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**INCREASING PUBLIC TRUST AND CONFIDENCE IN  
ENVIRONMENTAL LAW THROUGH JUDICIAL AND LEGAL  
TRAINING AND THE FRAMEWORK OF THE ENVIRONMENT &  
LAND USE APPEAL TRIBUNAL (ELUAT)**

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**Introduction**

Being a small island state, Mauritius stands high on the list of countries at risk of environmental disasters. Environmental degradation, especially climate change, and air and marine pollution should be cause for concern for citizens of Mauritius. In the last decades, Mauritius has witnessed several micro climates, el nino effect and other climatic changes which cannot be ignored any longer. Moreover, marine pollution is a matter of concern given that the economy of Mauritius largely depends on the sea and tourism related to the sea. Selling beautiful undersea coral reefs will not be possible if all the coral reef has been destroyed by bleaching of the corals due to increase in sea temperature and pollution. It follows that sensitization of the population is a must. The Environmental Protection Act 2002 (as amended) in its section 2 gives each citizen the ‘stewardship’ of preserving the environment. Mauritius has also signed around 35 multi-lateral agreements related to the environment. The UNEP project of ‘Switch Africa Green’ which sensitizes various sectors of Mauritius has also been applicable to education of students and whole population alike.

Judicial and legal training are powerful tools for creating awareness about environmental preservation and protection in the Mauritian society. Through the decisions given by the courts, and by the Environmental and Land Use Appeal Tribunal (ELUAT for short), the public can be sensitized. By being trained on the various environmental laws in Mauritius, our legal practitioners who are often trained in UK or France, and yet appear before ELUAT and local courts, are empowered to bring environmental cases to court, and give effect to the spirit of the law. The Institute for Judicial and Legal Studies (IJLS) plays an important role in capacity building of the law practitioners as well as in judicial training in all aspects of law, including environmental law training, as we will see later in this paper.

The Supreme Court of Mauritius has the jurisdiction to hear most of the environmental law cases of civil nature including appeals from the Environment Appeal Tribunal and has a critical role in the enhancement and interpretation of environmental law and the vindication of the public interest in a health and secure environment.<sup>1</sup> Criminal environmental cases can be heard at all levels from District to Supreme Court depending on the nature of the offence committed. In Mauritius, the apex court is the UK Privy Council where appeals from the Mauritius Supreme Court lie. Many of our judges and magistrates have not studied environmental law as part of their training since environmental law as a subject in LLB degrees has only recently got the prominence it now has.

Moreover, judicial environmental law training may also facilitate speedier environmental adjudications and foster consistent rulings across time and the wide range of environmental law cases. In turn, consistent rulings along with proper remedies being awarded enable the Environment Appeal Tribunal to apply a similar rationale. This might therefore lead to a decrease in the number of appeals to the Supreme Court. Moreover, another use for judicial environmental training is to ensure that rulings in environmental law cases comply with local environmental legislations and multi-lateral treaties (MEAs). Continuing judicial education through courses and symposia will build judges' capacity and will engender support for international cooperative programs to build up the strength of, and respect for, environmental adjudication.

## **Part I**

### **Overview of the importance of the Institute for Judicial and Legal Studies in environmental law training of judges and law practitioners**

The Institute for Judicial and Legal Studies (IJLS) is the primary body in Mauritius which was set up for capacity building and development of law practitioners and judiciary so as to bring about a more efficient and effective legal system. The IJLS was established following a Presidential Commission which was set up in 1997 chaired by Lord Mackay of Clashfern with the purpose of examining and reporting the structure and operation of the judicial system

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<sup>1</sup> Preston B.J. (2012). 'Benefits of Judicial Specialization in Environmental Law: The Land and Environment Court of New South Wales as a Case Study' IN *Pace Environmental Law Review* 396: 398

and legal professions of Mauritius. It was through the Mackay Commission's recommendations that the Mauritian National Assembly introduced the Institute for Judicial and Legal Studies Act 2011<sup>2</sup> in October 2011:

By virtue of Section 4 of the Institute for Judicial and Legal Studies Act 2011 (IJLS Act 2011), the IJLS is tasked to:

- (a) promote proficiency and ensure the maintenance of standards in the Judiciary, among law practitioners and legal officers, and generally in the delivery of Court services;
- (b) foster continuing judicial and legal education;
- (c) promote international exchanges and co-operation with other jurisdictions in the field of judicial and legal studies; and
- (d) promote transparency and consistency in the sentencing of offenders, and the award of civil damages, by making recommendations, annually, to the Chief Justice for the issue of guidelines.

