required affidavit.

By way of Ruling No. 1 of the 16th day of February 2017 the Tribunal dismissed the preliminary points as raised above by Learned Senior Counsel on behalf of Judge Karunakaran. (Details Annexure 6).

The Tribunal reconvened and commenced hearing as per the above said Ruling on the 22nd May 2017 wherein Learned Senior Counsel, Judge Durai Karunakaran, Counsel to the Tribunal were all present. Learned Senior Counsel informed the Tribunal that he was to raise a preliminary objection at the start of the proceedings namely that of an application for the recusal of Judges M. Burhan and S. Govinden from the Tribunal. The grounds for recusal are rehearsed in the Application No. 2 of 2016 and mirrored in the Affidavit of Judge Karunakaran attached thereto of the 22nd day of May 2017 **(Annexure 14)**.

The Tribunal by way of a Ruling of the 23rd day of May 2017 dismissed the application for recusal as per (Annexure 6).

Following the above mentioned Ruling, Learned Senior Counsel moved the Tribunal to make a second application viva voce in terms of Article 46 (7) of the Constitution which Motion was granted, wherein Learned Senior Counsel sought the Tribunal to refer a question arising out of Judge Karunakaran's right to a fair hearing to the Constitutional Court**.**

On the 24th day of May 2017, the Tribunal delivered a Ruling rejecting the said application of Learned Senior Counsel as per (Annexure 6).

Following the said Ruling of the Tribunal Learned Senior Counsel proceeded in informing the Tribunal that he intended to make a statement to the Court. That there is no ruling sought for adjournment, that he just wish to make a statement to the Court before we proceed, as instructed by his client, if he may, it will be "a two minute statement." The extract of the proceedings containing the Statement of Learned Senior Counsel is reproduced as Annexure 15.

Thereafter Learned Senior Counsel together with Judge Karunakaran walked out of the precincts of the Tribunal and failed to participate and attend any further proceedings.

The Tribunal thanked Learned Senior Counsel for his intervention and informed Learned Counsel to the Tribunal to proceed with the hearing as per Ruling of the Tribunal of the 16th February 2017.

The Tribunal continued its sittings from the 22nd day of May to the 5th day of June 2017 to hear evidence of facts. 17 witnesses gave oral evidence being namely the Registrar of the Supreme Court of Seychelles Mrs. Juliana Esticot, the Chief Justice Mrs. Mathilda Twomey, Deputy Registrar Mrs. Jeanine Lepathy, the Personal Assistant of the Chief Justice Mrs. Jemina Lucas, the Executive Legal Assistant to the Chief Justice Ms. Joelle Barnes, Senior Court Reporter at the

Department of Judiciary Ms. Shena Labrosse, Court Reporter at the Department of the Judiciary Ms. Annie Hoareau, Mr. Bagnal Jean Baptiste, Mr. Alex Joseph Jean Baptiste, Mr. Francois Octobre, Mrs. Jerina Octobre, Attorney-at-Law Mr. Basil Hoareau, Programmer at the Department of Judiciary Mr. James Mukuwa, Attorney at Law Mrs. Samantha Aglae, Attorney at Law Mr. Rajasundaram and Mrs. Mireille Coleman Merali.

The Tribunal also had regard to written statements and documentations in support of and forming part of the complaint referred to the Tribunal by the CAA and produced before the Tribunal by the Registrar of the Supreme Court, the Executive Legal Assistant to the Chief Justice, the Senior Court reporter, the Chief Justice and Attorney-at-Law Basil Hoareau. The number of exhibits produced and marked by the Tribunal were 79 in number and those inclusive of several Court files pending and completed which were directly being dealt with by Judge Karunakaran prior to his suspension from office of Judge by the President of the Republic of Seychelles.

The Tribunal concluded the hearing of all the witnesses called by Counsel to the Tribunal on the 5th day of June 2017 and thereafter thanked all those who had assisted in the proceedings and adjourned the proceedings pending the preparation of the Tribunal's Report for both the CAA and the President.

COMPLAINT OF THE HONOURABLE CHIEF JUSTICE

The task of the Tribunal as per its terms of reference from the CAA is to inquire and investigate into the complaint of the Honourable Chief Justice of 30th day of September 2016 in terms of Article 134 of the Constitution with regards to the misbehaviour of Judge Durai Karunakaran.

The substance and details of the complaint falls within 3 main areas namely:-

I. **Judge Karunakaran's integrity and propriety in his office as Judge;**

II. **Judge Karunakaran's poor collegial attitude; and**

III. **Judge Karunakaran's competence and diligence in performance of Court duties.**

Details of the reasons for concern as per the complaint is clearly set out below:-

I. Integrity and Propriety

1. **Judge Karunakaran consistently acts without integrity or propriety which conduct threatens the reputation of the Judiciary and undermines the results of the cases decided in his Courtroom. In the past year he has behaved in a manner unbecoming of his office, which behaviour includes:-**

1.1. Publicly disclosing confidential information relating to the internal functioning of the Judiciary;

1.2. Openly disrespecting members of the Judiciary and the Bar in his Courtroom and judgments;

1.3. Refusing to leave the Chief Justice's chambers and continuing to sign judgments as the Acting Chief Justice upon his being passed over for the role of Chief Justice;

1.4. Attempting to turn the Registrar, other Judges and members of the Bar against the Chief Justice in order to gain support for himself;

1.5. Intimidating any litigants or Counsel who bring complaints about his management of the cases, and

1.6. Making content amendments to the transcripts of Court proceedings.

2. His repeated advocacy of judicial intervention in order to achieve a subjective notion of 'justice' above a technical application of the law threatens the legitimacy of his decisions.

3. His pervasive sexism openly expressed in judicial decisions gives rise to a perception that he would be biased in performing his judicial functions.

4. His willingness to act as Mediator and Judge in the same matters infringes on his impartiality in deciding cases and violates the Mediation rules.

II. Poor Collegial Attitude

5. Since my appointment, Judge Karunakaran has refused to work with me as the Chief Justice and has withdrawn from any engagement as part of the Judiciary team. This makes it increasingly difficult to work with him on a professional level and poisons the atmosphere of judicial occasions. Such conduct includes:-

5.1. Refusal to attend my swearing in or those of any judicial officers appointed thereafter (including the swearing in of Master Ellen Carolus, Mr. George Robert, Ms. Jessica Kerr, Mr. Melchior Vidot and Mr. Seegobin Nunkoo);

5.2. Judge Karunakaran has openly informed me that he does not believe that I am qualified to be the Chief Justice and has consistently subverted any attempts I have made to address judicial matters with him;

5.3. I have on two occasions been required to ask Judge Karunakaran to leave my office due to the threatening and aggressive nature of our interactions;

5.4. In the past year Judge Karunakaran has disregarded administrative rules by –

5.4.1. Permitting his son to drive his car despite the Judiciary policies prohibiting same;

5.4.2. Ignoring practice directives or publicly subverting them;

5.4.3. Not being present at Court or attending to work-related matters when he was the acting duty Judge;

5.4.4. Permitting Courtroom staff to wear non-uniform attire in the Court Room;

5.4.5. Going on leave without informing the Chief Justice;

5.4.6. Not giving reasons for failure to attend to the monthly Judges meeting; and

5.4.7. Failure to attend continued learning sessions.

5.5. In October 2015, Judge Karunakaran issued an order of Court that I provide an explanation for having possession of a case file which was being called in his Courtroom that morning.

5.6 He threatened to hold me in contempt of Court if I failed to provide it. Such a public displace of insubordination and collegial bickering was unprovoked, unnecessary and unprofessional (and incorrect as I did not in fact have the case file). This was resolved with the intervention of Court of Appeal Justice Fernando.

III. Competence and diligence in performance of Court duties:

6. The Seychelles Judiciary has struggled with chronic issues of backlog and judicial delays which my predecessor Former Chief Justice Frederick Egonda-Ntende sought to remedy during his term in my office. This is a continued and necessary priority for me and requires a multipronged approach, including reviewing Court rules, efficient case management by Judges and diligent case prosecution by the Bar. Steps have been taken

in line with international best practice to promote better case management in the Seychelles Judiciary which includes the adoption of a Seychelles Code of Judicial Conduct as well as an undertaking to adopt Delay Reduction Measures in the Court rooms.

7. Judge Karunakaran refuses to follow these adopted practices to ensure that cases are efficiently and effectively disposed of and refuses to take responsibility for the delays experienced in his Court room (which are not prevalent in those of the bulk of his colleagues). In a recent judgment, Judge Karunakaran expressed his opinion on the measures in place to prevent undue delay as follows:

> ***One may even unwisely suggest that Court should apply the law strictly, refuse adjournments to stop procrastination, and the accumulation of backlogs and delays. The Courts can arbitrarily and mechanically do so and show better figures on disposal rates. After all, technically, a case dismissed is a case disposed. …Should it [the Court] look for short-term, quick-fix solutions, dehumanising the law, for a pleasing statistic?***
>
> ***Didon v Roucou Construction CS 90/2003 delivered 5th September 2016***

8. Judge Karunakaran has been invited to express his input on the cause of judicial delays on numerous occasions and has chosen instead to express these views in the Court room.

9. Despite his years of experience, he remains a Judge with chronic backlog even with greatly reduced responsibilities in the past year. This slow disposal of cases is unacceptable and he is unwilling to amicably discuss measures to assist him with better case disposal.

10. Judge Karunakaran neglects to take carriage of his cases which shows an unwillingness to diligently perform his duties as a Judge:-

10.1. He fails to adequately prepare for the Court appearances resulting in embarrassing encounters in Court;

10.2. **He fails to supervise preparation of the files resulting in missing proceedings in his files, erroneous filing of cases, and delays for unnecessary administrative purposes;**

10.3. **He blames his inability to prepare judgments timeously on the lack of availability of proceedings without having taken steps to ensure that his files are in order.**

10.4. **He shirks his duty to decide on difficult or awkward matters.**

11. In the past year Judge Karunakaran has neglected his duties with regard to delivering judgments by:

11.1. **Failing to fix a date for judgment at the end of a hearing;**

11.2. **Failing to deliver judgment on a fixed date;**

11.3. **Taking longer than 60 days to deliver a judgment.**

12. Judge Karunakaran's management of cases has been the subject of several letters of complaint over the past years. Counsel have even taken to going on record to register their dissatisfaction with lenient behaviour towards delaying Counsel or dilatory proceedings. Review of several backlogged cases picked at random tells a tale of woeful maladministration.

13. When admonished on these matters, Judge Karunakaran uses the Courtroom to publicly undermine the case management processes:

13.1. **By making a display of citing that he is unable to take cases because the Chief Justice has restricted his cause list;**

13.2. By describing how busy he is and his inability to cope with his case load;

13.3. By intimidating litigants or Counsel who issue complaints about the management of his cases.

14. It was further intimated by way of the complaint that the Honourable Chief Justice had on countless occasions attempted to address this appalling behaviour but have been met with aggression and an unwillingness to address matters in a collegial manner. That exhaustion of every option within CJ's role have been exhausted and that the Judiciary has no ability to efficiently meet its constitutional obligations whilst the reputation of the Judiciary is consistently undermined by one of its most outspoken and influential members.

As part of the complaint as lodged with the CAA was further enclosed an index to documentation file in support.

GROUNDS FOR REMOVAL OF A JUDGE UNDER ARTICLE 134 (1) (a) OF THE CONSTITUTION OF SEYCHELLES

Article 134(1) (a) provides that a Judge may be removed for inability to perform his functions in two instances:-

> *134. (1) A Justice of Appeal or Judge may be removed from office only –*
>
> > *(a) for inability to perform the functions of the office, whether arising from infirmity of body or mind or from any other cause, or for misbehaviour;*

The first instance concern cases of incapacity and it specifies that a Judge may be removed if such inability (*i.e.*, incapacity) arises from infirmity of body or mind or from any other cause. The second instance where a Judge may be removed is for misbehaviour.

This reading is corroborated in Article 18 of the ***UN Basic Principles on the Independence of the Judiciary***, which provides that incapacity and misconduct are the sole grounds on which removal is justified. This is further echoed in the ***Commonwealth Latimer House Guidelines***, which provides that a Judge should be removed only for reasons of incapacity or misbehaviour that clearly renders them unfit to discharge their duties (Principle IV).

As to the scope of misbehavior as an initial matter, according to a report of the ***UN Special Rapporteur on the Independence of Judges and Lawyers***, a finding of misconduct should not be based on the "content of their rulings, verdicts, or judicial opinions, judicial mistakes or criticism of the Courts," because these decisions made in good faith should be challenged on appeal and that is the way the judiciary is collectively held accountable under the law.

With respect to the degree of misconduct sufficient to warrant removal, the ***Latimer House Guidelines*** explain that the misbehavior must amount to serious misconduct **(Guideline VI. 1(a) (A))**. Moreover, the UN Special Rapporteur explains that removal should be confined to "instances of professional misconduct that are gross and inexcusable and that also bring the judiciary into disrepute." Similarly, the ***IBA Minimum Standards of Judicial Independence*** refer to a Judge "who by reason of a criminal act or through gross or repeated neglect has shown himself/herself manifestly unfit to hold the position of Judge."

Finally a report from the Institute on Democratic and Electoral Assistance entitled *Judicial Tenure, Removal, Immunity and Accountability* provides that misbehaviour is usually defined in terms of corruption or other breach of trust or dereliction of duty.

Additionally, an extract from the ***Subaris Company Ltd &Ors. v Perera & Anor,* CP 3 of 2008** , where presiding Judge Karunakaran explained that:

"Now, one might ask whether the term "Misbehaviour" used by the framers of the Constitution is sufficient enough to cover all the misdeeds one can foresee, that a Judge may commit in the performance of his judicial functions. In my view, "misbehaviour" is an inclusive term commanding a broad sense that covers all improper or wicked or immoral and unlawful acts and

conducts that could possibly be committed by a Judge in the performance of his functions as Judge or otherwise outside. This term also includes all "malicious" or "criminal" acts and other misdeeds committed outside his judicial function and capacity or committed in the guise of judicial function and capacity. All criminal acts are in a sense, acts of misbehaviour that carry a legal sanction; but, not all acts of misbehaviour are criminal acts. In all those scenarios, the Judges shall lose the immunity, be held liable to those proceedings before the Special Tribunal and face the legal and other consequences."

ETHICAL STANDARDS FOR THE CONDUCT OF JUDICIAL OFFICERS UNDER THE SEYCHELLES CODE OF JUDICIAL CONDUCT

A thorough elaboration of the qualities of a Judge in regard to the Seychelles Code of Judicial Conduct ("SCJC" or "the Code"):

(A) Integrity and Propriety;

(B) Poor collegial attitude; and

(C) Competence and Diligence in performance of Court duties.

As a preliminary matter, it bears reminding that the Code in its Foreword states that it represents the principles of professional conduct that **bind** Justices of appeal, Judges, and Masters of Seychelles Judiciary in both their professional conduct and private lives.

A. Integrity and Propriety

i. Integrity

The Code provides that "[i]ntegrity of the Judges is the core of an independent and impartial judiciary." Section 3 of the Code entitled "Integrity" states that:

> "Integrity is central to the proper discharge of the judicial office. The behaviour and conduct of a Judge must re-affirm the peoples' faith in the integrity of the Judiciary."

The Code then goes on to explain that a Judge shall respect and uphold the law (§ 3.1), be of an upright character and ensure that his or her conduct is above reproach in the view of a reasonable fair-minded and informed person (§ 3.2), exhibit and promote high standards of judicial and personal integrity (§ 3.3), and personally observe the standards of the Code and encourage, support and help other Judges do the same (§ 3.4).

While the term integrity does not appear in the IBA Minimum Standards of Judicial Independence nor the Commonwealth Compendium and Analysis of Best Practice regarding ***"The Appointment, Tenure and Removal of Judges under Commonwealth Principles,"*** **the Action-Learning Program on Judicial Transparency and Accountability in Latin America and Caribbean Region (LCR) in a study entitled "*How Can Greater Judicial Integrity Be Achieved?"*** elaborated on the notion of judicial integrity. The study explains that:

> "Integrity may be given a variety of meanings, and its scope may be influenced by culture and history, among other factors. At a minimum, in a judicial context, integrity includes honesty, fairness, and trust. Integrity may also be defined by what it is not. Where a person in a position of power acts for his or her own self-interest, or for ulterior or improper purposes, it is widely understood that such a person lacks integrity."

Moreover, the study acknowledges that integrity is difficult to measure. It indicates, however, that there are assessments that may be a proxy for measuring integrity, which include:

- The number of complaints against Judges
- Surveying public trust and confidence in the judiciary
- Surveying judicial activities and practices

However, the Commonwealth Compendium and Analysis of Best Practice indicates that regarding removal of a Judge, if a Judge's conduct is merely unpopular with a large section of the public, the shortcomings of the Judge would have to be Judged to have been manifest, a more objective standard.

Additionally, the study specifies that regarding the topic of judicial integrity in Canada, a country part of the commonwealth, the Canadian Judicial Council issues a non-binding "Ethical Principles for Judges," which states that: "Judges should strive to conduct themselves with integrity so as to sustain and enhance public confidence in the judiciary." Moreover, similarly to the Code, the two principles following this statement on integrity state:

I. Judges should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair minded and informed persons.
II. Judges, in addition to observing this high standard personally, should encourage and support its observance by their judicial colleagues.

ii. Propriety

Regarding propriety, the Code provides that:

> "Propriety and the appearance of propriety are essential to the performance of all the activities of a Judge. A Judge shall avoid impropriety and the appearance of impropriety in all judicial and personal activities."

The Code then states that a Judge shall conduct himself consistent with the dignity of the judicial office, and for that purpose must be willing to accept appropriate personal restrictions (§ 4.1); exhibit and promote high standards of judicial conduct (§ 4.2); not use or lend the prestige of the judicial office to advance his private interests or that of anyone else, nor convey or permit the impression that he can be influenced (§ 4.3); refrain from conduct and associating with persons or organizations, which may undermine confidence in the Judge's impartiality or with regard to any issue that may come before the Courts (§ 4.4); refrain from all political activity or conduct that gives the appearance of political activity (§ 4.5), excepting loans from banks and other financial institutions, neither ask nor accept, whether himself or through any person, a gift, loan, or favour from any person in relation to the performance of judicial duties (§ 4.7), refrain from being engaged in financial or business dealing which may interfere with the performance of judicial duties or reflect adversely on the image or impartiality of the Judge (§ 4.8), and not serve as an officer or

employee of any business and shall not practice law or be a dormant partner or associate in a law firm (§ 4.9).

The principle of propriety in the Bangalore Principles of Judicial Conduct, which the Code is based on, includes a number of these provisions, but also adds that:

Confidential information acquired by a Judge in the Judge's judicial capacity shall not be used or disclosed by the Judge for any other purpose not related to the Judge's judicial duties. Beyond this additional provision regarding the use of confidential information, it appears that the Code's twelve sections explaining the notion of propriety are quite comprehensive. Most articles and Codes of Judicial Conduct reviewed, like for instance the International Bar Association's Minimum Standards of Judicial Independence and the American Bar Association's Model Code of Judicial Conduct do not appear to provide any additional relevant commentary that is not in the Code already.

B. Poor Collegial Attitude

Poor collegial attitude is not expressly addressed in the Code, however, "behavioural issues" may be addressed through the principle of propriety and competence and diligence. Sections 4.1 and 4.2 respectively require that a Judge must conduct himself with the dignity of the judicial office and shall exhibit and promote high standards of judicial conduct. A Judge exhibiting a poor collegial attitude such that it is inconsistent with the dignity of the judicial office or implicitly encouraging low standards of judicial conduct would appear to be in violation of the Code he has agreed to be bound by and respect. However this does not mean a poor collegial attitude amounts to serious and gross misbehaviour warranting the removal of a Judge from office.

