

LAW REFORM COMMISSION

Issue Paper on « Criminalisation of denial of access to public beaches in Mauritius »

[LRC_ R&P 181, June 2024]

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EXECUTIVE SUMMARY

Issue Paper on “Criminalisation of denial of access to public beaches in Mauritius” [LRC_R&P 181, June 2024]

Public beaches are invaluable natural assets and that in addition to being recreational areas are also integral parts of communities, ecosystems, and cultural heritage, thus enriching the lives of individuals and communities alike. Hence, it is crucial to preserve these spaces in order to maintain environmental balance, fostering community ties, promoting health and well-being, and sustaining local economies.

Mauritius, being an island in the Indian Ocean, features amongst those countries in the world that are surrounded by the sea. The island’s beautiful coastline and marine attractions are magnets in attracting both foreigners and Mauritians. It has statistically been proven that tourists as well as locals, of all age groups, spend the majority of their leisure time by the public beaches. However, although no private beaches exist in Mauritius, meaning that those beaches that have been declared public, should be accessible to everybody, yet certain media reports suggest that this is not always the case, since there have been instances where signboards of “No trespassing” or “Private access” have been placed on public beaches, with the intention to restrict access to them. Indeed, there is a growing body of complaints and concerns raised by the public, alleging encroachments and restrictions imposed by private entities on public beach access.

Therefore, the Law Reform Commission has, in this Issue Paper, deemed it necessary to review the existing laws in Mauritius concerning access to beaches (A); examined the laws relating to the accessibility of beaches by the public in Seychelles, New Zealand and Barbados (B); and made certain recommendations concerning the criminalisation of whoever denies access to public beaches (C).

The essence of law, particularly in the context of granting access to public beaches to individuals, lies in its clarity and enforceability. This legal clarity serves not only as a guideline for acceptable societal behaviour but also as a protective measure for the rights and freedoms of individuals. It is imperative that laws governing public beach access are articulated in a manner that is comprehensible to the layman, thereby ensuring that every individual is aware of their rights and obligations. Equally important is the establishment of severe penalties for those who harass individuals seeking to exercise their rights or for zealous employees of establishments who obstruct access unjustifiably.

Through legislative reform, enforcement, public education and stakeholder engagement, a balance can be struck between private property rights and public access to beaches, safeguarding the interests of all parties while preserving the natural heritage of Mauritius.

INTRODUCTION

1. Mauritius boasts stunning beaches that are a vital part of its allure for tourists and locals alike. As at August 2022, 134 beaches have been proclaimed public in Mauritius.¹ Such proclamations have to be gazetted in the local newspapers. A copy of the most recent proclamation of a public beach has been attached to the current document as “Annexe 1”. Moreover, a list of public beaches in Mauritius (region-wise) has been annexed to this Issue Paper as “Annexe 2”. Theoretically, beaches, being natural assets to any country, outright ought to have been publicly accessible. Nevertheless, it would be untrue and inaccurate to believe that beach access is a universal right, since this concept varies across different countries and regions. Indeed, there are privately owned beaches around the world, which are inaccessible.²
2. Access to public beaches is not explicitly mentioned in the Universal Declaration of Human Rights (UDHR). However, several articles within the Declaration could be interpreted to support the idea of access to public spaces, including beaches, as part of human rights. For instance, by virtue of article 13 of the Declaration, everyone has the right to freedom of movement and residence within the borders of each state and the right to leave any country, including their own, and return. Access to public beaches could potentially be seen as a part of this right, allowing people to freely access and enjoy natural spaces.³
3. Furthermore, various countries associate access to public beaches as part of public spaces that should be available for all individuals without discrimination, thus aligning with the principles of equality and non-discrimination as outlined in the UDHR. Public beaches often serve as places where communities gather, engage in cultural activities, and connect with nature. Guaranteeing access to these spaces supports the right to participate in cultural

¹ However, the Minister of Housing and Lands is legally empowered to de-proclaim a public beach. For instance, part of the beach at Pomponette, in the South of Mauritius had been de-proclaimed in order to cater for construction of a hotel.

² There exists a misconception that all beaches are public in Mauritius, which is untrue. Actually, in order for a beach to become public, it has to be declared as such by the Minister of Housing and Land Use Planning. While proclaiming a certain beach as a public one, the Minister declares a portion of land of a specified extent of the beach as “public”. After a beach has been proclaimed as a public one, then it is the duty of the Beach Authority to control and manage it, by building certain infrastructures to be used by the public in general.

³ Universal Declaration of Human Rights, art. 13.

life.⁴ Although not directly related, ensuring access to public beaches can contribute to an adequate standard of living by providing recreational spaces and opportunities for relaxation and well-being.⁵ In addition, access to public beaches aligns with several Sustainable Development Goals (SDGs), particularly, Goal 11 with regards to ‘Sustainable Cities and Communities’. Providing access to public beaches would contribute to making cities and human settlements inclusive, safe, resilient, and sustainable.

4. According to data reported by the Beach Authority, the approximate total extent of proclaimed beaches in Mauritius amount to 330 hectares.⁶ The Mauritian coastline is approximately 322 km in length⁷ and which is distributed as follows: - 90 km are occupied by hotels or developments with tourist vocation, 60 km are either occupied by residences or privatised, while only 48 km; or around 14% of the total length, are officially accessible to the public under the status of “*public beaches*.”⁸
5. In Mauritius, the designation of beaches within the public domain is an established legal principle, yet there exists a nuanced categorisation of these beaches that warrants clear explanation, in order to avoid confusion and conflicts for all concerned parties. Public beaches in the country are areas where access and enjoyment are entirely unrestricted for all citizens. These beaches represent the quintessential public domain, where the right to leisure and recreation is freely exercised without any form of hindrance or requirement. However, contrary to public beaches, certain sections of the coastline are leased to private individuals or entities, which introduces certain restrictions on general public access. While these beaches remain part of the public domain in principle, the nature of access granted to the public is specifically regulated.
6. Public Beach is defined under Section 2 of the Beach Authority Act 2002 as “*a space along the coast which, by notice published in the Gazette, has been declared to be a public beach*”

⁴ Universal Declaration of Human Rights, art. 27.

⁵ Universal Declaration of Human Rights, art. 25.

⁶ ‘List of Public Beaches in Mauritius’ <<https://www.beachauthority.mu/pdf/beaches/List2019.pdf>>

⁷ ‘National Marine Ecosystem Diagnostic Analysis (MEDA)’ (ASCLME, 2012), p. 23

<https://wedocs.unep.org/bitstream/handle/20.500.11822/25892/Mauritius_MEDA.pdf?sequence=1&isAllowed=y>

⁸ <<https://mru2025.org/mauritius-coastal-development>>

by the Minister responsible for the subject of housing and lands including the space between the high-water mark up to a distance of 100 meters from the low-water mark.”

7. According to Section 2 of the Beach Authority Act 2002, public beaches are only those which have been published in the Gazette whereas in Mauritius, we also have public beaches leased for private use by organisations or individuals for example, beaches leased by hotels, beach houses, bungalow owners amongst others. These beaches are not published if it is done by way of private contract. Nonetheless, the fact that the space between the high-water mark and low water mark is considered as public beach, this connotes that there is freedom of access and the public can conduct activities like, walking, picnicking, playing, sunbathing and so on.