The IJLS is a small but very proactive organization under the aegis of the Supreme Court. Based in the capital city, Port-Louis, the IJLS has been operating with a skeletal staff deputed by the Judiciary, young interns and a full-time director, under the direction and guidance of the IJLS Board, competently led by the IJLS Chairperson, retired Supreme Court Judge, Mrs. Chui Yew Cheong. The IJLS has been offering various courses to not only law practitioners, but also to court ushers, court managers, legal and judicial staff, police prosecutors, public officers dealing with the courts, and most importantly to the magistrates and judges.

Over the years, the IJLS has been providing environmental law courses for law practitioners and judiciary on an ad hoc basis, depending on the availability of resource people. But they were few and far between. Also, the need was not felt so much, and environmental law training was considered to be of lesser importance than trainings in core laws topics like criminal law or evidence, and less interest of the law practitioners were seen for environment related courses.

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<sup>2</sup> Institute for Judicial and Legal Studies Act 2011

During its academic year 2017-2018, the IJLS was able to harness the support of various foreign experts in Mauritius to provide the following courses on Environmental Law:

SN	CPD Course	Date	Resource Person
1	Overview of Civil Environmental protection laws in the United States	21- Jun- 17	Mr. Paul Gormley, US Attorney, political attache, US Embassy
2	International Climate Change Diplomacy: Legal and Governance Implications for a Small Island Nation like Mauritius	17- Oct- 17	Mr. Bilal Anwar, the General Manager of the Commonwealth Climate Finance Access Hub
3	Presentation on Environmental Tribunal: Practice and Principle & An Overview of the Environmental Law Principles	22- Nov- 17	1) Mrs. Vedalini Phoolchund-Bhadain, Chairperson of the Environmental and Land Use Appeal Tribunal; and 2) Ms. Mokshda Pertaub, Director of the IJLS
4	Marine Environmental Law	1. Mar- 18	Dr. Erika J Techera FAAL, Professor of Environmental Law, University of Western Australia
5	International Law and Electronic Waste	1. Mar- 18	Mrs. Stéphanie Reiche-de-Vigan
6	Conserving the past : the role of International Heritage law in safeguarding heritage in Mauritius	1. Apr- 18	Dr. Erika J Techera FAAL, Professor of Environmental Law, University of Western Australia

Again, many of these courses seen above have been possible due to the availability of resource people experts in environmental law who were either posted in Mauritius or on short term visits. The courses were very well received, albeit by a smaller number of legal practitioners who actually practice in this domain or before the ELUAT. Developing the interest of legal practitioners in environmental law training still remains a challenge. As for the judiciary, the courses were also opened to judges and magistrates, and a few have been in attendance. Environmental law training still remains an ongoing theme for the IJLS in its training of judicial officers and law practitioners.

## **Part II**

### **The Environment and Land Use Appeal Tribunal**

Even though the district courts and the Supreme Court can hear environmental law cases, the main court of law in Mauritius which rules specifically on environmental issues is the Environmental & Land Use Appeal Tribunal (ELUAT). It was created by the Environmental & Land Use Appeal Tribunal Act 2012<sup>3</sup> with the objective of upholding ‘environmental justice’ as specified on its website. Besides presiding over full hearings, the ELUAT also has the mandate to sit in mediation proceedings<sup>4</sup> and hear injunction claims<sup>5</sup> for urgent matters. The Tribunal as at November 2019 sits in two divisions and comprise:

- The Chairperson, Mrs Vedalini Phoolchund-Bhadain
- A Vice-Chairperson, Mrs Jayshree Ramful-Jhowry
- 2 Members or assessors, generally technical experts, are appointed by the Attorney General on an ad hoc basis sit with the Chairperson or Vice-Chairperson.

By virtue of its jurisdiction, the ELUAT is called upon to hear appeals on:

#### **1. Environmental Matters**

- Against decisions of the Minister of Environment (Preliminary Environment Report (–PER) and Environment Impact Assessment – (EIA)
- Notices issued by the Director of Environment

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<sup>3</sup> Environmental and Land Use Appeal Tribunal Act 2012

<sup>4</sup> Section 5 (3) (c) of the Environmental and Land Use Appeal Tribunal Act 2012

<sup>5</sup> Section 4 (2) of the Environmental and Land Use Appeal Tribunal Act 2012

- Decisions of the Director

## 2. Land Use Matters

- Building and Land Use applications made by applicants to local authorities (Section 7 of TCPA and Section 117 LGA)
- Outline Planning Permissions (OPP) made to local authorities (Section 6(A) (5) TCPA)
- Applications for excisions and morcellement permits submitted to Morcellement Board.