Section 6.3 of the principle of competence and diligence in the Code states that a Judge shall be dignified in all proceedings. This principle would appear to include acting in a dignified manner to all persons, including other Judges, in all proceedings. Moreover, the Bangalore Principles on Judicial Conduct provide additional guidance regarding this principle. Article 6.6 entitled "Competence and Diligence" provides that:

> "A Judge shall maintain order and decorum in all proceedings before the Court and be patient, **dignified** and **Courteous** in relation to litigants, jurors, witnesses, lawyers and **others with whom the Judge deals in an official capacity.** The Judge shall require similar conduct of legal representatives, Court staff and others subject to the Judge's influence, direction or control."

Accordingly, the behaviour of a Judge who conducts himself in an undignified and uncourteous manner towards others Judges in his official capacity is likely to be inconsistent with the Code.

C. Competence and Diligence in Performance of Court Duties

Regarding competence and diligence, the Code states in its Preamble that the Courts are enjoined "to administer justice expeditiously." Section 6 of the Code provides that "Competence and

diligence are prerequisites to the performance of the judicial office. A Judge shall give judicial duty precedence over all other activities." Moreover, section 6 specifies that a Judge shall endeavour to maintain and enhance knowledge, skill and qualities necessary to competently perform his duties (§ 6.1); promptly dispose of the business of the Court, avoiding protracted trial of a wherever possible, and where a judgment is reserved, it should be delivered within sixty days unless for good reason it is not possible (§ 6.2); and maintain order and decorum in Court, be patient and dignified in all proceedings, and require similar conduct of all persons in attendance in Court (§ 6.3).

In this regard, the Judges of the **Supreme Court and Justices of the Court of Appeal adopted on 8 September 2010 an Annex on *Delay Reduction Measures and Time Standards for the Supreme Court of Seychelles.*** This Annex details several measures to reduce delays and can be used as a benchmark to evaluate a Judge's diligence and competence in administering justice.

Importantly, however, while competence and diligence are very important principles, the Commonwealth Compendium and Analysis of Best Practice indicates that it is not one of the two grounds for removal (*i.e.*, incapacity and misbehaviour) in the Latimer House Principles nor is incompetence expressly set out in the Seychelles Constitution as ground for removal. Nevertheless, the Compendium acknowledges that certain States have included incompetence as a ground for removal. For instance in South Africa, gross incompetence may result in the removal of a Judge; and in Pakistan, inefficiency may result in removal. The Compendium, however, cautions against individual Judges being unfairly held responsible for delays or errors caused by systemic failings such as an excessive caseload or inadequate administrative support. Whereas incompetence is not a ground for removal under the Constitution of Seychelles, diligence or rather the lack of diligence may amount to misbehaviour. It is essential to examine the available evidence to determine whether the conduct of the Judge lacked diligence to such a degree that it amounts to serious or gross misbehaviour.

There is conduct of a Judge that may amount to misbehaviour but nonetheless of itself is not sufficiently serious to justify a Judge's dismissal from office on the ground of misbehaviour.

The responsibility of this Tribunal is a heavy one and requires an appropriate measure of detachment and perspective taking into account all the above stated principles with respect to the ground of misbehaviour of a Judge which renders his inability to perform functions of his office as Judge. The Tribunal's approach has to give proper weight to the crucial importance of protecting Judges against unnecessary attacks in the performance of their judicial duties to uphold judicial independence in their jurisdiction. Hence the Tribunal is to be mindful of all the risks involved prior to considering removal on grounds on misbehaviour.

SUMMARY OF EVIDENCE BEFORE THE TRIBUNAL

Evidence heard by the Tribunal

All persons who gave evidence did so under oath or affirmation.

Evidence of the Registrar

Mrs. Juliana Esticot, the Registrar of the Supreme Court, appeared and officially produced all Court files which were requested for the Tribunal's perusal. The Registrar further testified regarding a statement of hers contained in the complaint letter. On 7th August 2015, when Judge Karunakaran was the Acting Chief Justice and the announcement came that Twomey Chief Justice had been appointed as Chief Justice, Judge Karunakaran telephoned the Registrar and told her to start packing her bags as the new Chief Justice was going to remove her and replace her with Jessica Kerr (former Executive Legal Assistant to the Chief Justice). She had clarified with the Chief Justice that this was not the case as there was no reason for such an apprehension.

The Registrar described the fact that there had been some problems with Judge Karunakaran's files, where the orderlies had come to the Registrar stating that there were proceedings missing in a file, and when she investigated she often found that the proceedings were in the file but had not been placed in the correct order. She testified that the Judges receive their files for the following week the Thursday or Friday the week preceding when they will be called before that Judge and it is the responsibility of the Judge to go through the file and make sure that the file is ready for the upcoming case, including ensuring that the proceedings are in order. She stated that there had been instances where Judge Karunakaran had stated that proceedings were missing, which were in fact misfiled. If he had gone through the file, he would have found that the proceedings were on file.

She testified regarding statements made by Judge Karunakaran to her during the period when the Chief Justice had been appointed but was overseas during August to September 2015. She testified that Judge Karunakaran had stated that he was against a woman being the Chief Justice and expressing his disbelief that the Government failed to recognize his efforts after all that he had done. She stated that he had told her to allow those persons who would petition against the appointment of the Chief Justice to do so.

Evidence of Chief Justice Twomey

Chief Justice Twomey appeared before the Tribunal on 25th May 2017, she testified regarding the letter of complaint that she had sent to the Constitutional Appointments Authority concerning Judge Karunakaran. She testified that she had known Karunakaran for many years, going back to when they were both young lawyers. Prior to her appointment as Chief Justice she enjoyed a cordial work relationship with him and upon her appointment as Chief Justice she had made a

point to contact him within a very short period of time to express her regret that he would feel disappointed that he was not appointed. He had responded by stating that he had reservations about her appointment. He had refused to attend her swearing in, stating to her on 17th August 2015 that he would not attend because as the senior most Judge he ought to have been appointed and that she had no qualifications or experience for the job. He did not attend the swearing in and avoided meeting with her to discuss case administration of cases in the civil division, over which he was the senior Judge.

The Chief Justice testified that the Judge had refused to leave the Chief Justice's chambers until about 21st August 2015 and she was forced to work from her Court of Appeal chambers until she threatened to have security called to remove him. Thereafter, there was no formal handover of work to her.

She testified that he continued to perform functions under the title of the acting Chief Justice despite her appointment and signed several orders and rulings under that name until 24th August 2015. She described that after her appointment as Chief Justice she became aware of, and conflicted with Judge Karunakaran over, "his gross mismanagement of cases, his interference in certain matters, his inappropriate behaviour in terms of what is discussed privately between himself and [herself], his impropriety, his lack of collegiality" and "many difficulties that [she] was only encountering with him and not the other members of the team in the Judiciary."

The Chief Justice detailed that she had tried in various ways to engage with him. Informally, she had called him in and they had two very tempestuous encounters. During one such encounter she felt physically threatened and she had to ask him to leave her office on two occasions actually.
After the first such incident she had written to the Constitutional Appointments Authority and engaged with the Chairperson, the PCA and Fernando JA. Fernando JA had accompanied Judge Karunakaran shortly thereafter to express remorse for the incident and to ask her to withdraw any complaints about him. He had given an assurance that his behaviour would not be repeated.

The Chief Justice testified that Judge Karunakaran had refused to engage with the Chief Justice on matters relating to the administration of his own cases and the civil division. She described the difficulties she faced in discussing these in the monthly Judges meetings. She testified that Judge Karunakaran stated that there would always be a backlog however, she thought it was unacceptable for people to wait 15 years to get their decisions finalized. He also expressed the fact that complaints against Judges ought not to be investigated. She testified that she had a number of complaints against Judge Karunakaran.

One particular case, the **HFIM v HIL** case led to her first complain to the Constitutional Appointments Authority in October 2015. Having received a complaint about Judge Karunakaran's slow handling of a 2012 case, she had indicated to Judge Karunakaran that she

needed to discuss this case and made some efforts to progress it with him because of the number of complaints she was receiving from the international parties involved in that particular case and also the legal implications of the delay in the matter. There had also been a complaint about procedural irregularities in relation to the admission of documentary evidence in this case. The Chief Justice related an incident where Judge Karunakaran entered her office stating that there was something he needed to "explain" to her and told her angrily to stop asking Judges about their work and that they knew how to deal with their cases. He became angry moved close to her and shouted abuse at her about the fact that she had not worked as a magistrate or a Judge and would not know about dealing with cases. She recalled that he had stated that she has no right to meddle in his cases and tell him what to do. She stated that he was in an extremely aggressive mood and in an unprofessional manner attacked her verbally, shouting that she should leave him alone and not to interfere with him. This, in her opinion, showed total disregard to the authority of the office of the Chief Justice. She attempted to placate him, and he ignored her and continued to shout at her. She felt extremely intimidated by the verbal assault and walked out of her office, at which point he shouted "you can go to hell or wherever you want now".

Mrs. Jemina Lucas, PA to the Chief Justice confirmed that on the 19th of October 2016 there was an incident that took place in the Chief Justice's chamber where she overhead Judge Karunakaran lose his temper and begin yelling at the Chief Justice that she was never a magistrate or Judge and should not be interfering with the work of a Judge. She stated that the Chief Justice had asked him to leave, but he had refused, she saw him approach the Chief Justice threateningly and he stated that he would not allow her to interfere with his job. He told her to go to "hell wherever you want to go." The Chief Justice left her office and the Judge returned to his. Mrs. Lucas testified that his tone was very aggressive and she believes that if she was not there, there could have been physical abuse.

In her evidence further, the Chief Justice reiterated that she had attempted on further occasions to engage with Judge Karunakaran in a rational and professional manner and has only been met with rudeness and unprofessional behaviour. She first referred Judge Karunakaran to the CAA in a letter dated 18th October 2015 for misbehaviour and unprofessionalism following the above incident. She stated therein that he was aggressive and lacked respect towards her office. She stated that his failure to follow the Chief Justice's directives, his demeanour to his fellow Judges is totally unacceptable and interferes with the governance of the judiciary and the discharge of the Chief Justice's duties. She testified that it is also affecting the day to day working of the legal system. His unprofessionalism is evident in his total disregard for the observance of directives and his failure to carry out his duties in accordance with his constitutional and judicial oaths. After she sent the initial complaint to the Constitutional Appointments Authority, she was asked to try and work things out. She withdrew the complaint after Judge Karunakaran approached her a few days later with Justice Fernando to apologize.

When asked why she sent the letter to the Constitutional Appointments Authority the Chief Justice replied that she received complaints from litigants and lawyers about Judge Karunakaran on a regular basis about his behaviour in Court. She also received concerns from other colleagues. She had attempted to engage with Judge Karunakaran about his backlog and mismanagement or maladministration of his case files, his non-delivery of judgments, some of which were adjourned sometimes for over a year, without a decision being given. She testified that the final matter that brought things to a head was the final Judges meeting in which he completely humiliated her in front of the Judges and magistrates and after that day she wrote to the Constitutional Appointments Authority and attached all the different cases that depicted this inappropriate behaviour that had been brought to her attention. She sent the letter to the Constitutional Appointments Authority outlining these difficulties that she was having with Judge Karunakaran which in her view amounted to misbehaviour and was so serious that she felt she had no other recourse than to turn to the method under the Constitution, that it should be investigated.

She decided not to wait any longer because the matters were getting progressively worse. There were 146 files handed over on the day that he was suspended. She invited the Tribunal to go through them to see that he had a modus operandi of many mentions with no resolution to the cases, going over 10 years, in some cases more. She described how in those cases the parties often give up and withdraw cases. In some cases the litigants had died without judgment and she found this unacceptable. She detailed these issues in her letter to the Constitutional Appointments Authority and this was sent to him in around about October 2016.

The Chief Justice described the fact that judicial officers operate under a Code of Conduct based on the Latimer House rules. It exacts and promotes a standard of judicial and personal integrity and the Chief Justice described that it is part and parcel of the judicial and constitutional oath that Judges take. In addition to the Code of Conduct the Chief Justice reported that the Judges are subject to agreed practice directives, including the delay reducing measures and time standards for the Supreme Court which the Judges adopted as guidelines for the performance of their functions.

In the Chief Justice's letter to the Constitutional Appointments Authority she had identified three areas of problems that she had had with Judge Karunakaran, these were:

1. Integrity and propriety,
2. Poor collegial attitude; and
3. Competence and diligence in the performance of Court duties.

She had supported each allegation that she made with documentation compiled and filed in a thick lever arch file. Her evidence hereafter traversed the contents of the file which she invited the Tribunal to peruse. She explained that in many instances one extract might show evidence of multiple forms of misconduct.

Integrity and Propriety

The Chief Justice referred the Tribunal to paragraphs 3.1 to 5.1 of the Seychelles Code of Judicial Conduct. These paragraphs give content to her idea of what it means for a Judge to act with integrity and propriety.

Disclosing confidential memoranda

The Chief Justice gave examples of times that cases had been allowed to drag unnecessarily. In one specific instance she had addressed the matter with Judge Karunakaran by memo which had then been read out in Court. She read the transcript of the proceedings from **Didon v Roucou** where there had been significant delay, where the Judge had read a memo in Court and badgered the parties about who had raised a complaint. The proceedings from that day had also been heavily altered by the Judge. Furthermore, the Judge stated that he needed a long time to write the judgment and joked in Court about adopting the submissions in full, "copying and pasting" from the submissions. The litigants were in the Courtroom at the time and felt it was very disrespectful to them and had stated so to the Chief Justice.

Merali v Gheradi

She also referenced a case by the name of **Merali & Ors v Gheradi & Ors. CS 178/2008; CS 48/2013.** This was a 2008 case which had a related 2013 case. The Chief Justice had also received complaints in that case and had asked Judge Karunakaran to fix a hearing date and to try and dispose of the matter. Again he disclosed this in Open Court and intimidated the Counsel and the litigants about who had complained to the Chief Justice. He disclosed the contents of her memorandum in Open Court rather than dealing with the matter outside of the Courtroom and face to face. She believed that this displayed a lack of propriety and judicial professionalism / restraint.

Mrs. Mireille Merali testified in confirmation about her case, which was against her step-daughters and which started in 2008 and ended on 30th December 2016. She described how her finances had been blocked from 2013 by an order of the Court issued by Judge Karunakaran and that to this day she is forced to live with other people because she does not have the finances. The case derives from the death of her husband. Ordinarily, she believes that she is entitled to half of the estate and her step-daughters to the other half. She and her step-daughters were contesting the estate. She testified that some of the case was handled in Open Court, but in the end the matter was taken in Chambers in the presence of her lawyer and the executrix. During the course of the case she was never given an opportunity to be heard and felt this was unfair. The case ended in a judgment by consent which she signed against her will. She testified that the Judge placed a large amount of pressure on her to put an end to the matter because the matter was taking too long. There was pressure to complete the case from both the Judge and the Chief Justice, and she was pressurized

to settle the case in order to end it. However, she stated that there was no hearing of the case, and the matter was delayed multiple times pending the arrival of documents from abroad, and each time it was adjourned. She testified that she wanted an opportunity to be heard, but at the last session of the case she was called into the Judges' chamber in the presence of her lawyer (Karen Domingue) and the executrix (Mrs. Tirant) and told that the matter had gone far too long, that he was under pressure and that if she did not accept the judgment by consent she would be held in contempt of Court. She testified that there was no other option but to sign the judgment.

The Chief Justice had also described the fact that litigants and Counsel who wished to complain about conduct were intimidated and specifically asked for their identities to be hidden lest they face recrimination from the Judge. This showed that his behaviour had an actual intimidating effect on the persons before him.

Still using the **Merali case**, she indicated a matter that concerns competence and diligence and had to do with the Judge blurring the line between an adjudicating role and a mediating role. Under the Mediation Rules, if a Judge believes that a matter should go to mediation, he can refer it to another Judge but that same Judge may not descend into the arena to settle the matter and then step back up to the bench to be the Judge in it.

The **Merali is case** is an example where the Judge stepped into the arena stating: "if you need my judicial intervention to a certain extent I can help you to resolve the issues, not in my official capacity, not as a Judge but I can do some judicial intervention to encourage you to reach a settlement." This shows how he would disregard the procedural fairness rules in order to achieve his subjective notion of justice and is compounded by Mrs. Merali's own evidence that she was forced to sign a judgment by consent or face a contempt of order ruling.

Disrespectful behaviour

The Chief Justice gave examples of Judge Karunakaran openly disrespecting her in the Courtroom with the **Delpeche v Gregoretti case,** a 2004 case. She made several points about this case. First, she pointed out another example where the transcript of the proceedings had been substantially changed by the Judge. Secondly, the case had attracted complaints and she had spoken with him about the case in the past. On 21st October 2015, the case was to be before Judge Karunakaran but the file was not with the others for that morning. He thought that the Chief Justice must be interfering with the case and made a scene in the Court room. In fact it was in the registry and either his Court orderly, or the Judge himself had not been diligent in checking the files before walking into Court. Thirdly, at the sitting when the case was called he questioned Counsel about whether either had written to complain to the Chief Justice, again showing how he intimidated Counsel who complained about his disposal of cases. Fourth, in his order he ordered the Chief Justice to give reason why the case was removed from his Court without his knowledge. In her

opinion, this is tantamount to citing the Chief Justice for contempt. It shows poor collegiality and looks bad for the judiciary.

Ms. Barnes, the Executive Legal Assistant to the Chief Justice testified that the hand over period between Judge Karunakaran and the Chief Justice was tense. He informed her to keep working on the things that she was working on, such as the speech for the opening of the Court in September, as the appointment of the Chief Justice would be reversed. There was confusion as to when the actual hand over was happening.

Improper conduct of cases and subversive use of Court

She described how Judge Karunakaran refused to abide by the rules requiring that Judges set an appropriate number of cases for Wednesday mentions (the other Judges had agreed that 20 mentions in a 30 minute period was appropriate). Judge Karunakaran was setting 40 cases in a morning, which meant that he ran overtime, to the detriment of the Counsel appearing before him, and delaying the proceedings for the other Judges. The Chief Justice referenced to **Davidson & Ors. v Cerf and Surf** where Judge Karunakaran had openly passed a comment on the CJ's policy stating that although he had the capacity to hear the case he could not cause list it because "he will get pressure from the office of the Chief Justice".

The Chief Justice explained that the mentions are a procedural process to allow the Judge to make arrangements for trial, to set hearing dates and to ensure that all pleadings are on file. This is not the place for mediating, negotiating or discussing terms of settlements, however, Judge Karunakaran would engage in long conversations or even attempt to settle matters at the Wednesday mentions, and this also caused them to run over time. He would ask litigants about personal matters when the Court was full of litigants and she received complaints that it was not the appropriate time or place and embarrassed the litigants and Counsel in the Courtroom.

Mr. Rajasundaram, an attorney at law was called to discuss his appearance before Judge Karunakaran. He stated that from 2011 he began to feel that Judge Karunakaran had some personal animosity against him. In mentions, he would get Mr. Rajasundaram to explain the case and would "show that as if [he] did not have any case at all" (sic). He testified that since then he felt denigrated when he appeared before Judge Karunakaran. He referred to the case of **Woodcock v Woodcock** and illustrated an example of the fact that the Judge raised a defence on behalf of the defendant, refused to permit Mr. Rajasundaram to proceed to bring evidence, threatened to strike out the proceedings and to dismiss the case. Finally, the matter was fixed for hearing, however Mr. Rajasundaram testified that he felt the tone and content of the interaction was very humiliating.

In the case of **Aarti Investments,** Mr. Rajasundaram explained a situation where he had made a note on a document submitted to Court clarifying a clerical error on a title number and how he had

explained the same in the plaint documents. He described how the Judge 'blasted' him for having done so, and formally admonished him with notice to the Registrar for doing so despite the fact that he believed that there was no fraud or dishonesty involved.

The Chief Justice indicated that mention slots are not the appropriate place for long hearings but can be used to set short causes. The Chief Justice testified that Judge Karunakaran would frequently go into the merits of the case in the Wednesday mentions. Mr. Hoareau also gave an example from the **Jeremie case** where he was called upon to submit on a preliminary point at a mention which had been set so that Counsel could find a hearing date and the Judge gave a ruling there and then disposing of the case without it being properly heard.