8. Any lands beyond the high water mark up to a distance of not less than 81 metres and 21 centimetres⁹ are reserved lands and they are called the *pas géométriques*¹⁰ except those which are situated within the limits of the District of Port Louis or in any village mentioned in the First Schedule of the *Pas Géométriques Act*,¹¹ for example: Pointe d’Esny, Roche Noires and Mare aux Lubines. These lands are not categorised as *pas géométriques* but rather State lands, Yet, they shall be inalienable and imprescriptible¹² similar to the *pas géométriques* which form part of the *domaine public* and are inalienable and imprescriptible.¹³ The *pas géométriques* comprise ponds of sea water, salt water marshes, lakes, bogs and basins which situate wholly or partly upon it, the islets adjacent to the shore and which can be reached on foot at low tides, the creeks at the mouths of rivers, and the mouths of rivers, and they also shall form part of the *domaine public* and shall be inalienable and imprescriptible.¹⁴

9. In view of its inalienable and imprescriptible nature, the *pas géométriques* cannot be sold¹⁵ but can be leased upon the approval of the Minister of Housing and Land Use Planning, by

⁹ Pas Géométriques Act 1874, Section 3.

¹⁰ Pas Géométriques Act 1874, Section 2.

¹¹ Pas Géométriques Act 1874, Section 18(1)(a).

¹² Pas Géométriques Act 1874, Section 18(1)(b).

¹³ *Ibid.*

¹⁴ Pas Géométriques Act 1874, Section 4.

¹⁵ State Lands Act 1856, Section 3.

private contract or public auction for any period not exceeding 30 years.¹⁶ Further to this provision, the grant of lease of the *pas géométriques* can be for a period exceeding 30 years but not exceeding 99 years if the property was an object falling under the Cyclone Housing scheme under the Central Housing Scheme Act.¹⁷ These specific leases can be exchanged from lease of *pas géométriques* to leases of private property. The more so, in case the *pas géométriques* are leased, by private contract or public auction, for campement sites,¹⁸ these leases shall be valid for a period not exceeding 60 years.¹⁹

10. It is reminded that the grant of lease is subject to such conditions as may be imposed by the Minister of Housing and Land Use Planning.²⁰ As already mentioned, the *pas géométriques* can be leased but they still form part of *domaine public* which have been leased for private use and are inalienable and imprescriptible, thus, it is implied that the public has a “*droit de passage*” on that leased part unless restricted by relevant authorities. Annexe 3 contains a drawing of how the above is regulated.

11. Although there are statutory provisions for the control and management of public beaches, yet, the law remains vague for whoever wishes to have access to public beaches which have been subject to leases, and is harassed or prevented from such access. Ambiguities in law provide a breeding ground for arbitrary enforcement and discrimination. When laws are articulated in simple and unambiguous language, it facilitates easier compliance by all stakeholders, including beachfront property owners, businesses, and the general public. This clarity aids in preventing conflicts and ensures a harmonious coexistence between different interests. Moreover, severe penalties act as a strong deterrent against potential violators who might otherwise engage in harassing individuals or obstructing access to public beaches. This deterrent effect is essential for maintaining open access to beaches for all. Ensuring that individuals can access public beaches without fear of harassment or obstruction is a matter of social justice and equity. Severe penalties for violators affirm the

¹⁶ Pas Géométriques Act 1874, Section 7(1)(a).

¹⁷ Pas Géométriques Act 1874, Section 7(1)(b).

¹⁸ Pas Géométriques Act 1874, Section 10(1).

¹⁹ Pas Géométriques Act 1874, Section 10(3).

²⁰ Pas Géométriques Act 1874, Section 10(2).

commitment to an inclusive society where the enjoyment of natural resources is not marred by discrimination or privilege.

12. Therefore, the Law Reform Commission has, in this Issue Paper, deemed it necessary to review the existing laws in Mauritius concerning access to beaches (A); examined the laws relating to the accessibility of beaches by the public in Seychelles, New Zealand and Barbados (B); and made certain recommendations concerning the criminalisation to whoever denies the public access to the public beaches (C).

(A) LEGISLATION AND CASE LAW CONCERNING ACCESSIBILITY OF PUBLIC BEACHES IN MAURITIUS

(i) Beach Authority Act 2002

13. The Beach Authority Act defines a “*public beach*” as a space along the coast which, by notice published in the Gazette, has been declared to be a public beach by the Minister responsible for the subject of housing and lands; and includes the space between the high-water mark up to a distance of 100 metres from the low-water mark.²¹
14. The Beach Authority is statutorily vested under the Beach Authority Act 2002 with the power to ensure proper control and management of public beaches in Mauritius and Rodrigues. In so doing, the Authority is empowered under the Act, *inter alia*, to implement projects so as to protect and enhance public beaches,²² regulate activities on public beaches and ensure that users of public beaches are secure and safe²³ and for the issuance of beach traders’ licence for activities at such places on public beaches as may be specifically reserved for that purpose.²⁴
15. While the Act empowers the Authority to have access and control of any public beach, for the purpose of exercising its functions and powers, it is, however, exhaustive and remains silent as to the accessibility of public beaches by the public in general and consequently does not make it an offence to whoever denies anyone access to the public beaches.

(ii) Beach Authority (Use of Public Beach) Regulations 2004

16. The Beach Authority (Use of Public Beach) Regulations 2004 explicitly prohibits certain activities on public beaches, including the prohibition of mooring of any vessel on any part of the public beach except in places specifically designated for that purpose,²⁵ prohibition

²¹ Beach Authority Act 2002, Pt. I, s 2.

²² Beach Authority Act 2002, Pt. II, s 5 (a).

²³ Beach Authority Act 2002, Pt. II, s 5 (b).

²⁴ Beach Authority Act 2002, Pt. II, s 5 (c).

²⁵ Beach Authority (Use of Public Beach) Regulations 2004, reg. 11(1).

of riding, driving or parking a vehicle including a motorcycle, autocycle, bicycle on the public beach;²⁶ or playing football or volleyball on the public beach²⁷, without making any provision with regards to access to public beaches.

(iii) Pas Géométriques Act 1874

17. The Pas Géométriques Act 1874, dates back to more than a century ago, but which remains valid till date. Section 2 of the Act has been quoted below: -

“The reserved lands along the sea coast commonly called Pas Géométriques and referred to in the Arrêté of Général Decaen of 5 May 1807, shall form part of the domaine public and be inalienable and imprescriptible.”

18. In other words, this particular section could be interpreted as nobody can hold freehold rights over the reserved lands along the sea coast of Mauritius. Indeed, hotels and resorts that are built along the coastline, only hold leasehold rights over the lands and have no authority to restrict access to users of public beaches.²⁸

19. The Act further details the breadth of the *Pas Géométriques* as being reckoned from the line of the seashore which is reached by the high water at spring tide, and shall never be less than 81 metres and 21 centimetres.²⁹ In addition, the ponds of sea water, salt water marshes, lakes, bogs and basins situate wholly or partly upon the *Pas Géométriques*, the

²⁶ Beach Authority (Use of Public Beach) Regulations 2004, reg. 15 (a).

²⁷ Beach Authority (Use of Public Beach) Regulations 2004, reg. 15 (b).