It should be noted that if a party is dissatisfied with the final decision of the ELUAT, he or she may appeal to Supreme Court through section 6 of the ELUAT Act 2012 on the ground that the decision is erroneous in law. The Supreme Court has interpreted section 54(2) EPA in a way that allows not only the person who is a party in the particular undertaking but also any person with a personal interest at stake to appeal or enter a case against environmental damage.<sup>6</sup> Reference can be made to the case of **Entresol & Ors v Saltlake Resorts Ltd [2004]**<sup>7</sup>.

The case of **Ricot J M and Others v Mauriplage Beach Resort Ltd [2004]**<sup>8</sup> can also be referred to for situations concerning ‘personal interest at stake’. The judgment in this particular case states that although an EPA was passed to ensure adequate protection of the environment for the general public benefit, there is nothing which prevents a member of the public who suffers special prejudice from a decision under the Act to seek relief for the protection of his legitimate personal interest. The applicants in this case have brought enough evidence to establish that they have a serious question to be tried and that they have the locus standi to seek relief for the protection of a personal right pending the determination of their appeal.

The Environment Protection Act 2002 also caters for criminal acts against the environment. The following sections can be referred to:

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<sup>6</sup> Faure M. G. & Du Plessis W. (2011). *The Balancing of Interests in Environmental Law in Africa*. PULP, 2011

<sup>7</sup> Entresol & Ors v Saltlake Resorts Ltd [2004] SCJ 305

<sup>8</sup> Ricot J M and Others v Mauriplage Beach Resort Ltd 2004 SCJ 329

- Failure to comply with any requirement, notice, order or direction issued under an environmental law amounts to an offence.<sup>9</sup>
- Any release of pollutants, wastes, or other noxious substances from the atmosphere or by dumping in the coastal and maritime zone also amounts to an offence.<sup>10</sup>
- Failure to submit a report or provide information or the provision of false or misleading information is also a contravention of environmental law.

In addition, the following sections set out the punishment for crimes against the environment:

- Any person committing an offence may be liable to 10,000 Mauritian rupees, depending on the type of offence, and to imprisonment for a term of four to twelve years depending on the type of offence committed<sup>11</sup> and whether it is a first or a second conviction.
- Fixed penalties<sup>12</sup> for offences are specified in the ninth schedule of the EPA 2002. For instance, in cases where litter, wastes or other materials generated by trade or industry are thrown or discarded in lakes, reservoirs or other public places or where there is a failure to abide by an eyesore abatement notice.

Statistics in relation to prosecution of environmental offences [2018] are as follows:

<b>No of cases received for prosecution</b>	<b>34</b>
<b>No of Cases lodged in District Courts</b>	<b>9</b>
<b>No of cases for which judgment were obtained</b>	<b>7</b>
<b>No of cases fixed for trials</b>	<b>2</b>
<b>No of cases set aside by Office of the Director of Public Prosecutions (ODPP)</b>	<b>6</b>

<sup>9</sup> Section 85(1)(a) of the Environment Protection Act 2002

<sup>10</sup> Section 52 of the Environment Protection Act 2002

<sup>11</sup> Section 85 (2) (3) Environment Protection Act 2002

<sup>12</sup> Section 88 of the Environment Protection Act 2002

No of cases advice received from ODPP/discussed	13 ( 9 cases ODPP advised for prosecution, 4 cases being discussed)
Ongoing enquiries	12

### Part III

#### The issue of locus standi in environmental law cases in Mauritius: Is public interest litigation entering the Mauritian legal system?

The phrase "public interest" indicates the common well-being of the public in general or public welfare, whilst the word "litigation" refers to the action and process of initiating or defending a contested legal claim with a view to enforcing a right or seeking a remedy for an alleged violation.<sup>13</sup> However, whilst entering a public interest litigation (hereafter referred to as PIL), one must overcome the threshold of *locus standi*. This basically requires prospective applicants to prove that they have a personal relationship with, or proprietary interest in, the subject-matter of the suit. However, the concept of *locus standi* especially in Mauritian environmental cases seems to be in a state of flux, with a liberal interpretation being favoured.