The Chief Justice gave additional examples of matters Judge Karunakaran using his Courtroom as a platform to subvert the work of the Chief Justice. **In Annex 4, LCP v Island Development Company**, Judge Karunakaran could simply have made an order on how he wanted cross examination to be made in his Courtroom, however, he had chosen to make a long statement showing disrespect for the Chief Justice. Annex 6 the case of *LDS v Electoral Commission* is similarly an example of lack of restraint on the part of the Judge and was disingenuous, as the Judge was looking for a hearing date and not a mention date, but took the opportunity to set a long date citing the Chief Justice's practice directive setting the number of mentions.

Annexure 5 again shows that the Judge was discussing administrative matters in the public in Open Court which was inappropriate. Annexure 7 refers to **Panesar v French**, where the Judge made statements which tended to reprimand Magistrate Kerr for demanding that the attorney Mr. Derjacques honour his commitment to appear in her Court despite the fact that he had double booked himself.

Lack of restraint

The Chief Justice indicated situations where Judge Karunakaran ought to have exercised restraint, one such example was in the judgment of **Didon v Roucou Construction,** where the Judge allocated blame for the delay in the case by naming all lawyers involved and stating that they were responsible for the delay which the Chief Justice believed actually lay with the Judge not diligently taking carriage of his case and furthermore was unnecessary.

Signing as Acting Chief Justice

The Chief Justice brought examples of judgments issued by Judge Karunakaran after she had been appointed wherein he continued to sign as the Acting Chief Justice for a week after she had been sworn in (until 24th August 2015).

Content amendments to proceedings and orders

The Chief Justice gave examples of situations where the Judge had made content amendments to transcripts of Court proceedings which is a very serious offence as the Court proceedings are supposed to be an honest and accurate transcript of the events in Court, and although typographical errors may be amended, the content or substance of the events that transpired should not. A senior Court reporter also gave testimony corroborating that from time to time the Judge would "cross out and write something else or he would add things that were not said". She produced a few examples for the Tribunal to see and clarified that although it is usually typographical errors, sometimes he would remove things that he had said or add things that had not been said. Another Court reporter also gave testimony to the same effect and produced documentation showing amendments by the Judge in his handwriting. She stated that there were times when he asked her to make the corrections and destroy the amended version afterwards.

Content amendments – Jeremie v Dodin

The Chief Justice also indicated that in the **Jeremie v Dodin case** an order was delivered by the Judge in Open Court and signed by the Judge which was later replaced with an order with different content, also signed by the Judge and amending the order by introducing an additional paragraph to the ruling. This was placed on file and distributed to the benefiting Court party. This shows that he was willing to amend even a Court order despite having delivered a substantially different order.

Mr. Bagnal Jean Baptiste testified that he was a party to the **Jeremie case** and was present in Court on the day that the first order referred to above was made wherein the Judge made an order that all persons listed down could be registered as heirs at the land registry for a particular parcel of land. A week later land surveyors had been on the land with a Court order instructing them to subdivide the property. It transpired that the Judge had issued a slightly different Court order in the same case dated on the same day. Mr. Jean-Baptiste had written to the president complaining about the Judge's conduct and asked his lawyer to press a complaint. The land is now standing idle and the registration has not taken place as ordered in the initial order. Mr. Alex Joseph Jean-Baptiste also testified to the same effect. Both had been in the Courtroom for the whole duration of time that the matter was before the Court. He testified that his experience leads him not to trust the Courts at all.

The Registrar confirmed that it was irregular for the two orders produced in that case to have the same judgment number on the signed version of the judgment if the two orders were different. She described that at the time of signing the order is given a judgment number by the Court orderly according to a schedule that generates the number and so if the Judge had issued a second order it should have been given a new number.

Mr. Basil Hoareau testified about the case as he was the attorney at law involved. He described the events on the 15th of January 2014. It was a Wednesday mention to fix a hearing date. Mr. Hoareau was called upon to submit on an objection to the petition. His objection was on a point of law and that was on the basis that the petitioners were not co-owners of the land, but were heirs to a person who was the owner of the land and who had passed away. They had not been registered under the land registration act as co-owners and therefore they had no right to bring the petition before the Court. What they had to do first was to have their names registered as co-owners and thereafter bring the petition. The Court made an order there and then ordering the land registrar to register the parties (this had not been an outcome that had been prayed). This order effectively dismissed the application, as it would need to be refiled after the petitioners had been registered. He went to the registry and received a copy of the order. Then a week later his clients came to him and reported that the land surveyor was on the land subdividing the land. He contacted the land surveyor and was informed that they were acting pursuant to a Court order. The land surveyor, Mr. Leong, had brought an order to Mr. Hoareau which had the same date and judgment number as the first one which Mr. Hoareau had received from the registry, but with an extra paragraph. Mr. Hoareau showed the Tribunal a heavily amended version of the Court order which appears in the Court file. It shows a paragraph 5 which has been crossed out, and a handwritten paragraph 6 and paragraph 4 appear, stating: "hence I approve the proposed subdivision as indicated in the report and diagram of a land surveyor Mr. Michel Leong dated 9th April 2012, reference No. 9M21-2010, attached to the order made hereby. Further, I direct the said surveyor to proceed with the subdivision and arrange for the registration in accordance with this order." When Mr. Hoareau had returned to the Court file he found that the original order, which he had a copy of, had been replaced by the version that Mr. Leong had. Mr. Hoareau testified that there was no way that this was amended in the Court. Mr. Hoareau's clients wanted to report the matter to the Constitutional Appointments Authority however, he had recommended that they first try to settle the matter amicably.

Mr. Hoareau testified that he had gone to see Judge Karunakaran in chambers and showed him both orders to which he replied that Mr. Bonte had misled him, and that maybe one of the stenographers had made a mistake. Mr. Hoareau had, at the instruction from the Judge, approached Mr. Bonte to ask the land surveyor to stop with the subdivision. Mr. Hoareau filed a notice of motion before the Court in terms of section 147of the Seychelles Code of Civil Procedure to say that there was a mistake in the order and for the Court to declare the order was incorrect. Mr. Hoareau was unable to attend the case himself, but Ms. Chetty took the matter on and had attempted to push the Judge for a hearing of the application on multiple occasions which was denied, and ultimately, no ruling was made on this motion. When Ms. Chetty attempted to ask the Judge for a hearing on 28th October 2015 the Judge said "no, that has been dealt with, that has already been dealt with." Judge Karunakaran never heard the matter. Rather, in the interim, Mr. Bonte had filed an application for the confirmation of the order, Ms. Chetty opposed it and again asked for the notice of motion filed by Mr. Hoareau to be heard before appointing the surveyor,

the Judge refused to entertain this and stated "no I have given sufficient time to the parties. It appears the respondents are abusing the right given to them under the Civil Procedure Code". Judge Karunakaran had thereafter granted the application by Mr. Bonte confirming the application.

Mr. Hoareau had filed an appeal against the judgment to the Court of Appeal, however the clients did not have the money to pay for the security and the matter was withdrawn.

When Mr. Hoareau read from the proceedings in that case, the Judge admitted in the proceedings from 6th May 2015 in the matter arising, that Mr. Bonte had gone to the Judge in chambers after he had delivered the ruling and said that there was a mistake in the order and the Judge had amended the order, without notice to Mr. Hoareau on the word of Mr. Bonte alone and without checking the proceedings in the file.

When the present Tribunal was set up to investigate into Judge Karunakaran's conduct, Mr. Hoareau was approached by his clients to bring this matter to the attention of the Tribunal. Mr. Hoareau stated that he was shocked by this behaviour and believes that it is an illegal practice that has severely disadvantaged his clients.

The Tribunal thereafter were provided with the audio recording of the proceedings on 15th January 2014, the day of the granting of the original order referred to by Mr. Hoareau in the **Jeremie case**. The recording clearly proved that the additional paragraph added by the Judge did not form part of the original order.

Applying own justice rather than the law

In her evidence, the Chief Justice gave examples of judgments wherein the Judge had regularly advocated for Judges imposing a subjective notion of justice over a technical application of the law. He states that Judges should "steer the law towards the administration of justice rather than the administration of the letter of the law". According to the Chief Justice, this subjective and unguided approach to judicial work threatens the legitimacy of his decisions.

Sexism

The Chief Justice also brought allegations of "pervasive sexism". She cited his complaints that she ought not to be Chief Justice because she was a woman. She also cited several judgments wherein he had made sexist remarks, including in the judgments of **Pillay v Labaleine and Lee v Zheng** where the Judge held that women were more frail than men, calling himself a "Shakespeare man" citing "frailty thy name is woman". She cited examples of disrespectful treatment of Mrs. Aglae in the **LDS** case as examples where he indicated differing treatment of women in and out of the Courtroom.

Mediating cases and pressing for settlement

In the case of **Waye Hive v/s Waye Hive** the Chief Justice illustrated the Judges' willingness to mediate cases in the Courtroom. She indicates his felicitous language in the Courtroom and attempting to push the parties to settle the matter. He states to Counsel: "so this time again you get your client to Court and I will be able to convince her, I will try to resolve the issue". At annexure 25 again in the same matter, the Judge states "maybe I can succeed where you have failed, I can talk to your client. I can convince her to accept this amount, can you get her into Court."

In **Casimir v Labonte**, the Chief Justice illustrated situations where the Judge attempts to influence a litigant into taking a settlement and states to a litigant who requests an opportunity to seek her Counsel's advice, "Madam, I am also a lawyer, I can help you if you want. I can help you." The Chief Justice described this as attempting to browbeat the person into a settlement. Mrs. Merali's evidence from her own case further confirms this behaviour.

The Chief Justice gave the example of the case of **Dan Ponan** to show that the Judge prejudges the matter and influenced the litigant's decision on accepting to take a settlement by saying "do not worry about that, I think the case is going to be dismissed." The Judge made other statements about the content of the case despite the fact that it had not been heard yet, he illustrated that he had already made up his mind on the merits of the case. Later he stated to Counsel: "Mr. Gabriel I expect you to give a clear indication of the outcome of the case to your client. There has been no outcome. I have made a lot of proposals to her, she does not understand what I am trying to say."

In the same case, the Judge states "why can't your client having admitted the receipt of the money come to reasonable settlement so that she can get some money. I can advice the plaintiff to give some money ex gracia and submit to judgment and finish the case. God is watching, one may cheat others but you cannot cheat God. If one take even one single cent of another person's money, one will have to pay twice the amount and one may even spend on medical expenses. This is the law of nature, this is now God works." In that case the Court asked questions of the litigants and led the evidence as if he were the lawyer on the case even though this is improper for a Judge to do.

Intervening improperly

In the matter of **Pillay v Rajasundaram**, the Chief Justice gave examples of the Judge acting with impropriety with regard to what he said in Court, applying the wrong law despite the lawyer's interventions, and then he proceeds to lead evidence and cross examine the witness, refusing to allow the lawyer to do the cross examination. The Chief Justice explained how this is inappropriate in the Courtrooms, and that the Court can intervene verify or clarify something but "it is not normal for a Court to descend in the arena and either lead the evidence or cross examine a witness, it is

very improper. It goes against the whole system of our laws which is an adversarial procedure that we use."

The Chief Justice indicated that she had taken over most of Judge Karunakaran's cases, approximately 146 cases, and has managed to clear most of these which he had not managed despite a drastically reduced workload.

Procedural impropriety and humiliating Counsel

The Chief Justice discussed the **LDS** cases against the Electoral Commissioner which were handled by Judge Karunakaran. The cases were self-allocated to Judge Karunakaran despite the fact that the Chief Justice had left instructions with the Acting Chief Justice that matters concerning the election process be dealt with by Judge Renaud. Judge Robinson was the acting Chief Justice and had not had sight of the case but Judge Karunakaran was the duty Judge and self-allocated the case to himself. Reports were given to the Chief Justice that Mr. Derjacques had first gone to speak with Judge Karunakaran in chambers prior to filing the case. Judge Karunakaran had at first denied that Mr. Derjacques had been in his chambers, but after being reminded that there were cameras in the Court house he admitted that he had received Mr. Derjacques, but stated that he did not remember whether it was prior to or after the case had been allocated to him. The allocation of the case was therefore unusual as it did not happen through the Acting Chief Justice, nor was the allocation in line with the arrangements the Chief Justice had made for dealing with elections cases. Furthermore, it was irregular and improper for Mr. Derjacques to be in the Judges' chambers.

The Registrar has also discussed the **LDS** Case. She said that Mrs. Lepathy had informed her that she had spoken to Mr. Derjacques and then to Judge Karunakaran to confirm that he would take the cases. She stated that later she saw Mr. Derjacques enter the Courtroom number 2 when it was not sitting. She also stated that she believes that the matter was taken the same day, and there was no service on the other party. She testified as the normal procedure for the allocation of cases: normally it is taken to the Chief Justice or Acting Chief Justice to determine whether it will be heard by the duty Judge, or any other Judge.

Mrs. Lepathy, the Deputy Registrar, confirmed that the **LDS** case was brought during vacation and when the case was filed she brought it to Judge Karunakaran, as duty Judge. Usually when the Chief Justice is there they take it to her for allocation, when the Chief Justice is not there they take it to the Acting Chief Justice. In this case the acting Judge was Judge Robinson. On the day Mr. Derjacques brought the case and said it was urgent and should be brought to the attention of the duty Judge, Judge Karunakaran. She took the case to Judge Karunakaran who heard the case the same afternoon. The matter was not an ex parte case, and it was not served on the other parties.

When the file was taken to Judge Karunakaran he "looked into the file" and told Mrs. Lepathy that he wanted to see Mr. Derjacques. Mrs. Lepathy telephoned Mr. Derjacques's secretary and informed her that Judge Karunakaran wanted to see him. The secretary informed her that he was going to file another case which was filed shortly after. Mrs. Lepathy informed the Acting Chief Justice and the Registrar about the case. The ruling was given that afternoon.

Mr. Rajasundaram testified about the procedure in the **LDS v Electoral Commission** case, in which he represented Lafors Sosyal Demokratik. The parties were struck off the Electoral register based on a petition filed by LDS. His case was that the order striking their names off the Register was not lawful. He had filed an application to intervene as they were not parties to the actual case despite the fact that their names were the ones being struck from the Register. When Mr. Rajasundaram stood up to speak, the Judge said "no, no, sit down. When your turn comes, I will hear you."

The Judge thereafter made a statement which concerned the very core of the case, he said "LSD, LDS, so confusing. It is confusing me". Mr. Rajasundaram believes that it was unprofessional for the Judge to make such a comment which indicated a prejudgment of the subject matter of the case, moreover the comment was clearly said to play to the large crowd in the Courtroom which then burst into laughter.

Mr. Rajasundaram testified that the Judge questioned him on law which was not relevant to the content of his application to intervene, and some of his comments were such that caused the people in the Courtroom to laugh. He was not given an opportunity to properly address the Judge on the content of his application to intervene and then it was denied. Mr. Rajasundaram felt that this was shaming and humiliating, the Judge went as far as to say "even a first year law student, would know explaining the legal procedure necessary for intervention". Mr. Rajasundaram took the matter on appeal and his clients were ultimately successful, however the prejudice they suffered resulted in their being unable to run in the election and undermined their basic Constitutional right of contesting the elections. Mr. Rajasundaram testified that Ms. Aglae, representing the Electoral Commission received the same treatment that he had.

Mr. Rajasundaram had also brought an application for recusal which was dismissed because it did not follow the full procedure for recusal, however Mr. Rajasundaram had explained to the Judge that there was not sufficient time before the election to follow the procedure to the letter and had prayed that the Court take this into consideration. It, too, was dismissed on the technicality of having not followed the procedure. He felt that the Judge was acting in a prejudiced way, finding any opportunity to dismiss his applications. And that it was unfair and incorrect. This was confirmed by the judgment of the Court of Appeal.

Ms. Aglae was also called to testify with regard to the **LDS case**. Ms. Aglae testified that the dates for the nomination day for the election had already been announced, and they received an order from the Court that a political party would be struck out and that the Electoral Commission could not proceed to accept their nomination. The Electoral Commission had not had the opportunity to come before the Court and were not notified prior to the order, furthermore, the return date was set for after the election had taken place. She testified that her and her clients believed that this was unfair, as the order was filed on the same day and granted on the same day without legal basis for it, as the Court of Appeal judgment ultimately proved. She explained that the Judge could have held a hearing on the next day, and set notice for them to come make the case. She believes that the real issue was the conduct of the case and not the outcome. She felt that the case was conducted by the Judge and the lawyer from the other side. Despite being present in the room, she felt that she was not heard. She described the Judge's behaviour as embarrassing and subjecting her to ridicule. Ms. Aglae stated: "The conduct of the case was an entertainment for them [the people in the Court]. They shouted whatever they wanted to shout, cheering. It was all a happy moment for them. It was an embarrassment for me, standing before a Judge whom I highly respected I would say. I had appeared many times before him. Even if he had given rulings against me but they were rulings of the Judge and we respect him. But the conduct of the Court, the way he conducted his Court, on those particular days, and even delivering his judgments, his remarks, there was so much sarcasm towards me in the case which I felt personally. He belittled me and he humiliated me in the case."

She testified that the procedure for the hearing was irregular, it need not have been ex parte, and there was no real need for the extreme urgency which it received when the parties could easily have been joined, and the matter could have been heard the following day since it was vacation. The order granted ought to have been an injunction, but the order was such that it took care of the main case by dismissing the nomination of the party, not admitting the party taking part in the election. The way that the Judge made the initial order was such that it prejudged the outcome of the whole case.

She felt the Judge was being sarcastic by setting a date for the hearing of the application after the election day. She stated that this was clearly a matter of some urgency, but the Judge did not treat it as such. However, the initial matter, the one that led to the first order, was urgent in the opinion of the Judge, so urgent that he heard it on the same day, ex parte.

She described the treatment of Mr. Rajasundaram, stating that he was not given any opportunity to plead his case, the Judge denied him rights of audience completely. She also stated that it was unprofessional and improper for the Judge to make the joke about the confusion of the name LDS and LSD, which the Judge made more than once in the course of the proceedings. She believed it was for the benefit of the people in the Courtroom who were laughing. She also described that the

Judge made a contempt of Court order against Mr. Gappy personally. The Judge allowed people in the Courtroom to cheer and chant "Gappy must go" and the Judge did not intervene to quiet down the people. She believed that this was improper. She believes that the transcript will show that the Judge took an opportunity to ridicule Mr. Gappy publicly which was unfair and he did not give her an opportunity to cross-examine Mr. Gappy, which meant that the matter was one-sided. Furthermore, the Judge was asking the questions himself.

Impropriety and the Sivasankaran file

The Chief Justice also discussed the **Sivasankaran** case files as these had been produced as part of the allegations related to diligence. The case file had caused some embarrassment to the Court as the Judge had not been prepared for Court and had allowed an unnecessary confusion with regard to a simple clerical error in the file (discussed later in the CJ's evidence). However, as it was already part of the Tribunal's inquiry, the Chief Justice brought to the attention of the Tribunal that since the filing of her letter of complaint, some serious allegations have arisen about the propriety of Judge Karunakaran's handling of this case. The divorce of Mr. Sivasankaran and his wife were taken in the chambers of Judge Karunkaran who allocated himself the case on the 24th March 2014. The divorce case was filed on 24th March 2014 and heard three days later in his chambers. A decree nisi was granted and the normal six week period for decree absolute was not waited for. It was granted after four weeks on the 30th of April, 2014. Subsequent to that on the same day, on the 30th of April there was a matrimonial property settlement from Mr. Sivansankaran to his wife in which he transferred all property that he owed both in Seychelles and in India to his wife. This included 40 properties in Seychelles. In the background, was a case going on in England, where a company called BMIC had filed a claim against Mr. Sivasankaran and the case was eventually heard and a judgment of Euro 211 million was entered against Mr. Sivasankaran and BMIC tried then to enforce the judgment in Seychelles but the proceeds belonging to Mr. Sivasankaran had been transferred to his wife in the interim before the Judgment had been given. Mr. Sivasankaran filed for bankruptcy proceedings and these were also heard by Judge Karunakaran. It is alleged in the Constitutional Court case that due to dubious circumstances Mr. Sivasankaran was declared bankrupt and a bankruptcy composition was accepted although it was not agreed to by the main creditor. This matter is still sub judice, but the Chief Justice had raised it as it reflects poorly on the judiciary that the matter was taken in chambers, by a rushed procedure and that both cases were self-allocated to the same Judge (which would not ordinarily be permitted out of caution). The matrimonial property matter was taken in chambers and nothing was recorded except for the judgment. The Chief Justice testified that it is unusual for a divorce settlement to be taken in chambers and can lead to a negative perception.