²⁸ Section 37A of the Interpretation and General Clauses Act 1974 deals with the issue of licences and provides that “Where a licence, permit or authority is issued under an enactment, it shall at all times be subject to such terms and conditions as may be imposed whether at the time of issue or renewal or during its currency.” Accordingly, section 37A of the Interpretation and General Clauses Act 1974 was cited in the case of *Contract Bus Owners Association & Ors v The National Transport Authority & Anor* (2014) SCJ 292 where the plaintiffs had lodged an action for constitutional redress against the defendants with respect to a variation of their licences by the defendants. The plaintiffs prayed for an order decreeing and declaring that the defendants had no power under the law to impose any condition limiting the scope of the operation of the plaintiffs as contract bus operators. The defendants have raised a preliminary objection to the effect that the plaintiff does not disclose any cause of action and referred to the provisions of section 76 (6) of the Road Traffic Act and 37A of the Interpretation and General Clauses Act and it was submitted that the defendant No. 1 (the National Transport Authority) is empowered to impose conditions on a public service licence vehicle and to vary such conditions as it thinks fit. As such the plea *in limine* was upheld and the plaintiff was dismissed as it did not disclose any cause of action.

²⁹ Pas Géométriques Act 1874, s 3 (1).

islets adjacent to the shore and which can be reached on foot at low tides, the creeks at the mouths of rivers, and the mouths of rivers, shall be deemed annexes of the *Pas Géométriques* and shall form part of the public domain and consequently be inalienable and imprescriptible.³⁰

(iv) Criminal Code (Supplementary) Act 1870

20. A further important section that requires attention is section 110 of the Criminal Code (Supplementary) Act 1870, which states the following: -

“Any person who, without lawful authority, obstructs or prevents the free passage of a pedestrian on the seashore shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees.”

21. The “seashore” has been defined under the Act as including that portion of it which is covered by the sea at high tide and uncovered at low tide.³¹

22. In the case of *Grand Bay Cruise Ltd & Ors v Ocean Blue Island Company Ltd* (2008 SCJ 125), was concerned with an application for an Interlocutory Injunction restraining the respondent and co-respondents from denying to them, their passengers, their employees and the public at large free access to the “beach” of Ilot Gabriel (“the Islet”), which had been leased by the co-respondents (1. The State of Mauritius and 2. The Permanent Secretary, Ministry of Agro-Industry and Fisheries) to the respondent.³²

23. The following from the “points-clés” on the “*domaine public*” of the learned author Jean Dufan with reference to Articles 537 to 542 of the Code Civil were conveniently highlighted in this case: -

³⁰ Pas Géométriques Act 1874, s 4 (1).

³¹ Criminal Code (Supplementary) Act 1870, s 110 (2).

³² The applicants contended that the beach of the islet formed part of the “*domaine public*” and as such the respondent was not entitled to restrict access to the beach in any manner whatsoever whereas in fact this is what it was doing. However, the respondent’s contentions were that there was no restriction at all for anybody including tourists to be on the beach which it submitted was the strip of sand covered by high tide and uncovered during low tide.

- (i) *“Les articles du Code Civil ci-dessus rapportés ne sauraient être considérés comme renfermant une définition valable du domaine public. En effet, la distinction du domaine public et du domaine privé était ignorée à l’époque de la rédaction du Code Civil... L’article 539 range dans le domaine public des biens qui font aujourd’hui partie du domaine privé de L’Etat. De même si les routes, les fleuves, le rivage de la mer, les ports, les havres et les rades visés à l’article 538 sont effectivement des dépendances du domaine public, il n’en va pas nécessairement ainsi pour les lais et relais de la mer.*
En réalité, la définition du domaine public est essentiellement d’origine jurisprudentielle.”
- (ii) *“Le domaine public naturel tire son origine des phénomènes naturels. Le domaine public maritime naturel comprend : - Le rivage de la mer qui est la partie alternativement couverte et découverte par la marée. Du côté de la terre ferme, le rivage est constitué par les terrains recouverts par le plus grand flot ... Les lais et relais de la mer qui ont été créés naturellement ou artificiellement ...”*
- (iii) *“91. –La règle de l’inaliénabilité interdit les démembrements de la propriété du domaine public, c’est-à-dire la constitution sur ce domaine des droits réels semblables à ceux qui existent en droit privé, au profit des particuliers (droit d’usage – usufruit, servitudes, etc.).”*
- (iv) *“Gratuité de l’utilisation*
125 –L’utilisation commune de domaine public affecté à l’usage de tous ne peut pas être assujettie au paiement des redevances, en dehors des cas prévus par les textes.”
- (v) *“Régime des utilisations privatives*
133 – Ces utilisations qui impliquent réserve exclusive d’une portion du domaine public au profit d’une catégorie particulière d’usagers sont soumises à une autorisation préalable et au paiement d’une redevance. Le régime des utilisations privatives n’est pas uniforme. Il faut distinguer selon que ces utilisations sont fondées sur un acte administratif ou sur un contrat.”

24. The Judge concluded that the beach of the islet indeed formed part of the “*domaine public*” and that it could not be leased and that free access to it was a right to which one and all was

entitled without any hindrance and therefore granted an interlocutory injunction restraining the respondent from denying to the applicants, their employees, their passengers and the public at large, free access to the beach of the islet, pending the decision in the main case.

25. The Court also held that the strip which is marked by low tide and the high tide is, indeed, a public domain (reference was made to Articles 537 - 542 of the Civil Code with regards to public domain) and therefore, access to the public cannot be denied, and that there is already a provision in the Criminal Code (Supplementary) Act (Section 101(1)) which makes it an offence to obstruct or prevent the free passage of a pedestrian on the seashore and it is an offence which is punishable by a fine of up to Rs 10,000.³³

(v) Equal Opportunities Act 2008

26. Section 23 of the Equal Opportunities Act 2008, makes it unlawful for any person to discriminate against another person by refusing to allow him access to, or the use or enjoyment of any premises, which the public or a section of the public may enter or use, whether on payment or not.
27. While the term 'premises' has not been interpreted under the Act, same could potentially include public beaches to which the general public has access. Consequently, no person can discriminate against another person by refusing to allow him access to, or the use or enjoyment of public beaches.

(vi) State Lands Act

28. The State Lands Act 1856 is a legislation that regulates defence lands, "*pas géométriques*" and all lands belonging to or in possession of the State, with regards to their sale or lease; the jurisdiction over defence lands.

³³ "Seashore" is defined (section 101 of the Criminal Code (Supplementary) Act) as including "the portion of the seashore which is covered by the sea at high tide and uncovered at low tide". (Similar to that of public beach as provided by the Beach Authority Act.

29. Furthermore, the Minister³⁴ may sell State Land,³⁵ excluding defence lands; *pas géométriques*; mountain reserves or river reserves which belong to the State.³⁶ Thus, properties built along the *pas géométriques* cannot be sold; property owners are only entitled to hold leasehold rights. However, the Minister may grant or lease State Land on payment of such rental and on such condition as he may approve where a portion of such land is bona fide required for development purposes.³⁷
30. All leases of State Land shall be by public auction³⁸ and subject to certain conditions: the land leased must not be used for any purpose for which it is not leased without the prior written approval of the Minister;³⁹ the land leased must not be so utilised as to constitute any nuisance or to cause any detriment to or pollution of the natural resources and the environment, including any adjoining sea, beach, lake, canal or river.⁴⁰ Moreover, if the above-mentioned conditions are not duly observed then the lease may be cancelled, after service of a notice setting out the reason for the cancellation.⁴¹ The Ministry responsible for the subject of lands may issue guidelines in terms of the criteria, conditions and procedures to be adopted.⁴²
31. In addition, State Land may be leased for industrial and commercial purposes,⁴³ which must be valid for a period not exceeding 60 years⁴⁴ and be subject to such payment of an annual rental as may be specified under the Schedule of the Act.⁴⁵ The Act further states that where the Minister deems, subject to the approval of Cabinet that a large investment project would be in the economic interest of Mauritius, the annual rental payable should be reduced by such amount as may be determined by the Minister, and any lease may be granted for a

³⁴ By virtue of section 2 of the State Lands Act 1856, “‘Minister’ means the Minister to whom responsibility for the subject of land use is assigned.”