To begin with, several countries have adopted a non-restrictive interpretation towards the issue of '*locus standi*'. The justification behind this approach is that environmental despoliation causes injury of such general nature that it becomes unreasonable to expect that only those directly affected have '*locus standi*' to institute an actionable claim in respect of the alleged harm.<sup>14</sup> For instance, the Indian Supreme Court in the case of *S. P. Gupta v Union of India [1982]*<sup>15</sup> ruled that the question of '*locus standi*' is of immense importance in a country like India where access to justice is being restricted by social and economic constraints. It is necessary to democratise judicial remedies, remove technical barriers against easy accessibility to justice and promote PIL so that the large masses of people belonging to the deprived and exploited sections of humanity may be able to realise and enjoy the socio-

<sup>13</sup> *Gupta v Union of India* AIR 1982 SC 149 (per Bhagwati J)

<sup>14</sup> G Sahu "Implications for Indian Supreme Court's innovations for environmental jurisprudence" (2008) 4(1) *Law, Environment and Development Journal* 1 at 5

<sup>15</sup> *S. P. Gupta v Union of India*- AIR 1982 SC 149

economic rights granted to them and these rights may become meaningful for them instead of remaining mere empty hopes. Similarly, since 2015, China's environmental protection law, more precisely, article 55 of the Chinese Civil Procedure Code has allowed any authorities or relevant organisations to file PILs with regards to offences against the environment. Moreover, the positive Judicial interpretation on behalf of the Chinese Supreme Court assists in the creation of mechanisms (for example, legal aid) to support organisations in filing PILs against environmental despoliation.<sup>16</sup>

In Mauritius, the Environment Protection Act 2002<sup>17</sup> sets the mechanism for criminal acts against the environment. The following sections can be referred to:

- Failure to comply with any requirement, notice, order or direction issued under an environmental law amounts to an offence [*section 85 (1)(a)*<sup>18</sup> of the EPA 2002].
- Any release of pollutants, wastes, or other noxious substances from the atmosphere or by dumping in the coastal and maritime zone also amounts to an offence [*section 52*<sup>19</sup> of the EPA 2002].
- Failure to submit a report or provide information or the provision of false or misleading information is also a contravention of the environmental law.

In addition, the following sections set out the punishment for crimes against the environment:

- Any person committing an offence may be liable to 10,000 Mauritian rupees, depending on the type of offence, and to imprisonment for a term of four to twelve years depending on the type of offence committed [*section 85 (2)(3)* of the EPA 2002]<sup>20</sup> and whether it is a first or a second conviction.
- Fixed penalties [*section 88* of EPA 2002]<sup>21</sup> for offences are specified in the ninth schedule of the EPA 2002. For instance, in cases where litter, wastes or other materials generated by trade or industry are thrown or discarded in lakes, reservoirs or other public places or where there is a failure to abide by an eyesore abatement notice.

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<sup>16</sup> Zhang Q & Mayer B. (2017). 'Public Interest Environmental Litigation under China's Environmental Protection Law' in *Chinese Journal of Environmental Law* Vol 1 Issue 2

<sup>17</sup> Environment Protection Act 2002

<sup>18</sup> Section 85(1)(a) of the Environment Protection Act 2002

<sup>19</sup> Section 52 of the Environment Protection Act 2002

<sup>20</sup> Section 85 (2) (3) Environment Protection Act 2002

<sup>21</sup> Section 88 of the Environment Protection Act 2002

On the other hand, the Mauritian Civil Code also sets out civil sanctions against environmental damages. They are as follows:

➤ Damage caused by faute or negligence:

As per Article 1382 and Article 1384 of the Mauritian Code Civil<sup>22</sup>, a civil action can be entered for any damage caused to the property of a citizen due to personal or intentional fault or by negligence respectively.

If environmental standards are not respected, a civil action may be lodged for damages, provided causation is established.

➤ Damage caused by faute or negligence:

The personal injury litigation is becoming an increasingly popular avenue to recover damages for injury or prejudice caused by pollution, noise (*Boolauky B v Suraj Bali [2008]*<sup>23</sup>), odours and waste-water issues (*Begue v The Ministry of Public Utilities [2001]*<sup>24</sup>).