Poor collegial attitude

The Chief Justice testified that Judge Karunakaran had steadfastly refused to work with her as Chief Justice and had withdrawn from any engagement as part of the judiciary team making it difficult to work with him on a professional level and poisoning the atmosphere of judicial occasions. Some examples of this, include for example his refusal to attend the Chief Justice's swearing in or those of any judicial officers appointed thereafter, including the swearing of Master Helen Carolus, the swearing in of Mr. Georges Robert, Ms. Jessica Kerr, Mr. Melchior Vidot as a Judge and Mr. Seegobin Nunkoo as a Judge. He has openly informed the Chief Justice that he does not believe that she is qualified to be the Chief Justice and he has consistently subverted any attempts she has made to address judicial matters with him.

On 20th September 2016 after another failed attempt to discuss judicial administration with Judge Karunakaran, the Chief Justice had written him a letter laying out her concerns about his backlog and his approach to the files, and the fact that he kept saying that she was outside of her authority to question him about the administration of his cases. In this letter, she gave him the opportunity to tell her whether he had any health or other concerns which might explain his inability to clear his cases because although she had on previous occasions obtained undertakings from him that he would try to clear the cases This letter had been copied to the President, the Constitutional Appointments Authority and the Attorney-General and received no answer.

The Chief Justice had also engaged with the Constitutional Appointments Authority after the order in **Delpeche v Gregoretti** where Judge Karunakaran had made the order about her attending to give reasons for having the file, an order which she felt was made with a view to holding her in contempt of Court if she failed to produce the file.

Delayed cases and the need for case management

The Chief Justice discussed receiving complaints from Mr. Octobre in a 2002 medical negligence case where the Judge was delaying giving a judgment. Chief Justice managed to give a judgment shortly after the Judge was suspended by adopting the proceedings. However, she stated that in such cases the parties are prejudiced significantly by the delay in justice. Chief Justice explained that sometimes the witnesses have passed away or a party has passed away or memories are hazy, because events took place a long time ago. At other times, it is even more difficult. There are two cases filed since 2006, **Wavel Ramkalawan v/s SPPF**, defamation cases which I believe are part of the annexures. It is very hard for the Chief Justice in 2017 to be writing a judgment on a defamation that took place in 2006 and because it is very hard to pitch a figure or to assess the effect of the defamation after 11 years. It prejudices the parties one way or the other.

The Chief Justice gave examples of the times that she and her predecessor had discussed case management and delays with Judge Karunakaran and the fact that his slow delivery of judgments was problematic. She attached a memorandum from the former Chief Justice which illustrated that he was trying to address the chronic delays and backlog some years before.

Disregard to Judiciary functions and rules

The Chief Justice testified that it was always difficult to get him to attend anything and she believes that shows his lack of collegiality. He has also disregarded administrative rules. He would allow his son to drive his car and that was pointed out to him on many times it was not permitted because the insurance policies did not cover members of family. It only covered the judicial officer and the driver. That was flouted on many occasions. He also continued to ignore the practice directives or publicly subverted them as illustrated with many of the cases in the file.

The Chief Justice introduced proceedings reports showing cases where there were many mentions over a long period of time. The Chief Justice invited the committee to consider these cases or any other cases to see the way that this proceeded with many mentions and not many hearing dates.

The Chief Justice gave an example of a time when the Judge had handed down a ruling in an important election matter during vacation time and later refused to come down from his house to sign the orders and proceedings so that the litigants could appeal the order. He finally signed the orders after the Chief Justice intervened however, the Chief Justice explained that as duty Judge he ought to have been at the Courthouse to attend to any situations arising.

A small matter that contributes to his poor collegial attitude has to do with the Judge's permitting of the wearing of non-Courtroom attire by his Court orderly. The Judge having granted her the opportunity to wear her own clothes, the orderly felt that she had immunity from the rules governing Courtroom attire and this made the judiciary look bad and set a bad example.

The Chief Justice gave examples of him leaving the jurisdiction without informing her and his not attending Judges' meetings despite them being held on the same day each month and all the other Judges arranging their diaries in order to attend. He had never attended or assisted in training sessions organized for Judges and lawyers.

Competence and diligence in performance of Court duties

The Chief Justice referred to Article 19 (7) of the Constitution – any Court or other authority required or empowered by law to determine the existence or extend of any civil right or obligation shall be established by law and shall be independent and impartial. Where proceedings for such a

determination are instituted by any person before such a Court or other authority, the case shall be given a fair hearing within a reasonable time.

She also referred to the Judicial Code of Conduct specifically paragraph 6(1), and to rule 2 of the Delay Reduction Measures adopted by the Judiciary. The Chief Justice invited the Tribunal to consider the cases that have already been brought before it. It will see that the Judge has failed to honour these requirements and failed to manage his cases well or produce judgments in the desired timeframes.

She gave the example of the 1999 case of **M. Chang-Sing Chung v/s Barnette Gonthier and three others** which was allocated to Judge Karunakaran on 5th April 1999. The Proceedings report shows numerous mentions, a striking out of the case in October 2009 and a judgment given in October 2011.

Another example given was the case of **Morin v Larue**, filed in 2001 and allocated to Judge Karunakaran in October 2001, the case had no successful hearing dates, only mentions until September 2015 when a judgment by consent was entered. The Chief Justice took the Court through the case file which contained mention after mention over the full 14 year period.

The Chief Justice had picked these cases at random, and she invited the Tribunal to consider any of the cases that have been produced to see that the cases are mentioned, but the hearings are often adjourned on spurious reasons and parties regularly come to a settlement or get discouraged, cases are withdrawn. Sometimes after hearings are held and often Judgments take months or years to be delivered.

The Chief Justice described the needs in the Judiciary to address the problems of chronic backlog, and the steps that had been taken by her predecessor and by herself. She described taking a multipronged approach – reviewing Court rules, increasing Court sitting times to have two extra weeks of Court sitting time. She urged the Judges to be prepared for their cases and had prompted Judges to not allow spurious adjournments. She had written to the Bar Association informing them of arrangements that would be made to improve Court efficiency, including new Courtroom processes, and reallocation of legal aid cases. The Chief Justice testified that she found Judge Karunakaran unwilling to adopt the procedures. Cases continued to be mentioned over and over again. He publicly expressed his reservation with the mechanisms that were put in place and with the way the Chief Justice was administering the case list.

Ms. Barnes described the active agenda that the Chief Justice came in with to improve case management and reducing the backlog. These measures included introducing monthly meetings and rejuvenating the 5 year plan, monitoring statistics and how to manage the cases in a more active way. She testified that Judge Karunakaran was resistant to this change.

She gave an example from the judgment in **Didon v/s Roucou** in the judgment he delivered on the 5th of September 2016 in a case that was filed since 2003, where he states that "one may unwisely suggest that the Court should apply the law strictly, refuse adjournments to stop procrastination and the accumulation of backlogs and delays. The Courts can arbitrarily and mechanically do so and show better figures on disposal rates. After all technically a case dismissed is a case disposed. Should it that is the Court, look for short term quick fix solution, dehumanizing the law for a pleasing statistic."

The Chief Justice reiterated that it is not about statistics, but about administering justice in a reasonable manner as is required by the Constitution. She had requested that he provide his input into the cause of judicial delays on numerous occasions but instead chose to express them in the Courtroom.

The Chief Justice described that despite his years of experience Judge Karunakaran remained a Judge with a chronic backlog, and she had, after a meeting with him, agreed not to allocate many cases to him in order to give him a chance to address his backlog. This was to the detriment of the other Judges who had an increased case load as a result. However, the Judge did not manage to take advantage of the situation or the availability of legal researchers to assist with judgments and research and his statistics produced show that in July 2016 he still had 49 backlogged cases.

The Chief Justice also testified about Karunakaran neglecting to take carriage of his cases, which shows an unwillingness to diligently engage with his duties as a Judge. She gave examples that clearly illustrated that he was not prepared for Court appearances, which sometimes led to encounters in the Court room that were embarrassing for the judiciary. She illustrated how often the Judge does not appear to know what a case is about when he enters the Courtroom. An example that the Chief Justice gave is from the case of **Ramkalawan v SPPF** (filed in 2006). The Judge in 2016 did not know how many defendants were in the plaint, he did not know the stage the case had reached, and going through the file in the Courtroom indicated that he did not have all of the proceedings on file and the Registrar should update the file, he suggests that they attempt a settlement which Counsel clarifies has already been tried and failed. Counsel express exasperation that the matter will be adjourned again when it is already 10 years old.

She gave another example of the **Sivasankaran** case, there had been two different main cases containing the same litigant, the first a divorce and the second an application for a declaration of bankruptcy. There was a matter arising that had been brought in the bankruptcy case but accidentally filed by the registry in the divorce main case. The Chief Justice illustrated that if Judge Karunakaran had looked at his case file before going to Court, he would have noticed it was in the wrong case file. Instead when he goes into Court, it is only then that he notices and he does not understand what is going on and he has to be guided by Counsel.

The Chief Justice described the state of disarray of his Court files and the fact that he had not supervised the preparation of this files which resulted in the perception that proceedings were missing, and also proceedings actually missing. The Chief Justice explained that when she took over his cases she had to appoint staff to help her retrieve proceedings and put the files in order. She described how the Registrar had found a box of unfiled proceedings in his office which the orderly had not filed because they had not been signed. She gave examples including the **Gregoretti** case (where he did not know where the file was) and the *Avante* limited case (where he was unaware that he had issued an order, which it transpired was not on the file).

The Chief Justice believes that one of the reasons for the long delays in the cases and the multiple adjournments is that Judge Karunakaran shirts his duty to decide on difficult or awkward matters. She gave an example from **Merali** where Judge Karunakaran stated that he "does not want to make a decision because it might be unpleasant."

The case of **Lenclume v Labrosse** shows an unwillingness to write a decision in an exchange with Counsel where he attempts to get Counsel to withdraw the plea in limine litis because "the law is clear, it is in black and white, if you know the provision, if it says so, then do you expect me to come and say this is the law? You have both read the law, why should we give a ruling?" Counsel had to push for him to write the ruling.

Ms. Barnes, the Executive Legal Assistant to the Chief Justice, discussed the disposal statistics for Judge Karunakaran during 2016 based on a report produced off the case management system. She stated that he had disposed of 125 cases during that period, which was relatively high compared to other Judges. She looked at the statistics and pointed out that of the oldest 30 cases, the Judge Karunakaran only wrote two judgments, and the rest of the cases were dismissed, withdrawn or judgment by consent. This corroborates the Chief Justice's testimony about his modus operandi and about parties withdrawing or agreeing to consent orders after the cases have dragged on for many years. Ms. Barnes pointed out that he was not writing a high number of cases, and that many of the matters disposed were matters arising out of other cases. The statistics before Ms. Barnes suggested that he had only written 18 judgments in the disposal of the 145 cases. She stated that he may have written judgments in some of the disposals listed as 'rulings' as these are generally given in short causes, which will include applications for judicial review.

Complaints regarding handling of cases and delays

The Chief Justice testified that in the past year, Judge Karunakaran neglected his duties with regards to delivering judgments within the 60 days set out in the guidelines or by failing to fix a date for judgment. She gave the example of the *HFIM* case where judgment was delayed twice, the closing submissions were filed in October 2015 and in May 2016 the judgment date was

delayed until September 2016 and again in September it was postponed without setting a return date.

The Chief Justice also pointed to a complaint from Benny Bastienne about the delays in his case, and from Mr. Cedric Thomas. Even Counsel went on record in the **Didon v Roucou** case to register their dissatisfaction with the lenient behavior towards Counsel. Mr. Elizabeth states in the proceedings of 25th February 2016: "I have to go on record because of the many complaints in this case since 2003. The case has been adjourned repeatedly, not at the request of plaintiff, rather the request of the defendant."

The Chief Justice produced summaries of several cases to show in more detail the way that cases are handled. She particularly drew the Tribunal's attention to the case of **Mondon v Mondon** where the Judge asks why the litigants can't take it to other Courts, stating "I have about 300 cases, as you know this Court is very busy, I have inherited about 2000 cases, now we have reduced to at least about 300 cases, It will take another ten years for me to complete all the cases." The Chief Justice invited the Tribunal to take note that this statement was completely untrue as he had only 146 cases or at least a number on par with the other Judges, and had never inherited 2000 cases.

Complaints and HFIM

One case which had generate several complaints was the case of **HFIM and HIL** which the Chief Justice mentioned. The Executive Legal Assistant to the Chief Justice Ms. Barnes explained the situation with the **HFIM v HIL** case. During September 2015 a complaint was brought to her (the Chief Justice was out of the country) against Judge Karunakaran and his handling of a 2012 breach of contract case. The main case had given rise to two cases, **HFIM v HIL and Panesar v French**. The cases were commercial cases and ought to be finished quickly, but they had been dragging on for three years already. Ms. Barnes listened to his complaint about the time delay and his concerns that the other lawyer involved was getting special treatment. She wrote to the Chief Justice regarding the complaint. She called the file and was able to see a fair amount of delays in the case and many mention dates, indicating it had been to Court a high number of times. In October 2015, a litigant had informed Ms. Barnes that the hearings were being cut short, amounting to having merely a half day's worth of hearing time instead of a full day. She had escalated the concerns to the Chief Justice who had taken the matter up with the Judge concerned. The following day Judge Karunakaran had embarrassed Counsel and the litigant in Court by asking in Open Court about who had initiated the complaint against him. The litigant felt embarrassed and prejudiced and withdrew his complaint against the Judge. Counsel for the litigant wrote shortly after to say that he was concerned about an aspect of the case, but could not formally complain because they did not want their case "prejudiced by overreaction" and stated that he "did not want to be reprimanded again by this Judge".

Ms. Barnes read out the transcript from the morning of 16th October 2015 when Judge Karunakaran had stated to the Courtroom: "If you have any grievance about the way I deal with the case please file a motion and ask for a transfer. I will be very happy to transfer this case to another Judge, before another Court." He asked each Counsel to confirm whether he had placed a complaint, and asked them to ask their clients whether they had lodge a complaint. Mr. Rouillon stated that his "client had made a report on the basis of the massive documents filed towards a very late stage and a number of adjournments in the case and this has been brought to the attention of higher authorities," to which the Judge respondent "who is this higher authority? … let the Chief Justice take this case". Later he states: "if you have a problem appeal against the judgments, against the order, against the ruling of the Court. I mean making complaints, I do not enjoy this kind of, you know, the attitude of Counsel. Who is this higher authority. There is no higher authority here. I am a Judge and I am an independent Judge, I decide on my own." After a thorough dressing down of Counsel the Judge states, "I think whoever wrote the complaint should tell the authority, whom Mr. Rouillon you say is a higher authority, tell that higher authority that you withdraw this complaint." And again he stated "please go and tell that you withdraw the complaint against this Court that you are very happy, put it in writing, give it to the authority, whoever you said the higher authority is, please do it today Mr. Rouillon."

That afternoon the Judge criticized the Chief Justice's oversight of the administration of the Courts saying "this is a very unhealthy administration" and "that is why one should have trial experience. Should be a trial Judge to sit and watch what it is like inside the Court. We are not dealing with computers and papers and files like the Court of appeal. We are dealing with humans. People should understand that they should not interfere with my discretion to grant adjournments".

Ms. Barnes testified that this particular case was complicated, and the files were not in order when the Chief Justice took them over, so it had taken them 3 days to get the files in order. The case had been allowed to get out of hand. She testified that while organizing the clean-up of the files they discovered several proceedings were not on file and were not even typed yet during the period October 2015 to May 2016 when the judgment was meant to be being written. This means that between the disorganization and the missing proceedings, it is likely that no work on the judgment had been done in the time when the judgment ought to have been written. She explained that the Court orderly and the judicial officer are responsible for ensuring that the files are complete. By April 2016 however, all of the proceedings would have been ready to go on file.

Ms. Barnes led the Tribunal through the **HFIM v HIL** file showing that the Judge had granted three months for submissions (from October to January), with reply submissions in February. The judgment was then reserved to May, however on the return date on 9th May the Judge came to Court and said: "there are more than a hundred thousand pages, it is not easy for me, if I could even read one thousand pages per day, it would take hundred days to read this file to at least know then

I have to register everything. The facts, then I have to do research. I thought I could work during the vacation but I could not make it, can we fix it after the next vacation…. but tell you clients not to make a big issue because I think they are complaining that we are not delivering judgment. It is not like that."

She testified that on the second date set for judgment the matter was adjourned without it being called. The litigant called her to complain and to question when they would receive judgment. No judgment date was set. The matter was not called properly as is the correct method for adjournment, but rather the adjournment was communicated via the Court orderly. Ms. Barnes testified that the proceedings ran for 4 files of about 300 pages each, significantly fewer than 100,000 pages.

The audio recordings from Friday 16th October 2015 were produced for the Tribunal in their encrypted form. The Tribunal was able to listen to the recordings from the morning session and they confirmed the wording which appeared in the proceedings read out by Ms. Barnes to the Tribunal.

Diary management

The Chief Justice expressed an opinion that his diary was not as full as he made it out to be and invited the Tribunal to go through his diary. She gave an example of the case of **AGU Quality Imports** where an importer had brought perishable goods into the country which were held by customs due to import duty difficulties in July 2016. Counsel asks the Judge to hear the matter urgently and asks for just an hour in the afternoon to hear the case. Judge Karunakaran stated "I have worked 25 years" and further down "this is why I have, to be a bit relaxed and not take too much pressure." He set the case down for February 2017 stating that the "government will pay if they have to". The Chief Justice reiterates that when challenged on his handling of such cases, Judge uses the Court room to publicly undermine the case management process, and she referred here to **Didon and Roucou and Mondon and Mondon**.

Ms. Barnes produced Judge Karunakaran's diary for the Court and identified available days. She also produced statistical data showing that on average his sittings lasted 1 hr. from which she concluded it was realistic for him to set two matters per day where he thought one might be short, but admitted that this was a judicial function best left to the discretion of the Judge. There is a Court target for Court usage which is more than 1 hr. a day.

Relationship with the CJ

Mrs. Lucas, the Personal Assistant to the Chief Justice, in her evidence confirmed that the relationship between the Chief Justice and Judge Karunakaran was not good. She believes it is

because he did not get the position as Chief Justice. She stated she had witnessed the Chief Justice try every possibility to work with Judge Karunakaran.

Ms. Barnes testified that the relationship between the Chief Justice and Judge Karunakaran was strained. The Chief Justice's suggestions and directions were met with an undercurrent of animosity and in the Judges meetings particularly he would express opinions which were resistant to change.

The Chief Justice stated that it was not easy to come to the decision to report him. She had a very difficult tenure of office with Karunakaran setting out to prevent her from making changes and achieving her objectives. However, she stated that since his suspension it is like a cloud has lifted over the judiciary.