³⁵ By virtue of section 2 of the State Lands Act 1856, “‘State Land’ includes defence lands, ‘pas géométriques’ and all lands belonging to or in possession of the State.”

³⁶ State Lands Act 1856, s 3.

³⁷ State Lands Act 1856, s 4 (2)(b).

³⁸ State Lands Act 1856, s 6 (1)(a).

³⁹ State Lands Act 1856, s 6 (1)(b)(i).

⁴⁰ State Lands Act 1856, s 6 (1)(b)(ii).

⁴¹ State Lands Act 1856, s 6 (1)(b)(iii).

⁴² State Lands Act 1856, s 6 (1)(c).

⁴³ State Lands Act 1856, s 6 (1B).

⁴⁴ State Lands Act 1856, s 6 (1C) (a).

⁴⁵ State Lands Act 1856, s 6 (1C) (b).

period not exceeding 99 years, with the approval of the Minister, subject to the approval of the Cabinet.⁴⁶

32. The Act makes it unlawful for any person to take possession of, encroach upon, cultivate or to put up any building or other structure on any part of any State land without the express authorisation in writing of the Minister,⁴⁷ failing which that person would be deemed to be a squatter,⁴⁸ and consequently where the Minister is satisfied that there is a squatter on State land, he may cause a notice to be issued calling upon him to vacate the land within a delay specified in the notice.⁴⁹
33. Moreover, State land is imprescriptible,⁵⁰ which means that nobody can acquire the land which is owned by the State, through prescription. Accordingly, an affidavit of prescription was declared null and void by the Judge in the case of *Government of Mauritius v Husraj P & Ors 2016 SCJ 140*, with regards to a portion of land which was acquired following a compulsory acquisition by the State, as by virtue of section 35 of the State Lands Act, the defendants could never obtain any right of ownership by the acquisitive prescription of a State land.
34. Similarly, in the case of *W. Fon Sing v Ww S.S. Ragobur 1999 SCJ 377*, reference was made to section 35 of the State Lands Act with regards to the imprescriptibility of a State land. The issue in this case revolved around the ownership of a plot of land of 7048 sq. metres, out of which the Government of Mauritius claimed to be the lawful owner of a portion of 3460 sq. metres. A brief set of facts of the case involved Mr. W Fon Sing (‘the purchaser’) who had purchased a plot of land of 7048 sq. metres in 1987 from Widow S.S. Ragobur (‘the vendor’). The land in lite had been attributed to the latter in 1969 by the Master following a division-in-kind and that plot formerly belonged to the vendor’s father, Ramnarain Sungkur, who had prescribed a larger portion of land in 1943.

⁴⁶ State Lands Act 1856, s 6 (1F)

⁴⁷ State Lands Act 1856, s 22 (1).

⁴⁸ State Lands Act 1856, s 22 (2).

⁴⁹ State Lands Act 1856, s 22 (3).

⁵⁰ State Lands Act 1856, s 35.

35. Reference was made to section 35 of the State Lands Act with regards to the imprescriptibility of a State land. That provision was, prior to the revised edition of our laws in 1981, contained in the now defunct Crown Lands (Exclusion from Prescription) Ordinance 1945, which had for object “*to exclude Crown lands from the operation of the Law of Prescription.*” However, that Ordinance came into operation only on 22 December 1945. So that as at 1943 there was no provision on our statute book regarding imprescriptibility of Crown lands which would have prevented Mr Ramnarain Sungkur from prescribing the land in lite. It is interesting to note that prior to 1945 land belonging to the Crown was liable to be prescribed unless it belonged to the “*domaine public de l’Etat*” and as such was “*inaliénable*” under the Civil Code unless done “*dans les formes et suivant les règles qui leur en sont particulières*”.⁵¹
36. Nonetheless, as no evidence could be adduced that the intended use of the land by the Government of Mauritius could fall within the definition of ‘*domaine public*’, the land was capable of being prescribed by Mr Ramnarain Sungkur in 1943, and the vendor obtained a proper title in 1969 which she passed on to the purchaser in 1987. Consequently, the Government of Mauritius was ordered by the Judge to allow the purchaser to enter into possession of the 3460 square metres of land and not to interfere with the latter’s enjoyment of the land as well as to compensate the vendor the sum of Rs 100,000 as damages for the prejudice suffered by her.
37. The case of *W. Fon Sing (Supra)* highlighted the notion of *domaine public*. The “*critères actuels*” of the “*domaine public*” have been spelt out in the *Traité de Droit Administratif* Tome 2 as follows: -“*A l’occasion des travaux en vue de l’établissement d’un projet de réforme du code civil, une définition du domaine public a été formulée et adoptée par la commission de réforme. Elle rattache au domaine public l’ensemble des biens des collectivités publiques et établissements publics qui sont, soit mis à la disposition directe du public usager, soit affectés à un service public pourvu qu’en ce cas ils soient, par nature ou par des aménagements particuliers, adaptés exclusivement ou essentiellement au but particulier de ces services. Cette définition, dont la jurisprudence, on va le voir, s’inspire largement aujourd’hui, retient donc concurremment les critères de l’affectation à l’usage*

⁵¹ Code Civil, art. 537.

*du public et aux services publics. Mais, elle introduit comme facteur de limitation l'idée d'adaptation spéciale, naturelle ou artificielle ; cette précision vaut seulement, dans la définition proposée par la commission de réforme du code civil, pour le domaine affecté aux services publics ; mais la jurisprudence en a étendu l'application à certaines dépendances affectées à l'usage du public. Ce facteur de limitation n'empêche pas, on va le voir, la conception actuelle du domaine public d'être nettement extensive. A quoi s'ajoutent encore, qui vont dans le même sens, les effets attachés à la notion d'accessoire ou complément des dépendances du domaine public”.*⁵²

38. Moreover, at note 276 the learned authors go on to say - “*Le critère de l'aménagement spécial. – C'est ce critère, réducteur de la domanialité, également retenu par la commission de réforme du code civil, que la jurisprudence a finalement adopté, après avoir appliqué des solutions très empiriques à la matière. Les arrêts se réfèrent à l'idée l'adaptation exclusive ou essentielle au but particulier du service public. L'affectation aux services publics n'entraîne la domanialité publique qu'à la condition que la dépendance domaniale soit adaptée au but du service par sa nature ou par un aménagement spécial.*”⁵³

39. Finally, pursuant to Section 5(2) of the Roads Act 1982, any road which may be required on, or for purposes of access to, any land, whether State land, *pas géométriques* or private property shall be deemed to be a private road. The definition of “private road” is established in Section 5(1) of the Roads Act 1982 as any road in any area which has not been dedicated to public use or has not been accepted as a regular maintenance responsibility by the Government, the Road Development Authority or a local authority, shall be deemed to be a private road. With regard to the above legal provisions, it is implied any road which provides access to *pas géométriques*, whether leased or not, and where no public access has been given, shall be deemed to be a private road and cannot be used by public. However, the said Section does not apply in cases where a “*servitude*” exists. A “*servitude*” (*droit de passage*) entails an obligation placed upon a property to serve the needs and advantages of another property owned by a separate individual. Vide the case of *Association des Riverains du Barachois de Tamarin v Mario NG Kuet Long* [2010] SCJ 188, where a

⁵² Laubadère, Venezia and Gaudemet, “*Traité de Droit Administratif Tome 2*” (9th edn., 1992), para. 258.