Remedies may also be sought under the form of injunctions to stop a party from carrying out an activity for lack of a permit or license (*Island Fertilisers Ltd v Mauritius Chemical and Fertiliser Ltd [2005]*<sup>25</sup>), although they may not always be granted (*Mothoo v Osprey Co Ltd [2004]*<sup>26</sup>) for lack of proof that it has caused damage to the environment.

### 1. Locus standi in Environmental Matters before the ELUAT

The Environmental and Land Use Appeal Tribunal has recently had to pronounce itself on the issue of locus standi in the case of **AHRIM v Min of Social Security, National Solidarity and Environment and Sustainable Development 1502/17**<sup>27</sup> [currently on appeal at the Supreme Court]. It basically held that the issue of *locus standi* should not be strictly interpreted. In this particular case, the association of hotels and civil society via NGOs brought an action against a government project of creating fish farms in the ocean on grounds that fish farming as well as aquaculture will attract sharks and this will be detrimental to

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<sup>22</sup> Art 1382 and 1383 of the Mauritian Civil Code 1802

<sup>23</sup> *Boolauky B v Suraj Bali [2008]* SCJ 221

<sup>24</sup> *Begue v The Ministry of Public Utilities [2001]* SCJ 255

<sup>25</sup> *Island Fertilisers Ltd v Mauritius Chemical and Fertiliser Ltd [2005]* SCJ 244

<sup>26</sup> *Mothoo v Osprey Co Ltd [2004]* SCJ 308

<sup>27</sup> *AHRIM v Min of Social Security, National Solidarity and Environment and Sustainable Development 1502/17 & Sea Users Association & Ors v Min of Social Security, National Solidarity and Environment and Sustainable Development 1507/17*

tourism, and will adversely affect them. The tribunal found for the AHRIM and took a liberal view of locus standi, expanding it to “special interest” related to the issue of environmental protection. The tribunal also applied Section 2 of the Environment Protection Act 2002 which deals with ‘Environmental Stewardship’ and highlighted that every person shall use his best endeavour to preserve and enhance the quality of life by caring responsibly for the environment of Mauritius.

Additionally, it should also be pointed out that the tribunal had to rule on whether this was a class action ‘per se’ and if this appeal represented an attempt to introduce PIL before the Mauritian jurisdiction. The ELUAT acknowledged that even though PILs are not recognised within the Mauritian jurisdiction, it would be unreasonable to expect every hotel to lodge an action against the Minister and held that it would be more reasonable to consider the appeal on behalf of a single organization, AHRIM which represented the interests of the whole hotel industry. Paradoxically, it also held that AHRIM is mainly representing the interests of its members and not the general public, which can be interpreted to be a class action. Reference was made to the case of **R v HM Inspectorate of Pollution, ex parte Greenpeace [1994]**<sup>28</sup> where the concept of *associative standing* was upheld and the tribunal went on to stipulate that the laws should focus on public policy rather than private interest.

To sum up, based on the rulings from the Mauritian Supreme Court and the Environmental and Land Use Appeal Tribunal, it can be seen that the issue of *locus standi* has been given a wider meaning and that the Mauritian courts seek to look at the bigger picture and aim at upholding environmental justice. Moreover, by drawing inference from the **AHRIM** (supra) case, it can be seen that Mauritian courts may be willing to consider appeals from one authority or organisation representing the interests of others in environmental protection and preservation matters. The AHRIM case is currently on appeal before the Supreme Court of Mauritius, one of the grounds of appeal being that the environmental tribunal has taken a far too liberal view of locus standi and we will have to wait for the outcome of the Supreme Court judgment to see the final interpretation of locus standi in environmental matters given by the Supreme Court.

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<sup>28</sup> R v HM Inspectorate of Pollution, ex parte Greenpeace [1994] 4 All ER 329

## **Conclusion:**

The judiciary have to be sensitive to the complexities of international environmental law principles given the interdependent and intergenerational nature of environment since more and more cases of environmental law are being filed with time. Bills dealing with climate change and other environmental issues are also tabled before Parliament to being Mauritian at par with international MEA signed. The IJLS recognises the growing importance of environmental law training for the judiciary and law practitioners. It should be noted that the IJLS has provided courses with the assistance of international bodies for the purpose of borrowing practices which decreases environmental damages. The IJLS has also been actively participating on regional level, through the drafting of a plan of action in the ‘Colloquium on Integrating Environmental Law Training in Judiciaries in Africa’ held in Johannesburg 2019, as well as the ‘Switch Africa Green Project’ of the UNEP.

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