Octobre – and the effect on litigants

Mr. Francois Octobre was called to testify regarding his case. He stated that he had had an injury when he fell and had undergone surgery. Another doctor had then told him that the surgeon had cut one of his ligaments, and that this could be repaired with an operation and treatment overseas. He had brought a case before the Court seeking compensation. The case had dragged for 15 years and had been before Judge Karunakaran. He stated that the money, if received 10 years ago could have paid for treatment and to improve his life, but he testified that the case was never heard, it was always adjourned. He felt that there was something strange going on that meant that it was always adjourned. He explained that as a result of the delay he has suffered and so has his family. He is now too old to go for the treatment. His wife, testified that the protracted delivery of justice affected them negatively, that he was unable to work and was in lots of pain. She was working and had to leave her work.

STANDARD OF PROOF

What is the standard of proof that the Tribunal must apply to determine if the allegations before it are proved or not? Ordinarily in civil proceedings the standard of proof is on a balance of probability while in criminal proceedings it is beyond reasonable doubt. The proceedings before us are neither ordinary civil proceedings nor are they criminal proceedings. It is open to this Tribunal to determine what the standard of proof shall be. In doing so we wish to take into consideration the position in other jurisdictions.

In Tanzania the Tribunal of Inquiry in respect of Mr Justice C.G. Mtenga and Mr Justice M.J. Mwakibete established that the standard of proof they applied was between beyond reasonable doubt and a balance of probability.

In Uganda the Tribunal appointed to look into the Conduct of the Honourable Mr Justice Oteng in its Report of December 1988 decided to adopt a standard that was higher than on a balance of probability but somewhat lower than proof beyond reasonable doubt. In the Republic of Kenya the Tribunal inquiring into the conduct of the Deputy Chief Justice Baraza adopted a standard of proof above the civil standard but below proof beyond reasonable doubt. (See: Report and Recommendation into the conduct of the Hon. Lady Justice Nancy Makokha Baraza [2012] eKLR, available at http://kenya.org/caselaw/cases/view/84481/.)

Given the nature of proceedings before us and that a finding could result in a Judge being removed from office it is important that the standard of proof is such that it ensures that the findings are based on a reasonably high standard of proof. In our view this standard must certainly be higher than the ordinary standard of proof in civil cases. The standard must be higher than on a balance of probability. On the other hand we are of the view that it need not reach the standard set in criminal cases as indeed this is not a criminal proceeding. Nevertheless it must be such that the Tribunal is satisfied that the allegations against the Judge must be proved to have been committed.

In taking this position we note that this is consistent with the position taken in the East African jurisdictions by Tribunals like this Tribunal that have inquired into the conduct of Judges.

Being guided by the above stated principles we now turn to the analysis of the evidence and the findings of the Tribunal in relation to the Complaint against Judge Karunakaran.

ANALYSIS OF EVIDENCE BEFORE THE TRIBUNAL

I Alleged Misbehaviour and Disrespect of Judge Karunakaran to the Chief Justice.

Misbehaviour:-

We would at the very outset deal with the allegations in respect of the misbehaviour of Judge Karunakaran towards the Chief Justice.

(i) The Chief Justice in her evidence under oath stated that until she took over the post of Chief Justice, the relationship between Judge Karunakaran and her was cordial. However, the moment she was appointed as Chief Justice there was a change of attitude towards her as Judge Karunakaran felt he had been overlooked for the said post as he had quite openly stated, he was going to be the next Chief Justice. When she had gone to invite him for her swearing in ceremony, he had informed her he would not attend as he was the Senior Judge and should have been appointed instead of her and that she had no qualifications or experience for the job. It appears from her evidence that from the time she had come back to take up her appointment in the Seychelles, she had not received any support or co-operation from Judge Karunakaran.

(ii) The first obstacle she had was that Judge Karunakaran had refused to vacate her chambers and it was only after threatening him that she would have to remove him for her office, did she eventually get access to it. It appears from her evidence that in defiance of her appointment Judge Karunakaran had continued to perform duties as Acting Chief Justice and continued to sign Orders until the 24th of August 2015 as Acting Chief Justice **(Annexures 9, 10, 11 and 12 of Exhibit T43)**.

(iii) Thereafter, having identified a chronic backlog of civil cases in the Civil Division, she had attempted to meet Judge Karunakaran as he was the Head of the Civil Division, to sort out the problems faced by the Division. He had refused to attend several meetings and when he eventually attended one on the 19th of September 2016, he had stated she should not interfere with his Judicial functions **(refer minutes of meeting attached to Annexure 29 of T43)**. She had made every attempt to discuss matters with him but it was to no avail.

(iv) The Chief Justice thereafter gave evidence under oath of two "tempestuous encounters" she had had with Judge Karunakaran, once when she felt physically threatened and on both occasions she had asked him to leave her office. She stated on the first occasion ie: the 16th of October 2015, he was actually abusive to her and she had complained to the Constitutional Appointments Authority (CAA) and President Court of Appeal and thereafter he had come with Fernando JA and apologized and promised to work with her and assured her, his behaviour would not be repeated.

(v) She then testified to the said incident which occurred on the 16th of October 2015. She had just written to Judge Karunakaran about a case he had been handling since 2012,the **Hedge Funds Investment Management Ltd v Hedge Intro International Ltd CC 04 /2012 (Exhibit T65)**, (hereinafter referred to as the 'HFIM case') and reminded him of the circular in regard to the completion of Civil cases within two years. She testified that there were complaints from international parties regarding the said case because it was holding up other proceedings in England, as they were waiting for the HFIM case in Seychelles to be completed.

(vi) On the said day as she was leaving her chambers for home, Judge Karunakaran had walked into her chambers through the Secretary's door that had been left open and said he needs to explain something to her. Even though she had told him this was not a good time as she was leaving as she had guests for dinner, she had invited him to sit down but he had refused and stood at her desk and angrily stated "Stop asking Judges about their work". She had told him "Please don't tell me how to do my job as a Chief Justice". Judge Karunakaran had then moved closer to her and stated "You have never worked as a Magistrate or a Judge what would you know about dealing with cases. You have no right to meddle with my cases and tell me what to do. You should stop telling tales about Judges and their work".

(vii) The Chief Justice stated under oath that Judge Karunakaran was in an extremely aggressive mood and attacked her in a very unprofessional manner, shouting that she should leave him alone and not to interfere with him. He had shown total disregard to the authority of the Office of Chief Justice. She had told him to leave the office but he had continued to shout at her, telling her he would not be answering her email. She told him several times to leave and even told him that he must be tired and that he could reply her email and they could have a meeting which her Secretary would minute. Judge Karunakaran had however continued to shout at her. The Chief Justice stated she had felt intimidated by the verbal assault and walked out of her office but he had followed shouting "You can go to hell wherever you want". She had no option but to report this matter to the Constitutional Appointments Authority (CAA). The evidence of the Chief Justice on this issue is corroborated by the evidence of Jemina Lucas, Personal Secretary to the Chief Justice who had walked in towards the latter part of this incident. She too confirms the fact that Judge Karunakaran "was very angry" and he "yelled" at the Chief Justice. She confirmed the fact that when the Chief Justice asked him to leave and come back later, without going backwards, he had gone closer to her and told her not to interfere with his work. She had also heard him telling the Chief Justice she could go to hell wherever you want and she had even gone behind both parties when they had left the chambers as according to her testimony had she not been there, there would have been physical abuse.

Disrespect:-

(i) It is the evidence of the Chief Justice that Judge Karunakaran on very many occasions in Open Court would disrespect her. She referred to the case of **Delpeche v Gregoretti CS 04/2004 (Exhibit T 25)**, where Judge Karunakaran on the 21st of October 2015, in

Open Court had ordered the Chief Justice to give reasons why the case was removed from his Court without his knowledge causing undue delay and further ordering the Chief Justice not to interfere with this case.

In the **Ms. Moorina Merali and Ors v/s Mrs Nichole Tirant Gheradhi and Ors CS 178/2008 (Exhibit T 33**), at page 3 of the proceedings of 26th September 2016, he states in Open Court, "*After I adjourned the matter Chief Justice somehow interfered into this case"*. In the Aubrey **Didon v/s Roucou Construction Pty Ltd CS 90/2003 (Exhibit T 31),** in the proceedings of 6th July 2016 at Page 2, he reads a memo addressed personally to him by the Chief Justice in Open Court in respect of the delay and makes unnecessary and uncalled for remarks like, *"what responsibility it does not make sense"* and other comments in an attempt to publicly ridicule the private memo of the Chief Justice. We also refer to the case of **LCP Development v Island Development Company CS 199/2011 (Exhibit T28)**, in the proceedings of the 14th March 2016, where it was brought to his notice that the other defendants would first cross examine a defence witness and lastly the plaintiff would do so and this was the procedure adopted by the Chief Justice. In Open Court he proceeded to state for the 35 years he had been in practice and the bench, he has never seen this procedure and states maybe the Chief Justice was not aware of the practice.

(ii) We also draw our attention to the comments of Judge Karunakaran in the **Hedge Funds Investment Management Ltd v/s Hedge Intro International Ltd**, of the proceedings of 16th October 2014 **(Exhibit T 65)**, where he states in Open Court that this is a very unhealthy administration that is why one should be a trial Judge to sit and watch what it is like in Open Court. He further states we are not dealing with computers and papers and files like the Court of Appeal. Clearly this refers to the administration of the Chief Justice and is a public condemnation of her administration.

We find no reason not to accept the evidence of the Chief Justice on these issues and we proceed to accept the evidence given by the Chief Justice under oath as set out above which is confirmed by that of her Personal Secretary. It is the evidence of both the Chief Justice and her Personal Secretary that the aggressive nature was so serious that there was a threat of physical abuse of the Chief Justice which made the Chief Justice, leave her chambers for fear of same. It is our finding that such conduct of Judge Karunakaran towards the Chief Justice is conduct unbecoming of a Judge and shows indiscipline to authority, is intemperate in nature, uncontrollable and is disrespectful conduct towards the Authority and Office of the Chief Justice. His actions and conduct set out above, clearly lacks the propriety expected of a Supreme Court Judge. This in our view is a serious breach of section 4.1 of the Seychelles Code of Judicial Conduct which reads as follows:

> *'A Judge shall at all times conduct himself or herself in a manner consistent with the dignity of the judicial office, and for that purpose must freely and willingly accept appropriate personal restrictions..'*

The public utterances by Judge Karunakaran referred to in paragraphs (i) and (ii) above (in relation to disrespect to the Chief Justice), is in our view, a public and blatant disregard to the Authority and the Office of Chief Justice which is unacceptable, especially when it was constantly repeated in public. It undermines the public confidence in the Judiciary and in our view is a breach of propriety principle vide section 4.2 of the Seychelles Code of Judicial Conduct which reads as follows:

> 4.2 *A Judge shall exhibit and promote high standards of Judicial conduct.*

We are therefore satisfied that Judge Karunakaran conducted himself both in and out of Court in a manner that lacked propriety towards the Chief Justice. No doubt this conduct is definitely deplorable and amounts to misbehaviour. We are satisfied that Part I, 1.1, 1.3 and 5.3 of the Complaint as set out at pages 9 to 14 herein have been proven and well established. Nevertheless we do not find that this misbehaviour is so gross as to warrant, on its own, removal of the Judge from office.

II. Alteration of Content of Proceedings including Orders of Court.

In the case of **Noellie Amanda Jeremie & Ors v Davilla Dodin & Ors Supreme Court (Civil Side) 261/2010 (Exhibit T 39)**, we observe from the evidence of Mr. Basil Hoareau Attorney at Law and the proceedings of the 15th January 2014 that after listening to the preliminary objection taken up by Mr. Hoareau, Judge Karunakaran had in Open Court immediately thereafter, made Order that all parties listed should be registered as co-owners of the land in the Land Registry. Mr. Hoareau further stated that subsequently, he had received a certified copy of the said Order from the Registry **(Exhibit T 74)** which contained only 5 paragraphs. This is further confirmed by the Open Court voice recording produced as **(Exhibit T75)** which confirms the contents of the 5 paragraphs Order given by Judge Karunakaran that day.

It is the contention of Mr. Basil Hoareau that the Order given in Open Court had been subsequently changed by Judge Karunakaran by the addition of a paragraph referring to the approval of the subdivision made by Mr. Leong and ordering Mr. Leong to proceed with the subdivision of the parcels. He further stated that this part was inserted later on as paragraph 4 and the existing paragraphs 4 and 5 were made 5 and 6 as shown in the record **(Exhibit T 39)**. This fact is further proved when one listens to the voice recording of the Court proceedings that day as there is no mention of approval of any subdivision or any mention of ordering Mr. Leong to proceed with the sub division of the land in his Order given in Open Court that day. Mr. Hoareau further states the earlier five paragraph Order given in Open Court was no longer in the file but now it contained the 6 paragraph Order. Matters are further aggravated when the record of the voice proceedings dated 15th January 2014 and the type written proceedings indicate that the last words of the Judge Karunakaran were, "If you want to apply for division in kind, you can apply. File closed".

Mr. Basil Hoareau states he was made aware of this change only when the surveyor Mr. Leong came on the land and began to survey it and had showed a copy of the six paragraph Order. On being made aware that the Order had been changed to avoid a scandal Mr. Hoareau had attempted to rectify the mistake in the second Order by filing a motion under section 147 of the Seychelles Code of Civil Procedure (SCCP) but this motion was never heard by Judge Karunakaran. However

on perusal of the relevant file **MA 363/2014** which is part of the main file, we observe that Judge Karunakaran had attended to his motion as a matter of urgency on the 24th of December 2014 and corrected the said order as requested, in the absence and without notification to the parties or their Counsel.

It is further the contention of Mr. Hoareau that Judge Karunakaran had proceeded to reopen the closed file and change the 5 paragraph Order in the absence of the other party by adding a completely new paragraph as referred to above. The evidence of witnesses Mr. Bagnal Jean Baptiste and Alex Joseph Baptiste indicate how the alteration of the Order has affected their rights as the land is still lying idle as they did not have the money to continue with litigation. They had reported the conduct of the Judge in changing his Order to the President and the CAA.

The Tribunal upon careful scrutiny of the relevant file as per (**Exhibit T 39)**, finds that as per Official transcripts of proceedings, Judge Karunakaran, on the 15th day of January 2014, delivered in Open Court the following Order:-

> *"[1] I gave careful consideration to the submission made by Counsel on both sides to this application. On the strength of the affidavit filed in support of this application, I am satisfied that one Sophie Jena-Baptiste nee Cathene, dies intestate on the 12 of October 1946 and Rose Jean-Baptiste dies intestate on the 27 of January 1938.*
>
> *[2] I am equally satisfied both deceased persons together with Therese Barra and Charlien Jena-Baptiste were co-owners in land registered as title V. 7878 and V. 7879 situated at Le Niol, Mahe.*
>
> *[3] I am also satisfied that the 13 applicants and 22 respondents whose names appear in the caption of this application are the only legal heirs to the estate of the said deceased persons.*
>
> *[4] In the circumstances, I direct the Registrar of Land to register the said two parcels of land namely, V.7878 and V7879 situated at le Niol, Mahe in the joint names of all the 35 persons named in the application. They shall remain as co-owners in respect of the said two parcels of land.*
>
> *[5] I direct the Land Registrar to comply with this order accordingly.*
>
> *Signed, dated and delivered at Ile du Port on the 15th January 2014.*
>
> *D Karunakaran*

Judge of the Supreme Court"

The Tribunal further finds that as per Official transcripts of proceedings **(Exhibit 39)**, Judge Karunakaran on the same above-referred date namely, the 15th day of January 2014, delivered another Order in relation to the same subject matter after delivering the afore-mentioned order in Open Court and closing the file to the following effect:-

> *"[1] I gave careful consideration to the submission made by Counsel on both sides to this application. On the strength of the affidavit filed in support of this application, I am satisfied that one Sophie Jena-Baptiste nee Cathene, dies intestate on the 12 of October 1946 and Rose Jean-Baptiste dies intestate on the 27 of January 1938.*
>
> *[2] I am equally satisfied both deceased persons together with Therese Barra and Charlien Jena-Baptiste were co-owners in land registered as title V. 7878 and V. 7879 situated at Le Niol, Mahe.*
>
> *[3] I am also satisfied that the 13 applicants and 22 respondents whose names appear in the caption of this application are the only legal heirs to the estate of the said deceased persons.*
>
> *[4] Hence, I approve the proposed sub-division as indicated in the Report and diagram of the land Surveyor of Mr. Michel Leong W.Y. dated 9th April 2012 Ref. No. GM212010 attached to the order made hereby. Further I direct the said Surveyor to proceed with the sub division and arrange for the registration in accordance with this order.*
>
> *[5] In the circumstances, I direct the Registrar of Land to register the said two parcels of land namely, V.7878 and V7879 situated at le Niol, Mahe in the joint names of all the 35 persons named in the application. They shall remain as co-owners in respect of the said two parcels of land.*
>
> *[6] I direct the Land Registrar to comply with this order accordingly.*
>
> *Signed, dated and delivered at Ile du Port on the 15th January 2014.*
>
> *D Karunakaran*
>
> *Judge of the Supreme Court"*

In direct reference to the latter second six paragraphs' Order, the Tribunal further notes the hand written insertion of the following sentences by Judge Karunakaran on the Original order inter alia:-

> *"[4] Hence, I approve the proposed subdivision as indicated in the Report and diagram of the Land Surveyor Mr. Michel Leong W.Y. dated 9th April 2012 REF No. GM212010attached to the order made hereby. Further I direct the said Surveyor to proceed with the sub-division and arrange for the registration in accordance with this order."*

Further, we observe also handwritten next to the above mentioned, hand written extract, is added in red ink by Judge Karunakaran as follows:

> *"'Bonte' told made a mistake".*

It transpires on the official voice recording and proceedings of the 15th January 2014 **(Exhibit 39)** that the case was never called in Open Court in the presence of the relevant parties for the second Order and or neither with their consent. Hence, the Tribunal concludes that the Order was changed in Chambers and thereafter signed by Judge Karunakaran.

In corroboration to the evidence of Mr. Basil Hoareau, the Tribunal further finds in MA. 363 of 2014 forming part of **(Exhibit 39)**, that Judge Karunakaran on a Motion of Mr. Basil Hoareau for the applicants of the 25th day of November 2014, moving for the second Order delivered by Judge Karunakaran dated the 15th day of January 2014 (supra) to be set aside and to further hear the matter as one of urgency, Judge Karunakaran it should be clearly noted at this juncture, without notifying the parties delivered in Chambers on the 12th day of December 2014 a further Order on Motion to the following effect:-

> *"[1] This order relates to the motion filed by the applicants dated the 25th of November 2014. I carefully perused the affidavit filed in support of the said motion. Having considered the entire circumstances of the case, I find it just and necessary that the motion should be heard urgently ex-parte:*
>
> *[2] According I make the following order:-*
>
> *(i) The land surveyor Michel Leong is hereby directed not to [proceed with the process of sub-division of the Parcel V. 7878 and V. 7879 and/or registering any parcels of the lands in terms the Land Survey Act, as sub-divisions of the said parcels V. 7878 and V. 7879 until further order of the Court.*
>
> *<u>Further order:</u>*
>
> *I hereby direct the Registry to serve a copy of this order on the land*
>
> *surveyor Mr. Michel Leong, Mr. France Bonte and Mr. Basil Hoareau*

learned Counsel for the parties at the earliest.

Signed, dated and delivered at Ile du Port on 12th December 2014.

D Karunakaran

Acting Chief Justice"

What is the law applicable in respect to changes and variations to Judgments and Orders of the Supreme Court?

Article 147 of the Seychelles Code of Civil Procedure deals with correction of clerical errors in Judgments or Orders. It states:-

> 'Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court on motion.'

This section is clearly inapplicable to the facts of this case. The variation by Judge Karunakaran to the order of 15th January 2014 was not clerical. Neither was it made upon written or oral motion filed and or recorded in the proceedings for that purpose.

The other provision that could have come in aid is Article 150 which states:-

> 'The Court may, after hearing both parties, alter, vary or suspend its judgment or order, during the sitting of the Court at which such judgment or order has been given.'