⁵³ Laubadère, Venezia and Gaudemet, “*Traité de Droit Administratif Tome 2*” (9th edn., 1992), para. 276.

“*chemin commun et mitoyen*” has been serving the owners and lessees of various portions of land known as “Le Barachois” in Baie de Tamarin including a number of riverains to have access to the beach but after the respondent has bought two plots of land which were separated by the said “*chemin*”, the latter blocked, without any right, title or authority, the access to it by erecting a gate across. This led the Applicant to no longer have access to the beach through this “*chemin*”. In this case, the Court commented on the right of freedom under the Constitution and quoted the following: “*Even the State has no right to restrict the free movement of any citizen in this country. In this case, it would appear that it is a citizen who is arrogating himself that right. It would be an erosion of our fundamental freedoms and liberties if individuals under one excuse or another started a practice of prohibiting others from their free movement, a prohibition denied even to the State. The mischief in such a scenario is self-evident. The citizen then would have power to do better than the State itself. Worse still, the State would frustrate the fundamental freedoms by acting through, and colluding with, a citizen of its choice. If any right of protection exists for an owner, it is the right to enclose his property. To invoke into that right a right to enclose a part of what is not strictly his own, it would amount to an abuse of right to enclose as per the Civil Code as well as a weak link in our constitutional régime.*” Thus, it is understood that where a servitude exists, no one should obstruct the freedom of movement.

(B) LAWS RELATING TO ACCESSIBILITY OF PUBLIC BEACHES IN OTHER JURISDICTIONS

(i) SEYCHELLES

40. There is a growing trend of resentment expressed against hotels that restrict access of the locals to beaches or their premises. In Seychelles, the beach is public domain by law but there are cases where owners of tourism establishments minimise access particularly in front of their property in order to provide further exclusivity to their clients.⁵⁴
41. The Physical Planning Act 2021 came into being in November 2021, and repealed and replaced the Town and Country Planning Act of Seychelles, provided for the establishment of the Planning Authority, the development of land use plans, the sustainable development of land and for matters connected therewith or incidental thereto.
42. Sub-Part III of the Act deals with development of land adjacent to sea. Unless prior written authorisation has been sought from the Planning Authority, nobody shall carry out any development of any land adjacent to the sea. Furthermore, the Act guarantees access to the beach by the public by providing that where there is no alternative public access to a beach, ‘traditional public use’⁵⁵ of a private landward access through an existing private development shall be sufficient ground for establishing a public right of way over that access or another access of similar convenience.⁵⁶
43. Oftentimes, there are beaches in Seychelles that are surrounded by hotels and resorts and the only landward access to the beach is through such existing private development. In such cases, the Minister is empowered under the Act to acquire the right to the public use of that beach access by gift, negotiation, contract, purchase, lease or compulsory acquisition in exchange for other property, interest or monetary exemption, or by such other means as the

⁵⁴ ‘Seychelles Sustainable Development Strategy 2012 -2020’ p. 126,
<https://faolex.fao.org/docs/pdf/sey185105.pdf>

⁵⁵ By virtue of the Physical Planning Act 2021 (Seychelles), Pt. IV, Sub-Pt. III, s. 47 (6), “*traditional public use*” means “*peaceful, open, continuous and uninterrupted enjoyment of access by the public for a period in excess of twenty years.*”

⁵⁶ Physical Planning Act 2021, Pt. IV, Sub-Pt. III, s. 47 (2).

Minister may recommend, as a condition of issuance of any permit or licence required under the provisions of this Act or any written law.

44. In order to remedy future cases of the public’s inaccessibility to the beach, the Act requires that any proposed development which is likely to adversely affect the public’s ability to access a beach, must mandatorily have a landward public access through the development at all times free of charge and the same shall be caused to be recorded in the relevant register maintained by the Registrar General, otherwise a development permit would not be granted.
45. Failure of complying with the above-mentioned provisions would entail liability on conviction for a fine of SCR 1,000,000.⁵⁷

⁵⁷ Approximately, MUR 3,314,000 as at 13.12.2023.

(ii) NEW ZEALAND

46. New Zealand is famous for its splendid natural beauty, including its picturesque coastline and beautiful public beaches. The country is surrounded by the Pacific Ocean and the Tasman Sea, boasting over 17,000 kilometres of coastline and offering a wide array of beaches for locals and tourists to explore.⁵⁸ Some of the most popular public beaches in New Zealand include Piha Beach (Auckland), Mount Maunganui Beach (Bay of Plenty), Ninety Mile Beach (Northland) and Abel Tasman National Park Beaches (Nelson Tasman).⁵⁹
47. In February 2021, the Government announced that the Resource Management Act 1991 of New Zealand would be repealed and replaced by three new Acts, namely the Spatial Planning Act, the Natural and Built Environment Act and the Climate Adaptation Act. The Natural and Built Environment Act 2023 features amongst the main replacement of the Resource Management Act 1991 of New Zealand, which marked New Zealand’s transition to a new resource management system. The purpose of the recent Act is to uphold “*te Oranga o te Taiao*”, which is a concept drawn from *te ao Māori*, and an intergenerational ethic relating to the health and wellbeing of the natural environment, and the essential relationship between a healthy environment and its capacity to sustain all life.⁶⁰
48. The importance of continued public access to the coast is recognised in this legislation. More precisely, the Act makes it a mandatory provision to maintain and enhance public access to and along the coastal marine area,⁶¹ lakes, and rivers.⁶² In so doing, the Act explicitly provides for an access strip for public access to or along a river or lake or the

⁵⁸ ‘Coastal’ (LAWA), <<https://www.lawa.org.nz/explore-data/coastal/>>

⁵⁹ ‘New Zealand’s Best Beaches’ <https://www.newzealand.com/int/feature/new-zealands-best-beaches/>

⁶⁰ ‘Resource management reform: Protecting the environment’ (November 2022, INFO 1115)
<<https://environment.govt.nz/assets/publications/rm-reform-protecting-the-environment.pdf>>

⁶¹ According to the Natural and Built Environment Act 2023, Pt. 1, Sub-Pt. 2, s 11 (1), a “*coastal marine area*” means “the foreshore, seabed, and coastal waters, and the airspace above the water,—(a) of which the seaward boundary is the outer limits of the territorial sea; and (b) of which the landward boundary is the line of mean high-water springs, except that where that line crosses a river, the landward boundary at that point is whichever is the lesser of— (i) 1 kilometre upstream from the mouth of the river; or (ii) the point upstream that is calculated by multiplying the width of the river mouth by 5.”

⁶² Natural and Built Environment Act 2023 (New Zealand), Pt. 1, Sub-Pt. 1, s 6 (6).

coast.⁶³ Moreover, the Act firmly indicates that neither can someone occupy any part of the common marine and coastal area⁶⁴ nor can holders of coastal permits have any authority to occupy a coastal marine area to the exclusion of all or any class of persons, thus demonstrating the public’s accessibility to a coastal marine area.

49. Sub-Part 5 of the same Act deals with offences, penalties, and related provisions. The Act makes it a strict liability offence to whoever restricts access to the coastal marine area;⁶⁵ it is not necessary to prove that the defendant intended to commit the offence,⁶⁶ entailing liability on conviction, in the case of a natural person to imprisonment for a term not exceeding 18 months or a fine⁶⁷ not exceeding \$1,000,000⁶⁸ and in the case of a person other than a natural person, to a fine⁶⁹ not exceeding \$10,000,000.⁷⁰

⁶³ Natural and Built Environment Act 2023, Pt. 10, s 610 (1)(a).

⁶⁴ Natural and Built Environment Act 2023, Pt. 2, Sub-Pt. 1, s 23 (2)(a).

⁶⁵ Natural and Built Environment Act 2023, Pt. 11, Sub-Pt. 5, s 701 (1)(a).

⁶⁶ Natural and Built Environment Act 2023, Pt. 11, Sub-Pt. 5, s 703 (1).

⁶⁷ Natural and Built Environment Act 2023, Pt. 11, Sub-Pt. 5, s 706 (1)(a).

⁶⁸ Natural and Built Environment Act 2023, Pt. 11, Sub-Pt. 5, s 706 (1)(a).

⁶⁹ \$1,000,000 is equivalent to approximately MUR 27,000,000.

⁷⁰ \$10,000,000 is equivalent to approximately MUR 270,000,000.

(iii) FRENCH OVERSEAS DEPARTMENTS

50. The “*littoral d’outremer*” is subject to the provisions of the “coastal” law which is common to France and the “*départements français d’outre-mer*” (Guadeloupe, Martinique, Guyana, Reunion and Mayotte), essentially with regards to the principles of urbanisation boundaries, free access to beaches, continuous urbanisation and the protection of outstanding areas. Nevertheless, the law also dedicates a specific title to the special provisions applicable to such areas; that is, the zone known as the ‘*50 pas géométriques*.’⁷¹
51. The ‘*50 pas géométriques*’ is linked to colonial history and applies to a strip of coastline of 81.20 m in width, on which a large number of unauthorised dwellings have sprung up.⁷² The ‘*réserve domaniale*’, also known as the ‘*50 pas géométriques*’ has legally been defined under the ‘Code du Domaine de l’État’ as the following: - “*La réserve domaniale dite des “cinquante pas géométriques” est constituée par une bande de terrain déjà délimitée dans le département de la Réunion et présentant, dans les départements de la Guadeloupe, de la Guyane française et de la Martinique, une largeur de 81,20 mètres comptée à partir de la limite du rivage de la mer tel qu’il a été délimité en application de la législation et de la réglementation relatives à la délimitation du rivage de la mer*”.⁷³
52. In addition, it is worth noting that the reasoning behind the application of the ‘*50 pas géométriques*’ was primarily to protect the inhabitants of the French colonies. Below is an extract from the Governor General of the American Isles, M. De Baas, concerning the ‘*50 pas géométriques*’: - «*Je ne sais pas, Monseigneur, si quelqu’un vous a jamais expliqué pourquoi les cinquante pas du Roi ont été réservés dans les isles françaises de l’Amérique, c’est-à-dire pourquoi les concessions des premiers étages n’ont été accordées aux habitants qu’à condition qu’elles commenceront à 50 pas du bord de la mer et que cette ceinture*

⁷¹ Judith Klein, ‘Les espaces littoraux : gestion, protection, aménagement
Domaine public, réserve domaniale dite des “50 pas géométriques” : entre la France et l’outre-mer, quelles différences?’ (01 December 2003) <<https://geoconfluences.ens-lyon.fr/doc/typespace/littoral1/LittorDoc2.htm>>

⁷² Caroline Popovic, ‘50 pas géométriques : un rapport préconise de prendre en compte les valeurs et normes sociales spécifiques aux Antilles’ (30 May 2022) <<https://la1ere.francetvinfo.fr/martinique/50-pas-geometriques-un-rapport-preconise-de-prendre-en-compte-les-valeurs-et-normes-sociales-specifiques-aux-antilles-1289052.html>>

⁷³ Code du Domaine de l’État 1976, art. L.86.

intérieure qui fait le contour de l'isle peut être donnée en propre à aucun habitant pour plusieurs raisons judicieuses et avantageuses au bien des Colonies. La première a été pour rendre plus difficile l'abord des isles ailleurs que dans les rades où les bords sont bâtis, car 50 pas de terre en bois debout très épais et difficiles à percer est un grand empêchement contre les descentes de l'ennemi. Secondement, les 50 pas sont réservés pour y faire des fortifications, s'il est nécessaire, afin de s'opposer aux descentes des ennemis et on a réservé cette terre pour ne rien prendre sur celle des habitants qui autrement auraient pu demander des dédommagements. En troisième lieu cette réserve est faite afin que chacun ait un passage libre au long de la mer, car sans cela, les habitants l'auraient empêché par des clôtures et par des oppositions qui, tous les jours, auraient causé des procès et des querelles parmi eux. En quatrième lieu, pour donner moyen aux capitaines de navires qui viennent aux isles d'aller couper du bois dans les 50 pas du Roi, pour leur nécessité car sans cela les habitants ne leur permettraient d'en prendre qu'en payant. La cinquième et la plus essentielle raison est celle de donner moyen aux artisans de se loger, car ils n'ont aucun fonds pour acheter des habitations, et qu'ils n'ont pour tout bien que leurs outils pour gagner leur vie. On leur donne aux uns plus, aux autres moins, des terres pour y bâtir des maisons mais c'est toujours à condition que, si le Roi a besoin du fonds sur lequel ils doivent bâtir, ils transporteront ailleurs leurs bâtiments. Or, sur ces 50 pas sont logés les pêcheurs, les maçons, les charpentiers etc, personnes nécessaires au maintien des colonies. »⁷⁴

53. However, for a period of around 30 years, between 1955 till 1986, the ‘50 pas géométriques’ were regarded as ‘*domaine privé*’⁷⁵ and hence property owners could legally hold freehold rights over such land, due to the alienability and prescriptibility of the lands. Nonetheless, the ‘*loi littoral of 3 January 1986*’ restored the zone to the State’s maritime public domain.⁷⁶

⁷⁴ Extract from the letter from M. De Baas, Governor General of the American Isles to the Minister (8 February 1674).

⁷⁵ Loi n° 55-349 du 2 avril 1955 et décret n° 55-885 du 30 juin 1955.

⁷⁶ Loi n° 86-2 du 3 janvier 1986 relative à l'aménagement, la protection et la mise en valeur du littoral.

(iv) **BARBADOS**

54. The Coastal Zone Management Act 1998 of Barbados came into force in order to provide for the more effective management of the coastal resources of Barbados, for the conservation and enhancement of those resources and for matters related thereto.
55. The Act puts an obligation upon the Director of the Coastal Zone Management Unit to draft a coastal zone management plan⁷⁷ to, inter alia, provide for the public access through and to the beach and other natural areas of the coastal zone.⁷⁸
56. The Act further defines the “*beach*” as the entire area associated with the shoreline, composed of unconsolidated materials, typically sand and beachrock, that extends landwards from the high water mark to the area where there is a marked change in material or natural physiographic form or to a distance of 500 metres landward from the mean high water mark, whichever is the lesser distance.⁷⁹
57. However, the Act remains silent as to the penalties to be imposed to someone denying access to the public beaches.

⁷⁷ Coastal Zone Management Act 1998, Pt. II, s 3 (a).

⁷⁸ Coastal Zone Management Act 1998, Pt. II, s 4 (1)(d).

⁷⁹ Coastal Zone Management Act 1998, Pt. I, s 2.