Again it is amply clear that the Judge never cited this section as the source of authority for his action. The variation to the order of 15th January 2014 was not done on the same date that the order was made. It was done more than a week later. Neither were both parties heard. This provision is clearly inapplicable to the matter at hand.

On the 15th January 2014 when Judge Karunakaran read and pronounced his first Order he also directed the file is closed. With regard to subdivision he stated that the parties could apply for the same. The Judge's authority to further handle this application had clearly ended at this point. He was '*functus officio*'. He could not on his own motion re-open this matter and attend to it. Neither could he revise or vary the Order he had made for he already exhausted his powers. There are many decisions of both the Court of Appeal of Seychelles and the Supreme Court that enunciate this principle. See **H Savy Insurance Co. Ltd v Rolex Ventigadgo Supreme Court Civil Appeal No. 2 of 2013; Allied Builders Seychelles Ltd v Resort Development Ltd Supreme Court Misc App No. 260 of 2015; Chetty v Chetty [2014] SCCA 12; and Revera v Dinan (1983-1987) 3 SCAR (Vol.11) 225.**

The Penal Code of Seychelles defines forgery in Section 331 which states:-

> 'Forgery is the making of a false document with intent to defraud or to deceive.'

Section 333 sets out the elements of making of a false document. It states in part:-

> 'Any person makes a false document who – (a) makes a document purporting to be what in fact it is not; (b) alters a document without authority in such a manner that if the alteration had been authorised it would have altered the effect of the document.'

The second Order made by Judge Karunakaran of 15th January 2014 replaced the first order of 15th January 2014 which was in fact removed surreptitiously from the Court file so as to deceive that the second Order of 15th January 2014 was the order issued on 15th January 2014 by Judge Karunakaran whereas it was not the case. The intent to deceive is clearly demonstrated by giving the second order the same date as the first whereas they were made on different dates as well as the removal from the file of the first Order.

The second Order included new substantive Orders that affected the rights of the parties as it actually approved subdivision of land and the registration of owners without any party having been heard on such an application. This new provision stated, '[4] Hence, I approve the proposed sub division as indicated in the Report of the Land Surveyor Mr. Michel Leong W.Y. dated 9th April 2012 Ref. No.GM21201 attached to the order made hereby. Further I direct the said Surveyor to proceed with the sub-division and arrange for the registration in accordance with this Order.'

This provision was not included in the Order that was read on 15th January 2014. The Order of 15th January 2014 was altered in such a manner so as to deceive that this provision had been part of that Order. Doing so amounts to making a false document. It is purporting to be the order made on 15th January 2014 whereas it is not the Order that was announced in Open Court on that day. Judge Karunakaran had no authority whatsoever in the circumstances of this case to make this second Order. The making of this document amounts to the making of a false document which is a felony contrary to section 333 of the Penal Code and in case the document is an official or judicial record it is punishable by ten years imprisonment (vide: section 337 of the Penal Code.)

In the course of proceedings to set aside the second Order Judge Karunakaran stated that he had been misled by Mr Bonte Counsel for one of the parties to that matter. Even if one accepted this statement to be correct it does not amount in law to a defence for his actions. The Judge was obliged not to engage in ex parte communications with one party in the absence of the other party. In any case he was already 'functus officio'. The conduct of Judge Karunakaran in this matter reveals a grave want of integrity or honesty. The conduct was dishonest. It amounted to the commission of a criminal offence of forgery. It is tantamount to gross misbehaviour for which removal from office is the only acceptable sanction in terms of article 134 (3) of the Constitution.

It is observed that Judge Karunakaran has subsequently acceded to the request of the Motion filed under section 147 of the SCCP and corrected the Order once again but it is clear from the proceedings that he had changed the Order made in Open Court on the 15th of January 2014 only

at the request of Mr. Bonte Attorney at Law in Chambers, in the absence of the other party and their Counsel.

Further, there are also allegations that certain changes in the proceedings of several cases were made by Judge Karunakaran. The cases referred to by the Chief Justice were the **Delpeche** case (supra) proceedings of 6th July 2016 which were changes made after signing as borne out by the evidence of the Chief Justice. We also refer to the changes in proceedings in the cases of Didon (supra) proceedings of 6th July 2016, the **Linyon Demokratik Seselwa v/s the Electoral Commission (Exhibit T6)**, case proceedings of the 23rd of August 2016 **(Exhibit T67)**, proceedings of 24th June 2015 of **Huns Biltoo Partner KPMG Advisory Services Ltd (exhibit T68)**, **Seychelles Trading Company v Prasal Parthalanka (Exhibit T69)** and **Camille v Padayachy (Exhibit T70)**. We are satisfied that the changes referred to above amount to gross and serious misbehaviour and in breach of section 3.3 of the Judicial Code of Ethics which reads as follows:

> *'A Judge shall exhibit and promote high standards of judicial and personal integrity.'*

We are therefore satisfied that the evidence produced to The Tribunal has established to our satisfaction that Judge Karunakaran acted without integrity as alleged in I, 1, 1.6 of the Complaint at Pages 9 to 14 and 1.7 of the Terms of Reference dated 12 October 2016 **(Annexure 4 refers)**.

III Delay in the Hearing of Cases and Delivery of Judgments

There were several allegations made against Judge Karunakaran in respect of his failure to dispose of cases speedily. The Chief Justice in her evidence under oath stated that when Judge Karunakaran was suspended she had taken over 146 cases he had pending. She had gone through the backlog of cases he handled and noticed that Judge Karunakaran had a modus operandi to mention cases several times with no resolution for a period, in some cases going over 10 years and eventually parties would give up and withdraw their cases. The testimony of the Chief Justice indicates the reason for the delays was because Judge Karunakaran would often avoid his responsibility of giving decisions on awkard and difficult matters. In the case of **Moorina Merali &Ors v Ms Nicole Tirant Gheradi & Ors CS 178/2008 (Exhibits T 33 and T 63)**, he states he does not want to make any decisions because it might be unpleasant while in the case of **Lenclume v Labrosse CS 53 of 2014 (Exhibit T23),** he states "You have both read the law why should we give a Ruling".

The evidence of Joelle Barnes (Executive Legal Assistant to the Chief Justice) is that the statistics of Judge Karunakaran indicates he has disposed 145 cases which was high comparatively but from the total of 145 disposals only 18 Judgments had been written. She also stated some of these disposals were from matters arising from the main case and though the Miscellaneous Application was decided, it did not conclude the main Civil case. She further stated the statistics T 64 indicate that the oldest 30 cases were disposed by dismissing cases, parties withdrawing their cases and by entering Judgment by Consent. Only two Judgments were written. We observe that the 30 oldest cases disposed in 2016 are cases filed as far back as 2003, 2005, 2007 and 2008 **(Exhibit T64)**. She also gave evidence that from the monitoring system introduced to calculate how long the Judges were on the bench, it showed that on an average Judge Karunakaran would be sitting in

Open Court for only one hour a day. The Tribunal has scrutinized the contents of **Exhibit T 73** in that regards which sets out the average time taken on the Bench taken during the period of the 17th September 2015 to the 9th August 2016.

The Chief Justice further stated in some cases the litigants would die and she found this unacceptable. We observe that in the case of **Desire Thomas v France Adrienne Construction Pty Ltd CS No. 168 of 2005) (Exhibit T61)** a case filed in 2005 has since 2008 being handled by Judge Karunakaran until Judgment by consent was entered on the 25th of January 2016. The record indicates an overabundance of mention dates over the years for numerous flimsy reasons. We note that in the few hearing dates given, on the 31st of March 2010, the hearing had been adjourned to the 21st of March 2011 by Judge Karunakaran, a date almost one year later, despite the case being a 2005 case. No reasons have been mentioned for adjourning the hearing date for a period of almost a year. The plaintiff had complained of the delays to his case until he passed away. His son succeeded him in pursuing this case. We also note in the file a memo dated the 23rd day of October 2015 sent by the Chief Justice to Judge Karunakaran stating therein inter alia:-

"Judge Dodin has instructed me that mediation in this case has failed…… In the circumstances may I beg that a speedy hearing. Brooking no adjournments from the parties involved be arranged asap. With thanks."

We find that the handling of this case by Judge Karunakaran has been inept and resulted in undue protracted hearing of the case and inordinate delays.

We would next draw our attention to the case **of Didon Construction v Roucou Construction CS 90/2003 (Exhibit T31).** The case was filed in the year 2003 and Judgment was delivered on the 5th of September 2016 almost 13 years later. We have perused the contents of the file and we see that there exists no satisfactory reason to explain the delay in the case. It is apparent that in answer to this inordinate delay in the conclusion of this case, Judge Karunakaran had this to say in his Judgment:

> "*One may wisely suggest that the Court should apply the law strictly, refuse adjournments to stop procrastination and the accumulation of backlogs and delays. The Court can arbitrarily and mechanically do so and show better figures on disposal rates. After all technically a case dismissed is a case disposed. Should it that is the Court, look for a short term fix solution, dehumanizing the law for a pleasing statistic."*

In his judgment, he blames the Counsel who appeared before him for the delay, forgetting that it is the Judge who has control and carriage of the cases before him.

This certainly does not explain the delay of the case which in actual fact was procrastinated for a period of 13 years, prior to being concluded by the Judge. We are satisfied that there was an unwarranted and inordinate delay in the hearing and conclusion of this case by Judge Karunakaran.

We next draw our attention to the case of **Francois Octobre v The Government of Seychelles CS 17 of 2002 (Exhibit T2**)

In this case the victim Francois Octobre gave evidence before the Tribunal stating that he had sued the Government of Seychelles in a case of medical negligence as during an operation a ligament of his had been cut. His case was before Judge Karunakaran for the past 15 years but never resolved and constantly adjourned. He had complained of the delay in the hearing of his case and finally it was the Chief Justice who had taken over the case and delivered Judgment. He stated he was young at the time the incident occurred and had the money been received earlier, he would have been able to go abroad and get treatment but due to the delay he had to cry and suffer for many years. His evidence was corroborated by the evidence of his wife Jerina.

We have perused the record in this file. We have noted that the case was filed and allocated to Judge Karunakaran as far back as 2002. The case has been adjourned over the years by Judge Karunakaran for a period of around 14 years until finally the Chief Justice took over the case and concluded it by delivering Judgement on the 25th of November 2016 after the suspension of Judge Karunakaran.

We next draw our attention to the **HFIM case** (supra). We are of the view that the delay in this case of not giving the Judgment within the period of 60 days is further aggravated by the fact that after postponing the Judgment for a period of almost a year, for reasons that the proceedings were lengthy and over 100 thousand pages and research had to be done, the case was eventually adjourned without giving a date for Judgment which in our view, is totally unacceptable conduct on the part of the Judge. Following the suspension of Judge Karunakaran, the Judgment had to be delivered eventually by the Chief Justice with the consent of all parties. It is the evidence of Joelle Barnes that the total number of pages in each hardcover box file was 300 and there were 4 such hardcover box files with proceedings in the said case.

The Tribunal has also perused the **(Exhibit T 43 Annexure 29 Sub-Annexure 4)** an internal memo circulated by Chief Justice Ntende dated the 1st day of August 2012 in which all pending cases for all Judges for both the Criminal and Civil Division as at the 30th June 2013 has been annexed. We observe and note the following delays in the delivery of Judgements.

In the case of **CS 61 of 2009 Mr. Allen Ernestine v/s Elizabeth Louise Beaufond Gummery**, the case was fixed of Judgement on the 4th day of December 2012 but delivered only on the 21st day of January 2014, a delay of thirteen months.

In the case of **CS 74 of 2005 Lucine Vidot & Ors v/s Jeanne Lesperance**, the case was fixed for Judgement on the 29th day of February 2012 but Judgement was eventually given on the 2nd day of October 2013, a delay of twenty months.

In the case of **CS 170 of 2010 Colin Dyer & Ors v/s Hon. Dr Patrick Herminie**, the case was fixed on the 14th day of October 2011 for Judgement on the 24th day of November 2011 but Judgement was never given in this case. We observe that on the 23rd day of November 2016 the matter was called before the Chief Justice who made a note that no Judgement had been given

since the said date and eventually on the 11th day of January 2017 Counsel Mr. A. Derjacques has withdrawn the case on behalf of the Plaintiffs.

In the case of **CS 104 of 2010 Emmanuel Haidee v/s Andre Beaufond & Ors**, we note from the Journal entries maintaining the Records that on the 18th day of January 2013, the case was fixed for Judgement. However Judgement was delivered on the 11th day of May 2014 a delay of sixteen months.

In the case of **CS 38 of 2012 Jill Nourrice v/Government of Seychelles**, the case was fixed of Judgement on the 2nd day of May 2013 and eventually Judgement was given on the 31st day of October 2013 a delay of five months.

In the case of **CS 30 of 2013 Anessa Pool v/s Lenny Canaya**, the case was fixed of Judgement on the 25th day of November 2015 and eventually Judgment was given on the 9th day of May 2016 a delay of six months.

In the case of **CS 113 of 2010 Aaron Barrado v/s Babhra Labonte & Ors**, the case was fixed of Judgement on the 20th day of January 2016 and eventually Judgement was given on the 8th day of June 2016 a delay of six months.

In the case of **CS 13 of 2009 Robert Howarth v/s Gilles Pinchon & Ors**, the case was fixed of Judgement on the 22nd day of February 2013 and eventually Judgment was given on the 22nd day of July 2013 a delay of five months.

The Chief Justice in her evidence also referred to other cases delayed by Judge Karunakaran. She referred to the case of **Wavel Ramkalawan v SPPF CS 423/2006 (Exhibit T14**) which was a defamation case filed in 2006 before Judge Karunakaran, left incomplete by him when he was suspended in 2016 and was completed by her in 2017. She stated such delays amounting to a period of 11 years caused difficulties when one is assessing the damages.

We next refer to the case of **The Estate of Pierre Ernest Vidot v/s Golden Sun Co. Pty Ltd CS 262/2001 (Exhibit T52),** the case was called before Judge Karunakaran on the 18/01/02 and fixed for hearing by Judge Karunakaran on the 31/07/2002. On the 10/10. 2006 the case was stayed pending appeal. The case was eventually concluded on the 24/09/2014 by a Ruling upholding a plea in limine and dismissing the Plaint. We observe that the case had been unnecessarily mentioned over a long period of time and several hearing dates adjourned and on the 18/10/2010 despite being a case filed in the year 2000, a hearing date had been given on the 29/09/2011 a period of almost a year later, without any reasons being given. As a direct result the matter was disposed after 13 years from filing date.

In the case of **Desire Jean Domingue v/s Marie-Ange Domingue DC 01/2000 (Exhibit T 53)**, on 04/05/04, the case was called before Judge Karunakaran and he fixed it for hearing on the 8/11/04. On the said date hearing was adjourned and the next hearing date was on the 20/02/2006. On the said date hearing was adjourned once again. The next hearing date was the 16/11/2006. Thereafter the hearing was again adjourned till the 21/2/2007 on which date the hearing was not taken up and several mention dates followed and on the 22/5/2007 a mention date for settlement

was given till the 19/06/2007. On the said date further mentions were given thereafter with no settlement. On the 31/7/2007 a hearing date was fixed for the 11/6/2008 almost a year later and no reasons given for such delay despite being a case filed in the year 2000. On said date hearing was again adjourned and a mention date given for settlement. The case was continuously thereafter adjourned on the basis of settlement till the 10/5/2010 on which date another hearing date was fixed for the 3/3/2011 and no reason was given for adjournment of the hearing date for such a long period of time. It is observed finally that on the 26/7/2012 a Judgment by consent dated 20/6/2012 was entered in Court before another Judge. As a direct result of the undue delays it took twelve years for the matter to be completed from the date of filing.

The case of **Arthur Servina v/s Club Vacanze Seychelles Ltd CS 79/2000 (Exhibit T 54)**, the Plaint was filed on the 1/3/2001. The matter was called before Judge Karunakaran on the 24/7/2001. Several mention dates had been given thereafter until the 14/5/2002 on which date as the defendant was absent and unrepresented the case was fixed for ex-parte hearing on the 14/6/2002. On the 14/6/2002 the ex parte hearing order was set aside and a date fixed for hearing on the 3/2/2003. On the said date, the hearing adjourned till the 24/9/2003. From the period of 24/9/2003 till the 22/2/2005 the matter was handled by other Judges and reallocated to Judge Karunakaran who fixed hearing on the 27/7/2005. On the 27/5/2005 hearing was adjourned by Judge Karunakaran and a mention date given on the 29/11/2005 for the hearing of a plea in limine litis. On the 29/11/2005 the hearing did not take off. Thereafter the case had been adjourned by other Judges till the 22/01/10 on which date Judge Karunakaran adjourns the matter for the 8/2/2010. On the 8/2/2010 the case was fixed for hearing on 1/10/2010 and on the said date, the hearing was again adjourned and case mentioned on the 21/10/2010 and thereafter Judge Karunakaran on the 23/10/2013 dismissed the case on the basis on lack of proceedings on file. It is observed that the matter took 12 years upon filing to be finally dismissed on the basis of lack of proceedings on file in the absence of parties. Which procedure is unprecedented.

In the case of **Louis Bedier v/s Classic Glass Pty Ltd CS 231/1999 (Exhibit T56)**. Date of filing was the 17/6/1999. Case was called before Judge Karunakaran on the 22/2/2000 and hearing commenced before Judge Karunakaran on the 13/11/2000. Hearing was adjourned for the 29/11/2000. On the 29/11/2000 an application for amended plaint was made and an amended defence was filed with a counterclaim. Thereafter several mention dates were given till a whole day hearing was fixed for the 19/2/2003. On the 19/2/2003 the hearing was adjourned to the 22, 24 and 29/10/2003 by Judge Karunakaran. On the 22/10/2003 hearing proceeded and case continued on the 24th of October 2003. On the 29th October 2003 it was further adjourned for further hearing on the 24th, 30th June and 1st and 2nd July 2004 dates nine months later albeit being a 1999 case. On the said date after hearing evidence, the case was fixed for further hearing for the 16th, 17th and 18th of March 2005, dates nine months later and no reasons given. On the 16th and 17th of March 2005, the hearing was adjourned and the case thereafter proceeded on mention dates until the 28/6/2005 on which date continuation of hearing was fixed for 9/2/2006 a date eight months later. Thereafter case was adjourned without hearing on that date and mention dates given until the 17/10/2007 on which date Judge Karunakaran fixed the case for Judgment on the 23/1/2008. Thereafter the Judgment was in turn adjourned on mention date till the 31st July 2008 on which date the case was fixed for continuation of hearing albeit a Judgment date fixed earlier on the 18/3/2009. On the said date the hearing was further adjourned till the 18/11/2009, the lawyer for the defendant stated the defendant had given evidence and moved for submissions which date

was given for the 17/2/2010. It further appears thereafter that until the 4/1/2011 both Counsels have not yet filed their submissions and a further date was given till the 14th February 2011. Finally Judgment was delivered on the 15th March 2013. It is observed that as a direct result of undue delay arising out of inept handling of the case file it took twelve years for the case to be completed by Judge Karunakaran.