(C) RECOMMENDATIONS

58. It is imperative to articulate that the primary objective of this Issue Paper transcends the discourse on the delineation of accessible beachfronts under the prevailing legal framework. Instead, it seeks to meticulously examine the legislative provisions and the punitive measures instituted when access is unjustly restricted. As a precursor to formulating any recommendations, it is essential to elucidate the rights and obligations incumbent upon both beachgoers and leaseholders. This foundational clarity is crucial, as a significant proportion of disputes between these parties emanates from nebulous interpretations and misconceptions regarding the extents of accessible beach areas. Hence, by fostering an understanding grounded in legal precision, we aim to mitigate the frequency of such conflicts, paving the way for a more harmonious coexistence between the custodians of private beachfronts and the public, whose right to access is enshrined within the legislative framework.

Droit de passage

59. Beaches embody a dualistic nature: they are coveted for their recreational value and natural beauty but are also subject to private property rights when adjacent to privately owned land. The principle of “*droit de passage*” emerges as a pivotal mechanism to reconcile these competing interests, facilitating public access to beaches while respecting the boundaries of private ownership. Central to this discourse, the “*droit de passage*”, a legal concept ensure public passage across privately leased coastal lands without permitting the establishment of permanent presence or “stay” by beachgoers.

60. It should be noted that the vast majority of coastal properties are State land leased under the categorisation of “*pas géométriques*”. Furthermore, it has clearly been mentioned under the Pas Géométriques Act 1874 that the pas géométriques form part of the domaine public and are inalienable and imprescriptible.⁸⁰ Hence, the majority of hotels, bungalows or ‘campements’ which have been built upon the ‘*pas géométriques*’, hold leasehold rights over the land. The breadth of the pas géométriques is measured from the line of the seashore

⁸⁰ Pas Géométriques Act 1874, s 2(1).

which is reached by high water at spring tide, and which shall never be less than 81 metres and 21 centimetres.⁸¹ Consequently, the general public have the right to be on the beach, even on beaches in front of such hotels and bungalows, provided that they do not exceed the distance of 81 metres and 21 centimetres, as the land beyond this distance could be privatised following leasing to hotel and bungalow sites.

61. In the case of *Ricot J M & Ors v Mauriplage Beach Resort Ltd (2004) SCJ 329*, the applicants, who were fishermen by profession, prayed for the issue of an interlocutory injunction restraining and prohibiting the respondent and/or its préposés from proceeding with any beach and lagoonal works pending the determination of the appeal lodged before the Environment Appeal Tribunal. The respondent was constructing a hotel at Wolmar, Flic en Flac and had already obtained an EIA (“Environmental Impact Assessment”) licence for beach and lagoonal works, including the construction of a jetty to be carried out on the beach and in the lagoon in front of its hotel. The applicants, however, contended that such works would be environmentally damaging which could seriously handicap their fishing activities. Moreover, section 110 of the Criminal Code Supplementary Act 1838 was highlighted in this case and which expressly prohibits the obstruction of the free passage of pedestrians along the sea shore. The Judge eventually granted the interlocutory injunction *inter alia* restraining and prohibiting the respondent and/or its préposés from proceeding with any works which may obstruct the free passage of pedestrians along the seashore.

62. The principle of “*droit de passage*” is anchored in the broader doctrine of servitudes or easements in property law, which allows for the imposition of certain rights over a property for the benefit of another property or the general public. The right is limited to passage, prohibiting permanent or prolonged occupation of the beach by the public, thereby balancing the interests of private property owners and the public. The exercise of this right must be reasonable, not hindering the primary use of the property by its owners or leaseholders.

⁸¹ Pas Géométriques Act 1874, s 3(1).

Responsibility of beachgoers

63. This document does not intend to cast opprobrium on all beachfront individual owners or hotel entities, but also and above all aspires to underline the responsibilities of everyone, which includes the responsibility and duties also of beachgoers. Therefore, it is important to stress that beachgoers are obligated to adhere to the legal stipulations governing access to and use of privately leased beaches. This includes respecting clearly marked private property boundaries and adhering to any reasonable restrictions imposed by leaseholders on access or activities. They shall also be reminded that the “*droit de passage*” does not equate to unfettered access or use, especially where it infringes upon the rights and privileges conferred by the lease to private entities.
64. Moreover, shall it be on public beaches or privately leased beaches, the driving of buggies or other motorised vehicles should be banned or at least severely restricted. Furthermore, authorities should provide proper parking slots for beachgoers.
65. Ethical beachgoer conduct involves acknowledging the privacy and property rights of leaseholders, avoiding activities that could damage property or disrupt the peaceful enjoyment of the leased premises. Fostering a culture of respect and understanding between beachgoers and leaseholders can contribute to community cohesion, reducing conflicts and enhancing the enjoyment of coastal resources for all.

Restriction of motorised vehicles on the beach

66. Shall it be on public beaches or privately leased beaches, the driving of buggies or other motorised vehicles should be banned or at least severely restricted. Indeed, motorised vehicles pose a significant threat to the delicate coastal ecosystems. Beaches are home to various species of flora and fauna that are sensitive to disturbances.⁸²

⁸² The tires of buggies and other motorised vehicles can crush and destroy beach vegetation, which is crucial for preventing erosion and providing habitat for wildlife. Beaches are nesting grounds for many bird species and marine turtles. Vehicles can destroy nests, kill hatchlings, and disrupt the natural behaviour of wildlife. Furthermore, the weight of motorised vehicles compacts the sand, which can alter the natural drainage patterns of the beach and affect the organisms living within the sand, such as crabs and insects.

67. The presence of motorised vehicles on beaches poses a significant risk to the safety of beachgoers. High-speed driving can lead to accidents, causing injuries to people enjoying the beach. The unpredictability of vehicle movement in an area frequented by pedestrians, children, and pets creates a hazardous environment. Furthermore, authorities should provide proper parking slots for beachgoers.

Clear signage and information

68. Many complaints have been received from beachgoers, bungalow owners and hotel management with regards to their rights on beaches other than public beaches since there is no delimitation. Taking into consideration the provisions laid down in the Beach Authority Act, no one has the right to obstruct access to the space between the high water and low water mark since it is public.⁸³ Any obstruction to access to the public shall commit an offence and shall, on conviction be liable to a fine not exceeding 100,000 rupees.⁸⁴ However, since there is no indication of where the high water and low water mark is located, the Commission proposed that relevant authorities should demarcate them accordingly so that public are aware where they have freedom of access. In addition, where the *pas géométriques* extend to a distance of not less than 81 metres and 21 centimetres from the high-water mark and are leased, the relevant authorities should clearly delimit that space to make both the public and the lessee aware of their rights and restrictions. The relevant authorities shall also have the duty to inform the public of the conditions attached to that leased part of the *pas géométriques* in order to avoid any occurrence of offences. This issue also necessitates appropriate action from relevant authorities such as the Beach Authority and the Ministry of Housing and Land Use Planning. As such, it is proposed that extensive sensitisation campaign should be carried out by the above relevant authorities to make public aware and appropriate enhancement programme should be offered to officers and enforcement agencies for proper monitoring and compliance.

⁸³ Beach Authority Act 2002, Section 2.

⁸⁴ The Criminal Code (Supplementary) Act 1870, Section 110.