In the case of **Martha Morin v/s Walter Larue CS 172/2001 (Exhibit 60)**. The date of filing was on the 22/5/2001. The case was called before Judge Karunakaran on the 23/10/2001. Thereafter mention dates have been given for pleadings till the 25/2/2003 on which date pleadings were completed and a hea**r**ing on plea in limine fixed for 17/10/2003 by Judge Karunakaran, a delay of eight months. On the latter date the hearing took off and completed and Ruling fixed for 21/11/2003. The Ruling was eventually delivered on the 29/1/2004. Thereafter, the case was fixed for hearing on the 22nd and 23rd/9/ 2004. Hearing did not proceed on the 22/9/2004 and mentioned for the 8/10/2004. Thereafter further mention dates were given till the 25th, 26th and 29th/5/2005 when hearing dates were fixed. On the 25th/5/2005 the hearing dates were adjourned and rescheduled for the 22/1/2007 and 24/1/2007. On the 22/1/2007 the case was further adjourned and fixed for hearing anew on the 20/9/2007 a period of eight months later. The case was next called before Judge Karunakaran on the 20/3/2010 and re-fixed for hearing on the 10/11/2010. The case was further called before Judge Karunakaran and mentioned for the 17/1/2011. Thereafter, several mention dates were given by Judge Karunakaran till the 19/7/2012 when a hearing date was fixed for the 19/9/2012. On the 22/5/2013 the case was fixed for hearing on the 10/6/2013. On the said date the hearing is adjourned and further re-fixed for the 19/7/2013. The case is next called on the 23/10/2013 whereby hearing on Motion took place and Ruling delivered in Open Court and thereafter the case was further mentioned till the 26/9/2013. On the said date, the matter is further mentioned till the 16/10/2013. On the said date the matter was further adjourned till the 23/10/2013 on which date a hearing date was fixed for the 30/5/2014. On the 25/6/2014 another mention date was given by Judge Karunakaran for the 2/7/2014. On the 30/7/2014 the case was fixed for hearing on the 31/7/2014. On the latter date the hearing was adjourned to the 13/3/2015. On the said date, the matter was further adjourned till the 6/5/2015 on which said date the case was mentioned for the 10/6/2015 and thereafter mentioned to the 15/7/2015 for settlement. Further mentions are given for until the 30/9/2015 when Judgment by consent was finally entered. It is observed that as a direct result of undue delay of the case file it took fourteen years for the case to be completed by Judge Karunakaran.

In the case of**, Marie France Slade v/s Seychelles Savings Bank CS 302/2006 (Exhibit T 47)**. The matter was filed on the 8/8/2006 and was called before Judge Karunakaran on the 31/7/2007. The matter was fixed for hearing on the 5/3/2008 a period of eight months later and no reasons given for such delay. We note further that on the 23/10/2007 a further hearing date was fixed for the 26/10/2007. Thereafter several hearing and continuation of hearing dates were being given on the 20/3/2009, 27/3/2009, 17/6/2009, 24/3/2010, 20/5/2010 and fixed for 14/6/2010 for settlement. On the said date the case was mentioned continuously until the 28/10/2010 when a continuation of hearing date was fixed for the 29/11/2010. The case was further mentioned on several other dates culminating on the 9/12/2010 continuation of hearing continued. Case was fixed for continuation of hearing on the 20/5/2011 but adjourned and thereafter further mention dates were given until the 14/10/2011 where continuation of hearing was fixed for the 5/3/2012 on which date the hearing date was adjourned and mention dates are given till the 7/11/2012 on which date case

was fixed for hearing for the 13/5/2013. On the said date the case was further adjourned and on the 22/7/2013 the case was fixed for submissions on the 25/11/2013 on which date further date for submissions was given and after submissions on the 2/7/2014, a date for "address" was given for the 1/10/2014. On the latter date the case was further mentioned till the 3/12/2014 on which another date was given for written submissions which had already been filed. Thereafter on the 21/1/2016 Judgment by consent was entered. It is observed that the case due to undue delay took almost ten years to be completed by Judge Karunakaran.

In the connected case of **Seychelles Savings Bank v/s Marie France Slade CS 169/2007 (Exhibit T 49)**, the case was filed on the 4th June 2007. It came before Judge Karunakaran on the 23rd October 2007. The case was mentioned on the 7th November 2008 before Judge Karunakaran and thereafter several hearing and continuation of hearing dates were given including, several mention dates until, on the 2nd July 2014 Learned Counsel informed Court that they would like to make oral submissions in addition and a date was given for them to address Court on the 1st October 2014. However, once against thereafter several adjournments and mention dates were given for submissions until the 28th January 2015 on which date the case was set for Judgment for the 22nd July 2015. However it appears that proceedings were not available and finally the Plaintiff withdrew the matter on the 21st January 2016 as a settlement was reached between the parties and the file closed. It appears that this case had taken a period of over eight years to be resolved by Judge Karunakaran.

In the connected case **(Seychelles savings Bank v/s Marie France Slade CS 170/2007) (Exhibit T48)**, the case came up before Judge Karunakaran on the 23rd October 2007 and after several mention and hearing dates being given, it was finally concluded with case No. 169 of 2007 on the 21st January 2016 after a period of eight years had lapsed and by way of settlement.

In the case of **Rody Steve Rath v/s Alain Dubignon CS 307/2007 (Exhibit 46)**. The case was filed on the 30/10/2007 and was called before Judge Karunakaran on the 4/12/2007 on which date the case was fixed for ex parte hearing on the 17/3/2008. On the said date ex parte order was vacated and case fixed for hearing on the 12/11/2008. On the said date case was adjourned and re-fixed for hearing on the 22/7/2009. On the said date the case was dismissed for non-appearance of the Plaintiff and an application for reinstatement was thereafter filed dated the 18/8/2009. On the 6/10/2009 reinstatement was granted and case fixed for hearing on the 10/3/ 2010, on which date the case was adjourned and re-fixed for hearing on the 29/11/2010. Thereafter, mention dates were given and on the 14/6/2012 hearing was fixed for the 23/1/2013. Thereafter on the 17/7/2013, the case was dismissed for non-appearance of parties. On the 23/7/2013 an application for reinstatement of the case was made and granted and fixed for hearing on the 17/3/2014. On the said date, the case was adjourned and a continuation date of hearing was given for the 24/7/2014. On the latter date, case was adjourned. On the 24/9/2014, the case was fixed for hearing on the 4/5/2015. On the said date, continuation of hearing was fixed till the 11/5/2015 for settlement. On the 10/6/2015, the case was again mentioned for settlement till the 15/7/2015. On the said date a date was given for filing of submissions on the 16/9/2015 on which date a further date for submissions was given and this continued till the 11/11/2015 for Judgment by consent and thereafter further dates were given for Judgment by Consent and finally on the 20/1/2016 Judgment by consent was filed. It is observed that it took almost nine years for the case to be completed by Judge Karunakaran.

In the case of **Andrew Franky Laurette v/s The Government of Seychelles CS 133/2008 (Exhibit 62),** the case was filed on the 15/5/2008 and was called before Judge Karunakaran on the 10/6/2009 on which date the case was mentioned for the 25/6/ 2009, and thereafter continuously mentioned until the 30/7/2009 when a hearing date was fixed for the 2/6/2010. On the said date the hearing of the case commenced. Thereafter the case was next mentioned on the 7/7/10 and thereafter continuously mentioned till the 14/10/2010, on which date the hearing was fixed for the 24/2/2011. On the said date, the hearing was adjourned to the 30/6/2011. The hearing was further adjourned and a mention date given for the 28/7/2011. Thereafter the case was taken up on the 21/10/2011 for hearing and adjourned for continuation of hearing on the 17/11/2011. On the said date the case was mentioned continuously until the 14/3/2012 on which date continuation of hearing was given for the 13/6/2012. On the said date, the case was adjourned and reset for continuation of hearing on the 23/7/2012. Further, adjournments were granted and mention dates were given until the 15/5/2013 on which date the case was fixed for continuation of hearing on the 23/9/2013. On the said date the case was adjourned and on the 2/10/2013, the case was fixed for continuation of hearing on the 27/3/2014. On the said date, the case was adjourned once again for continuation of hearing on the 2/10/2014. Thereafter, the case was fixed for written submissions on the 6/11/2014. It appears that on 10/2/2016 submissions had been filed and Judgment was delivered on the 29/7/2016. It is observed that the case had taken eight years to be completed by Judge Karunakaran and this, due to undue and unexplained delay as revealed by the proceedings.

It appears Judge Karunakaran tried to justify the delays in Open Court as shown in the case of **Mondon v Mondon CS 110/2015 (Exhibit T24)**, filed on 14/12/2015 and called before Judge Karunakaran on the 18/5/2016 and as per proceedings of the said date he stated in Open Court, he has 300 cases and his Court is very busy and further that he had inherited 2000 cases and it would take another ten years for him to complete the cases. He mentioned the case on the 15/6/2016 for another Judge to be allocated. The Chief Justice went on to state that this statement was completely untrue as he had about 146 cases at the time at par with that of the other Judges.

Reference was also made to the case of **AGU Quality Imports v Ministry of Finance CS 03/2016 (Exhibit T12)**. This case was filed on the 17/2/2016 and was called before Judge Karunakaran on the 17/2/2016 and thereafter the matter was mentioned and hearing fixed and adjourned and on the 27/7/2016, when Counsel for the plaintiff requested the matter be heard urgently that very afternoon, Judge Karunakaran stated, that he had no early dates and that he had worked 25 years and therefore he had to be a bit relaxed and not take too much pressure and thereafter gave a date for hearing almost 8 months later and gave the date of 28/2/2017.

It is in evidence of the Chief Justice and the Registrar, that several adjournments to Judgments were given by Judge Karunakaran on the basis that proceedings of cases were not available. However, the Registrar in her evidence stated that when this was brought to her notice, they would reprint the proceedings and file, only to see that the proceedings were in fact in the file but not in the correct place. Further after the suspension of Judge Karunakaran, they had retrieved a box full of proceedings from his chambers which is confirmed by the evidence of the Chief Justice.

We are satisfied on perusing the aforementioned records and on the evidence before us that there was unwarranted delay in the hearing and determination of the aforementioned cases which in some instances extended to 13 and 14 years. We are satisfied that there was an unwarranted and

inordinate delay in the hearing and determination of these cases due to the lack of case management and judicial control by Judge Karunakaran. It is our view that it is the duty of the Judge who is in charge of the case to control proceedings in his Court and in exercising this control, he must not lose sight of the fact that the proceedings should be concluded within a reasonable time which is a constitutional requirement. In all the aforementioned cases, we see a complete lack of control and sense of duty to determine the rights of parties within a reasonable time, resulting in an inordinate and unreasonable delay which would undermine the confidence of the public in the Judicial system. Several of the aforementioned cases clearly indicate the eventual 'litigation fatigue' felt by parties due to continuous and numerous adjournments for periods close on and over 10 years and supports the contention of the Chief Justice that Judge Karunakaran had a modus operandi, to mention cases several times with no resolution for a period in some cases going to 10 years or more and eventually parties would give up and withdraw their cases or settle them. It is apparent that several of the delay reduction methods and the steps taken to ensure better case management, such as adoption of the Seychelles Code of Judicial Conduct as well as procedures adopted to prevent delay reduction, were not followed and sometimes openly criticized by Judge Karunakaran.

We are of the view that the circumstances set out above clearly indicated a breach of section 6.2 of the Seychelles Code of Judicial Conduct of Judges which reads as follows:

> *'A Judge shall promptly dispose of the business of the Court, but in so doing, must ensure that justice prevails. Protracted trial of a case must be avoided wherever possible. Where a judgment is reserved it should be delivered within 60 days, unless for good reason, it is not possible to do so'.*

We are therefore satisfied that the evidence produced to the Tribunal has established to our satisfaction, the allegations in relation to Judge Karunakaran's lack of diligence which resulted in delaying the hearing of cases and delivery of Judgments. Invariably the majority of the proceedings before him were protracted with a culture of incessant adjournments that was simply unacceptable and deplorable. This conduct violated the constitutional imperative under Article 19 (1) and (7) of the Constitution of trial within a reasonable time. None of the cases that we have examined which Judge Karunakaran handled complied with this requirement. The delays were so pervasive that this amounted to gross misbehaviour on the part of Judge Karunakaran compelling a recommendation for removal from office. Part III, 6, 7, 8, 9, 10. 10.1, 10.2 10.3 10.4, 11, 11.1, 11. 2, 11.3, 12 of the Complaint has been firmly established.

IV Poor Collegial Attitude

The testimony of the Chief Justice under oath further referred to instances where Judge Karunakaran failed to attend the swearing in ceremonies of herself and several other Judges and Magistrates. In fact when the Chief Justice had personally sought to invite him for her swearing in ceremony, he had informed her, he would not attend as he was the Senior Judge and should have been appointed instead of her and that she had no qualifications or experience for the job.

The Chief Justice also referred to instances where due to a chronic backlog of Civil cases in the Civil Division, she had attempted to meet Judge Karunakaran as he was the Head of the Civil Division, to sort out the problems and back log faced by the Division but he had avoided discussing or engaging with her on these issues and when he finally attended a meeting, he had told her not to interfere with his judicial functions. We observe by a letter dated 20th September 2016, addressed to Judge Karunakaran **(Annexure 29 of Exhibit T43)**, the Chief Justice refers to the back log of cases handled by Judge Karunakaran and specifically refers to 49 cases, the oldest dating as far back as 2002. The minutes of meeting with the Chief Justice on the 19thof September 2016 annexed to the said letter, indicates the discussion in regard to the clearing of the backlog of cases did not go well as Judge Karunakaran, tells the Chief Justice during discussion, not to interfere with the judicial functions of a Judge and she was compelled to ask him to leave the room. The other time the Chief Justice had to ask Judge Karunakaran to leave her office was during the incident of 16th October 2015 referred to above due to his aggressive conduct.

The Chief Justice also gave evidence to the fact that one reason for the backlog was the failure of Judge Karunakaran to observe the circulars and practice directions of giving a Judgment in a Civil case within 60 days of conclusion of the case and concluding a Civil trial within two years as set down in the circulars and the Seychelles Code of Judicial Conduct for Judges.

The Chief Justice also testified to other instances where Judge Karunakaran had ignored practice directives. This was in regard to a memorandum she had issued to the Judges regarding mention cases on Wednesdays. It is the evidence of the Chief Justice she had allocated half an hour time limit for Judges to take their mention case on Wednesdays and if Judge Karunakaran were to exceed his time limit of 30 minutes, he would intrude into the time limit of the next Judge, Judge Renaud, resulting in Judge Renaud not having lawyers before him as they were still engaged in Judge Karunakaran's Court. In order to prevent this, the Chief Justice stated she issued a memo dated 2nd October 2015 and 14th January 2016 **(Annexures 30 and 31 of Exhibit T43)**, informing all Judges not to fix more than 20 mentions during their period of 30 minutes. This was done because Judge Karunakaran would fix 40 cases as mentions, have discussions on settlements and even on a certain occasion had taken a divorce hearing which was not permitted to be done in Open Court, even though that Wednesday was set down for mentions only, which further encroached into the time left for the other Judges to take their mentions.

It appears in response to this memo, Judge Karunakaran stated in Open Court as borne out in the proceedings of the 17th of August 2016 in the case of **Davidson v Cerf and Surf Property Ltd CS 41/2014 (Exhibit T 30)** that the Chief Justice has asked him not to fix more than 20 cases even if he is able to deal with 50 cases in half an hour mention time. (also refer evidence of Chief Justice of 25th of May 2017 at page 23 in respect error in proceedings) and despite being asked by Counsel for continuation of hearing in the afternoon, on this pretext gives a much later mention date on 21st of September 2016 stating, he gets pressure from the Chief Justice. A similar Order was made in the **Linyon Demokratic Seselwa v Electoral Commission MC 86/2016 (Exhibit T4 also referred to as the LDS case)** where when asked for a short date, he blames the same memo and proceeds to give a long mention date after the pending election, despite the matter being in respect of an election which was to be held in a few weeks' time, thus clearly attempting to ridicule in public, the administrative directions given by the Chief Justice.

It is also apparent from the evidence of the Chief Justice and Mr. Rajasundaram Attorney at Law, the Registrar and the exchange of the e mails dated 23rd and 24th August 2016 **(produced as Annexure 32 of exhibit T43)**, that Judge Karunakaran when he was the duty Judge had failed to attend to matters by coming to Court and signing the proceedings and Judgments in MA 86/2016 and MA 87 /2016 which were Miscellaneous Applications arising from the LDS case, which proceedings were urgently required for purposes of appeal. The email of the Chief Justice referred to above indicates that he had refused to come to office and sign the proceedings and even though a driver had been offered to take the proceedings to his house for signature, he had refused and stated he would do it the next day which according to the email, he had not yet done by 9.55 a.m. that day. The evidence of Mr. Rajasundaram, the Registrar of the Supreme Court further confirmed the contents of the emails.

In her evidence the Chief Justice further stated that Judge Karunakaran had also on occasions failed to participate in monthly Judges' meetings and on the last occasion he participated he had humiliated her in front of the other Judges and Magistrates. It is also borne out from the evidence of the Chief Justice that Judge Karunakaran permitted his son to use his vehicle on several occasions which was not covered by the existing Insurance Policy of the vehicle. She also stated that he would permit his Orderly not to wear her uniform whilst conducting official duties in Open Court. The Chief Justice further testified to the fact that Judge Karunakaran had failed to attend learning and training sessions organized at a cost by the Chief Justice and failed to give reasons for his absence. However he had sought to complain in Open Court of the absence of seminars in Open Court as borne out in the proceedings of 24th June 2016 Page 16 of **Hotel Development Corporation Ltd v Jeffrey Renaud CS 65 of 2015) (Exhibit T 20)**.

Having considered the aforementioned testimony of witnesses, we are of the view that the evidence on all these issues stand supported by the documents referred to and therefore we would proceed to accept the evidence. We are of the view that such conduct by Judge Karunakaran does not exhibit or promote high standards of judicial conduct. Neither does such conduct encourage, support or help other Judges to maintain high standards of judicial conduct. It shows no effort on his part to maintain or enhance his knowledge, skills and personal qualities necessary for performance of his duties. It clearly indicates to us the resentment and the non-cooperative attitude of Judge Karunakaran to the administrative changes and improvements the Chief Justice was striving to make, and not so subtle attempts by Judge Karunakaran to ridicule these changes being brought by the Chief Justice in Open Court.

It is our view that the consequences of using an Official Judiciary vehicle contrary to the Insurance Policy could result in serious consequences detrimental to the Judiciary and Public Purse. However we have not received any evidence to support the said allegation of misuse of official vehicle. Neither have we received any evidence with regard to the Court orderly assigned to Judge Karunakaran being permitted by the Judge not to wear official uniform.

We therefore hold considering all the other afore-mentioned factors, that his conduct was in breach of section sections 4.2 and 6.1 of the Seychelles Code of Judicial Conduct which reads as follows:

> '4.2 *A Judge shall exhibit and promote high standards of judicial conduct.*

> 6.*1 A Judge shall endeavour to maintain and enhance knowledge, skill and personal qualities necessary for the proper and competent performance and discharge of judicial duties.'*

We are therefore satisfied that the evidence produced to the Tribunal has established to our satisfaction the allegations in relation to Judge Karunakaran's poor collegial attitude in failing to cooperate with the Chief Justice, undermining public confidence in the Judiciary, not attending the swearing in of the Chief Justice and other judicial officers and Judge's meetings, ignoring practice directives and publicly subverting them, being absent without permission and not attending to work related matters. In addition the Judge's failure to attend training, learning and monthly Judges' meetings has been established and proven as contained in I, 1, 1.1 1.2, II, 5, 5.1, 5.2, 5.3, 5.4, 5.4.2, 5.4.3, 5.4.5. 5.4.6 5.4.7 of the Complaint.

Nevertheless we do not find that this misbehaviour is so gross as to warrant removal from office.

V Intimidation of Witnesses and Counsel and Disrespect to Counsel and forcing settlements

Another aspect of the alleged misbehaviour of Judge Karunakaran that was brought to the notice of the Tribunal was the constant harassment by the Judge of persons who complained against him and intimidating them in Open Court to withdraw the complaints brought against him. This was clearly borne out in the case of **HFIM** (supra) in the proceedings of the 16th October 2014 **(Exhibit T 65)** where the Judge asked each and every party and Counsel whether they had complained against him and if they had done so, they should go and withdraw the said complaint and say they are happy with the way he is conducting the case. His rhetoric was in our view unnecessary and uncalled for especially on litigants who were already totally dependent on the Judge they were facing in Open Court, to deliver justice to them and therefore quite obviously would abide by what he said as they did not want to create any prejudice against themselves by continuing to complain against him. It is apparent that one of the Counsel felt intimidated as depicted in his email 11th November 2015 **(enclosed as Annexure 15 in Exhibit T 43)** where he states,

> '*he cannot formally complain about this because my client would not be happy since his main case … is in the hands of the same Judge for Judgment and he would not want it prejudiced by overreaction.'*

Such conduct is also observed in the **Delpeche** case (supra) proceeding of 21st October 2015 where Judge Karunakaran questions both Mr. Bonte and Mr. Ally the Counsel for parties whether they have complained against him to the Chief Justice and they both reply in the negative.

It is the evidence of Mr. Rajasundaram that he noticed that Judge Karunakaran as far back as 2011 had a personal animosity against him as even on mention dates Judge Karunakaran would ask Mr Rajasundaram to explain his case and would indicate in Open Court that Mr. Rajasundaram had no case at all to go on. In one case **Woodcock v Woodcock CS 43/2016 (Exhibit T78)**, the Judge himself had on his own accord raised a defence and refused to permit him to bring evidence, threatened to strike out the proceedings and dismiss the case. In the **Aarti Investment Ltd v Peter Padayachy & Ors Cs 05/2012 (Exhibit T79)**, he had corrected an error in the Title number and

signed same but he had been "blasted" by Judge Karunakaran who formally admonished him with notice to the Registrar, despite it being a genuine correction containing his signature and no fraud or dishonesty involved in it.

Mr. Rajasundaram also referred to the humiliating treatment he had received in the **LDS case** (supra), when they sought to intervene in the case. The Judge had made a statement "LSD... LDS so confusing it is confusing me". This according to Mr. Rajasundaram was unprofessional as it amounted to a prejudgment of the subject matter in issue and in his view, the comment was made to play to the large crowd present who burst into laughter.

He stated when he got up to address, he was told to sit down his turn will come. Without even giving him a chance to properly address the Judge on the content of his application to intervene, his application was denied by Judge Karunakaran. The Judge had ridiculed him in Open Court by mentioning in his Order that even a first year law student would know the legal procedure for intervention. He stated however when he took the matter in appeal to the Seychelles Court of Appeal he was successful. **(Refer Annexure 16)**. He felt that Judge Karunakaran was acting in a prejudicial manner against him by finding any way to dismiss his application. He further stated that Ms Aglae who appeared for the Elections Commissioner was treated in a similar manner.

Ms Aglae gave evidence that after the dates of the nomination had been received they received an Order from Court in the LDS case that a political party should be struck out and the Electoral Commission could not proceed to accept their nomination. She stated it was unfair by her clients as the case had been filed and the Order granted on the same day without any notice to her client and on no legal basis as later on decided by the Court of Appeal. **(Refer Annexure 16**. She appeared the next day in Court for the Electoral Commission and described that Judge Karunakaran's conduct was embarrassing and he subjected her to ridicule. The people present in Court shouted whatever they wanted, the Judge did not attempt to control them. They were shouting and cheering. On the said day his remarks were full of sarcasm toward her personally and she felt belittled and humiliated in the case. She testified that the procedure of hearing was irregular and was sarcastic by setting a hearing date for their application after the election day though this was a matter of extreme urgency and had to be heard prior to the election. She too corroborated the fact that Mr. Rajasundaram was not given an opportunity to plead his case and Judge Karunakaran denied his right of audience.

The evidence of these witnesses are corroborated and supported by the relevant proceedings in the file and the recordings of Open Court proceedings in the said case. We see no reason why we should disbelieve these witnesses who are respected members of the Bar. It is our view that every litigant has a right to complain to the Chief Justice regarding his case and it is the duty of the Chief Justice to bring to the notice of the Judge the complaints made. A Judge should not thereafter badger or intimidate the litigant or his Counsel to withdraw his complaint. The litigant is thereafter placed in a desperate situation with no respite from the ongoing unfairness or delay he experiences in Open Court on one hand and the danger of retribution, if he complains to the Chief Justice on the other. Judge Karunakaran's conduct in telling litigants to go and withdraw the complaints they have made against him, amounts to intimidation as he is in control of their case and it clearly implies if they do not, they will have to face the consequences. This in our view is improper judicial

conduct. The Judge in effect abused the authority of his office to cover up aspects of misconduct being brought to the attention of judicial authorities.

During the course of the inquiry evidence was led to establish that several parties were forced by Judge Karunakaran to settle their cases especially when pressure was being brought on him to clear his backlog.

One of the main cases on this issue was the **Merali case (supra)** where Ms Moorina Merali stated under oath that her case was against her step daughters and as her finances had been blocked by an Order of Judge Karunakaran in 2013, to this day she is forced to live with other people as she does not have finances. The case was in respect of the estate of her late husband and though she expected to receive half share she had not received anything. During the case which commenced in 2008, she was never given an opportunity of being heard. She had complained to the Chief Justice of the delay. Thereafter Judge Karunakaran had put a lot of pressure on her to settle the case. She stated she was never heard and there was no hearing in the case which ended up with a Judgment by Consent which she had signed against her will. She stated on the last session they had been called into chambers by Judge Karunakaran in the presence of her lawyer Karen Domingue and the executrix and was told that the case had gone on for too long and he was under pressure and if she did not accept the Judgment by Consent she would be held for contempt. She stated that as she had no other option she had signed the Judgment by Consent.

The Chief Justice in her evidence too stated that Judge Karunakaran often intimidated persons who complained to her and often, in order to conclude a long standing case would blur the line between his adjudicating role and mediating which was not in conformity with the Mediation Rules as it made provision for mediation to be done by a separate Judge and not the Judge hearing the case.

In this regard the Chief Justice also referred to the case of **DV 9/2009 Waye Hive v Waye Hive (Exhibit T19),** where in the proceedings of 17thFebruary 2016, Judge Karunakaran indicated to the Counsel that they must put pressure on their clients to settle the matter and at page 3 of the proceedings stating, "Maybe I cab (sic) succeed where you have failed, I can talk to your client, I can convince her to take this amount. Can you get her to Court"? further, in the case of **DV Case No 96 of 2004 Casimir v Labonte, proceedings of 17th February 2016 MA 164/2014 arising from (Annexure 26 of Exhibit T 43)** Judge Karunakaran states, " Madam, I am also lawyer, I can help you if you want any, I can help".

The Chief Justice also referred to the case of **MC 12/2012 Don Ponan v Hilda Brenda Chetty (Exhibit T40)** in the proceedings of 22nd March 2013, where Judge Karunakaran very clearly referred to the case being dismissed even though it had not been heard yet, he informed the lawyer Mr. Gabriel to give his client a clear indication of what the outcome of the case would be, he also stated he could advice the plaintiff to give some money ex-gracia and submit to Judgment and close the case. It is very clear that all this was being said and done to force the parties into settlement.

It is clear that the aforementioned behaviour of Judge Karunakaran, supports the view of the Chief Justice that Judge Karunakaran would often blur the distinction between mediation and adjudication and would threaten and put pressure and force parties to bring about settlements

against their will, in order to conclude long outstanding matters which have been brought to his notice by the Chief Justice.

We are satisfied that the behaviour of Judge Karunakaran in forcing settlements referred to above amounted to gross misbehaviour and in breach of section 2 of the Seychelles Code of Judicial Conduct which reads in part as follows:

> *'2. Impartiality: Impartiality is the essence of the judicial function and applies not only to the making of a decision but also to the process by which the decision is made. Justice must not merely be done but must also be seen to be done.*
>
> *2.1 A Judge shall perform judicial duties without fear, favour, ill-will, bias, or prejudice.*
>
> *2.2. A Judge shall ensure that his or her conduct, both in and out of Court, maintains and enhances the confidence of the legal profession, the litigants and the public, in the impartiality of the judiciary.'*

We are therefore satisfied that the evidence produced before the Tribunal has established to our satisfaction the allegations in relation to Judge Karunakaran's lack of impartiality and propriety in intimidation of witnesses and Counsel, disrespect to Counsel and forcing settlements and we have no doubt in our minds that what is alleged to have occurred did in fact occur and proven as contained in 1, 1.2, 1.5, 4, 1.5, 13.3 of the Complaint. This misbehaviour was gross and warrants removal from office.

VII Sexism

The Registrar in her evidence also spoke of an incident where Judge Karunakaran had phoned her and asked her to pack her bags as Justice Twomey had been appointed as Chief Justice and she was going to be replaced by Jessica Kerr and also testified to the fact that he had mentioned to her he was against a woman becoming a Chief Justice and that she should allow a group of staff who always write Petitions, to write Petitions to protest against a Chief Justice woman.

The Chief Justice also referred to remarks made by Judge Karunakaran in his Judgments in **Pillay v Labaleine 2014 SCSC 23 (Annexure 23 of Exhibit T43)** and **Lee v Zheng CS 54 of 2002 (Annexure 22 of Exhibit T43)**.In the case of **Lee at page 15 of his Judgment dated 10th May 2010**, he refers to, *"it is truism that women are more vulnerable and less aggressive; they are defenseless: they are mentally more prone to frailty and humiliation than men in society. Alluding to the alleged inherent weakness in woman hood, William Shakespeare rightly generalized the norm, when he speaks through Hamlet in Act 1 Scene 2 "frailty thy name is woman"*. He further states, …… *"I am referring to the frailty of modern women, who is observably, more susceptible to emotional disturbances than her counterpart, I mean the other sex"*. He makes a similar reference to woman on page 8 of his Judgment dated 27thJanuary 2014 in the Pillay case.

The evidence clearly indicates that one of the many reasons Judge Karunakaran felt the Chief Justice should not be appointed was because she was a woman. His conduct in inciting the Registrar to encourage staff officers to send petitions on this basis against the appointed Chief Justice is inferior conduct, unbecoming of a Judge and amounts to gross misbehaviour by Judge Karunakaran, especially considering the fact he was the Acting Chief Justice at the time he stooped down to make these base requests from subordinate members of the staff.

We are satisfied that the behaviour of Judge Karunakaran referred to above, amounts to misbehaviour and in breach of section 5.1 of the Seychelles Judicial Code of Conduct which reads as follows:

> *'A Judge shall not in the performance of judicial duties, be biased or prejudiced towards any person or group on basis of unjust discrimination.'*

We are therefore satisfied that the evidence produced before the Tribunal has established to our satisfaction, the allegations in relation to Judge Karunakaran's pervasive sexism expressed in his conduct and judicial decisions as illustrated above as contained in I, 1, 3, of the Complaint. Nevertheless with regard to the application of this 'ideology' in judgments we are satisfied that this is a matter that would appropriately be dealt with by the appellate process rather than disciplinary proceedings. We therefore find that it does not warrant removal from office.

CONCLUSION

We remind ourselves that the purpose of this inquiry is to decide firstly, whether or not Judge Karunakaran had committed the alleged acts of misbehaviour. Secondly whether such acts or conduct as we find proved, warrant recommending his removal from office. The evidence before us was never disputed by Judge Karunakaran who voluntarily decided not to participate in the inquiry.

We are further of the view that conduct amounting to misbehaviour justifying removal from office is a question of judicial assessment which has been followed in the instant inquiry.

On the evidence established before us in the light of our findings above, we can summarise our findings under three heads; Allegations Not Proved; Allegations proved but do not warrant recommendation of removal from office and lastly Allegations proved that warrant a recommendation of removal from office.

Allegations Not Proved.

It was alleged that Judge Karunakaran permitted his son to drive his official car contrary to Judiciary policies. This allegation was not established on the evidence before the Tribunal.

It was alleged that Judge Karunakaran permitted Court room staff to wear non-uniform attire in the Court room. No evidence was led to establish this allegation.

Allegations proved but not warranting a recommendation for removal from office

Alleged misbehaviour and disrespect to the Chief Justice

On the evidence before us it has been established that Judge Karunakaran was disappointed in not being appointed Chief Justice and in the appointment of Chief Justice Matilda Twomey to that position. Since the Chief Justice's appointment Judge Karunakaran engaged in conduct to directly express his disapproval of her appointment including initially declining to hand over the office until threatened with removal form the precincts of her Office. He boycotted swearing in of the Chief Justice and other Judicial officers. He boycotted attending Judges' meetings. He intimidated the Chief Justice when she sought explanations in relation to his cases in respect of which the Chief Justice had received complaints. He boycotted continuing professional development programmes organized by the Judiciary. He had a poor collegial relationship with the Chief Justice. He blatantly disregarded the authority and the Office of the Chief Justice by refusing to follow practice directives brought to improve administration of justice. These allegations were proved and in our view amount to misbehaviour. Nevertheless we are of the view that they do not warrant a recommendation of removal from office considering the fact that after his conduct on the 16th October 2015 after his misbehaviour in her Chambers, he had sought to personally apologise in the presence of Justice A. Fernando to the Chief Justice which apology was accepted.

Allegations Proved and Warrant a Recommendation for Removal from Office

Lack of Integrity and Propriety

It has been established that Judge Karunakaran in a number of cases, but more particularly in the case of **Noellie Amanda Jeremie & others v Davilla Dodin** and others **Supreme Court Civil Side No. 261 of 2010, (Exhibit T.39)** acted without integrity when he altered, without authority in law, in the absence of the parties and their Counsel, the Order of 15th January 2014, and inserted a further Order approving a plan for sub division of the land, and ordering sub division of the land. In reality he forged the Order of Court by altering it when he was already 'functus officio'. This amounted to serious and gross misbehaviour warranting a recommendation for his removal from office.

Inordinate delays in the hearing of cases

Judge Karunakaran had mastered the art of procrastination and protracted management of the cases assigned to him; endlessly mentioning them periodically without bringing them to trial and in the few instances that they would be brought to trial a culture of incessant adjournments ensured that generally there was no trial of such cases within reasonable time as mandated by the Constitution. These cases include: **Desire Thomas v France Adrienne Constructions Pty Ltd SC Civil Side No. 168/2005; (Exhibit T.61); Didon Construction v Roucou Construction SC Civil Side No. 90 of 2003 (Exhibit T.31); Francois Octobre v Government of Seychelles SC Civil Side No. 17 of 2002; Wavel Ramakalawan v SPPF SC Civil Side No. 423 / 2006**; and many other cases that we examined in this Report. The conduct of Judge Karunakaran in managing the aforesaid cases amounts to serious and gross misbehaviour in respect of each individual case which warrants removal from office.

Delays in delivery of Judgments

The Seychelles Code of Judicial Conduct established 60 days from cessation of hearing as the period within which Judges had to ensure that judgments would be delivered. Where it was not possible to achieve this standard judgments must still be delivered within reasonable time. In **HFIM v HIL SC / Civil Side No. 04 /2012 (Exhibit T65)** hearing was completed and submissions filed in October 2015. By the time Judge Karuankaran was suspended almost a year later judgment had not been delivered. Further, inordinate delays in the delivery were noted in the cases of **Allen Ernestine v/s Elizabeth Louise Beuafond Gummery CS 61 of 2009, Lucine Vidot &Ors v/s Jeanne Lesperance CS 74 of 2005, Colin Dyer 7 Ors v/s Hon. Dr. Patrick Herminie CS 170 of 2010, Emmanuael Haidee v/s Andre Beaufond & Ors CS 104 of 2010, Jill Nourrice v/s Government of Seychelles CS 38 of 2012, Anessa Pool v/s Lenny Canaya CS 30 of 2013, Aaron Barrado v/s Babhra Labonte & Ors CS 113 of 2010 and Robert Howarth v/s Gilles Pinchon & Ors CS 13 of 2009** and (as discussed at page 58 and 59 hereof), these delays were egregious and amount to serious and gross misbehaviour.

Acting as a mediator and Judge in the same cases

The Mediation Rules of Seychelles prohibit a Judge assigned to try a case to act as a mediator in the same case. The Judge is required to pass it on to another judicial officer to act as mediator and if mediation is unsuccessful the Judge can resume handling the same and proceed to trial of the same. Contrary to the Rules Judge Karunakaran attempted to mediate the following cases assigned to him for trial. **Waye Hive v Waye Hive DV 9/2009 (T19); Casimir v Labonte Dv. Case No 96 of 2004 [MA No. 164/ 2004] (Exhibit T43); and Don Ponan v Hilda Brenda Chetty MC 12/2012 (exhibit No. T40).**

Humiliation of Counsel and intimidation of litigants

Mr Rajahsunduram and Ms Aglae complained of how they had been treated by Judge Karunakaran in the **LDS case** where they were ordered to sit down and not speak during the proceedings with orders being made against their clients without their Counsel being heard. Ms Merali testified to the Tribunal that she was forced to accept a settlement in the case of **Moorina Merali and Others v Mrs Nichole Tirant Gheradi and Others SC Civil Side No. 178/2008 (Exhibit No. T33)** against her will by Judge Karunakaran. Further intimidation of Counsel and litigants to withdraw complaints made by them as detailed in our analysis. In our view parties and Counsel deserve respect and Courtesy from the Court and the Courts exist to hear parties and their disputes rather than compel parties to settle actions or withdraw justified complaints against their will. This is at the core of a Court's functions to ensure that "justice is not only done but seen to be done".

Having considered all the afore-mentioned misbehaviour which warrant a Recommendation of removal from Office, we are satisfied that such misbehaviour renders the Judge unworthy to hold the office he sits in and not only directly indicates his inability to hold Office but also indirectly and in addition, affects the perception of others in relation to his ability to carry out the functions of his Office. We are satisfied that on these counts such misbehaviour as proved against Judge Karunakaran are so serious and gross as to warrant a recommendation for his removal from office. Judge Karunakaran had turned himself into master rather than servant of the people.

From the above conclusions, the Tribunal is satisfied that the conduct of Judge Karunakaran has breached the provisions of Article 134 (1) (a) of the Constitution and is of such a serious nature and magnitude to amount to gross misbehaviour.

RECOMMENDATION OF THE TRIBUNAL TO THE PRESIDENT OF THE REPUBLIC OF SEYCHELLES UNDER ARTICLE 134 (2) (b) OF THECONSTITUTION

The Tribunal members having unanimously found that the conduct of Judge Karunakaran amounts to gross and serious misbehaviour, we therefore recommend to Your Excellency, the President of the Republic of Seychelles , that Judge Karunakaran, be removed from the Office of Puisne Judge, in line with the provisions of Article 134 (2) (b) thereof.

Dated this …….. day of ……. 2017.

Honourable Mr. Justice Frederick Egonda-Ntende

President

Honourable Mr. Justice Mohan Niranjit Burhan

Member

Honourable Lady Justice Samia Govinden

Member

ANNEXURES

1. **Appointment letters of CAA**
2. **Letter by CAA to Judge Karunakaran**
3. **Chief Justice's Complaint**
4. **Terms of Reference**
5. **Tribunal Rules of Procedure**
6. **Rulings of the Tribunal**
7. **Seychelles Code of Judicial Conduct**
8. **Protocol on the writing of Judgments**
9. **Speech by Former Chief Justice Frederick Egonda Ntende at the Re-opening of the Supreme Court of Seychelles son 17th September 2012 (available at http://seylii.org/content/speech-honourable-chief-justice-federick-egonda-ntende-re-opening-supreme-Court-17th-september**
10. **List of exhibits produced before the Tribunal (T1 to T79)**
11. **Letter of the 12/10/16 to Judge D. Karunakaran by CAA**
12. **Letter of the 10th October 2016 (suspension letter) of Judge D. Karunakaran**
13. **Written Replies of Judge D. Karunakaran and Learned Senior Counsel Mr. P. Boulle.**
14. **Affidavit of Judge Karunakaran of the 22nd of May 2017**
15. **Extract of proceedings containing the statement of Learned Senior Counsel Mr. P. Boulle of the 24th day of May 2017**
16. **Judgement by Seychelles Court of Appeal (Civil Appeal SCA 23 & 24/2016 (Appeal from Supreme Court Division MC 87&86/2016) Linyon Sanzman Lafors Sosyal Demokratik Appellants v/s Linyon Demokratik Seselwa, The Electoral Commission-Respondents)**
17. **Letter of the 2nd day of December 2016 from Counsel to the Tribunal to Senior Counsel Mr. P. Boulle**