69. Effective signage and public information campaigns can help clarify the boundaries of leased beaches and the expectations for public conduct within these areas. Indeed, clear, unambiguous signage plays a critical role in demarcating the precise boundaries of beaches under private lease agreements.
70. The development of signage and information materials should involve a collaborative effort among stakeholders, including local authorities, private leaseholders, environmental experts, and community representatives. This collaboration ensures that the signage addresses legal, environmental, and community needs comprehensively. Signage must be highly visible and accessible, employing universal symbols and languages understood by the broadest audience possible, such as Mauritian Creole, French and English. This inclusivity ensures that both locals and visitors can comprehend the information, regardless of linguistic diversity. For signage and public information campaigns to remain effective, they must be maintained consistently. This includes regular updates to reflect any changes in legal status, environmental guidelines, or access rights, as well as physical maintenance of the signage itself.
71. However, coastal areas are inherently dynamic, subject to the whims of natural forces such as tides, storms, and erosional processes. These forces can dramatically alter beach landscapes, affecting access routes and the stability of infrastructure, including signage. A strategic approach must, therefore, accommodate these changes,⁸⁵ ensuring both the longevity of signage and the safety of beachgoers.

Enhancing law enforcement presence and training on beaches

72. In order to address and mitigate conflicts between beachgoers and beachfront property owners effectively, it is recommended to establish a dedicated presence of law enforcement officers on every beach, or to create a specialized beach patrol unit. These officers should receive specialized training focused on conflict resolution, mediation, and the legal

⁸⁵ Beaches may feature dunes, cliffs, wetlands, and other natural formations that influence access points and paths. Signage must guide the public in navigating these features safely, without causing environmental harm. Also, erosion can alter beach contours and access conditions, necessitating adaptive signage strategies that can be updated or relocated as the shoreline shifts.

specifics of beach access rights. This initiative aims to foster a safe, peaceful, and enjoyable beach environment for all parties involved.

73. Thus, it is suggested to deploy police officers or establish a specialized beach patrol unit on every beach, especially those with high visitor frequencies and significant interaction between public beachgoers and private beachfront property owners. This presence should be consistent, visible, and equipped to handle disputes and enforce beach access laws. Moreover, specialized training for all beach patrol officers should be provided, that includes:

- Knowledge of local and national laws regarding public access to beaches, especially those adjacent to private properties;
- Techniques in conflict resolution and mediation to manage disputes between beachgoers and property owners without escalating situations;
- Cultural sensitivity training to handle diverse populations and scenarios that may arise in beach environments; and
- Environmental laws related to beach use and preservation, ensuring officers can also address ecological violations effectively.

74. Furthermore, a policy should be implemented requiring beach patrol officers to accept and document every complaint related to beach access conflicts. Officers should not refuse to take complaints under any circumstances, ensuring accountability and responsiveness to all community members.

75. Officers should actively engage in mediation efforts to resolve conflicts on-site, aiming to de-escalate tensions and provide immediate solutions where possible. This approach should prioritize understanding and accommodating the concerns of both beachgoers and property owners, maintaining peace and order.

76. Beach patrol officers should be equipped with materials (e.g., brochures, flyers) that clearly outline the state of the law concerning access to beaches in front of leased properties. They should proactively educate the public about these laws to prevent misunderstandings and

conflicts. Regular public education campaigns should be conducted to inform both tourists and local residents about their rights and responsibilities regarding beach use, enhancing overall compliance and reducing the likelihood of disputes.

77. Finally, a system should be established for collecting feedback from both beachgoers and property owners on the effectiveness of the beach patrol officers. Such feedback shall be used to continuously improve training programs and patrol practices. And regular reviews of beach patrol operations to ensure that they are adequately meeting the needs of the community and effectively managing beach-related conflicts.

78. These recommendations aim to create a more structured and effective approach to managing conflicts on beaches, ensuring that both beachgoers and property owners feel safe, respected, and understood. By implementing these measures, local authorities can foster a more harmonious coexistence between different stakeholders in beach areas, enhancing the overall beach experience for everyone.

Integrating environmental education to promote responsible beach behaviour from a young age

79. Incorporating environmental education into school curricula is a crucial step towards fostering a culture of responsible beach behaviour from a young age. This initiative aims to instil a sense of stewardship for the natural environment among students, emphasising the importance of protecting coastal ecosystems and promoting sustainable practices. By embedding environmental education into the curriculum, schools can provide students with a comprehensive understanding of the ecological, social, and economic significance of beaches and coastal areas. Firstly, environmental education can cover the basics of coastal ecosystems, including the diverse flora and fauna that inhabit these areas. Students can learn about the delicate balance that exists within these ecosystems and how human activities, such as littering, pollution, and irresponsible recreation, can disrupt this balance. Interactive lessons and field trips to local beaches can provide hands-on learning experiences, helping students to connect theoretical knowledge with real-world observations. Moreover, integrating environmental education into the curriculum can

involve teaching students about the principles of sustainability and conservation. This can include topics such as reducing plastic waste, recycling, and the importance of preserving natural habitats. By understanding the impact of their actions, students can be encouraged to adopt more environmentally friendly behaviours, such as participating in beach clean-ups, using reusable items, and advocating for policies that protect coastal areas. Additionally, environmental education can address the cultural and recreational significance of beaches, highlighting the need for respectful and responsible behaviour. Students can learn about the historical and cultural connections that communities have with coastal areas, fostering a deeper appreciation for these environments. Lessons can also cover the rules and regulations governing beach use, such as respecting wildlife, staying on designated paths, and not disturbing natural formations.

80. To ensure the effectiveness of environmental education, it is important to adopt a multidisciplinary approach. Subjects such as science, geography, social studies, and even art can be integrated with environmental themes. This not only enriches the learning experience but also helps students to see the interconnectedness of environmental issues with various aspects of life and society. Furthermore, involving the broader community in environmental education initiatives can enhance their impact. Schools can collaborate with local environmental organizations, government agencies, and community groups to provide students with opportunities for engagement and activism. This can include guest lectures, community service projects, and participation in local environmental campaigns. Ultimately, incorporating environmental education into school curricula aims to create a generation of environmentally conscious individuals who are equipped with the knowledge and skills to make responsible choices. By instilling responsible beach behaviour from a young age, we can ensure that future generations will continue to enjoy and protect our coastal environments. This proactive approach not only benefits the environment but also promotes the well-being of communities that rely on healthy and sustainable coastal areas.

Legislative Proposals

81. In light of the above analysis, the Law Reform Commission opines as to the suitability of introducing new statutory provisions that would incriminate the denial of access to public

beaches. The Commission takes note that although the Criminal Code (Supplementary) Act provides that *any person who, without lawful authority, obstructs or prevents the free passage of a pedestrian on the seashore shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees*, neither does such provision cater for harassment nor differentiates between the category of offenders. Moreover, failure to abide by same is not enough severely punished.

82. Often, the only recourse that victims suffering from unjustly being denied access to public beaches is through bringing civil actions against the defendant(s). Unfortunately, it is observed that although reliance may be sought from existing statutory provisions, including, *inter alia*, the Pas Géométriques Act, which mentions that the reserved lands along the sea coast form part of the “*domaine public*”,⁸⁶ yet those bringing civil actions in courts cannot adequately be compensated in damages, due to the latter being unquantifiable.

83. Therefore, the Law Reform Commission is proposing the following options:

- (i) Option 1 - Either to amend the Beach Authority Act, to include a section for penalties and offences; or
- (ii) Option 2 - To draft a new legislation with the objective of criminalising the act of denying access to the general public to beaches.

84. As far as option 1 is concerned, section 5 of the Beach Authority Act, as part of the Beach Authority’s functions, could be amended to include a new section as follows:

“ensure free and unhindered access of public beaches by the public in general.”

85. The Commission further believes that it would be in the interest of the public that a new section be introduced under the Beach Authority Act which would deal with penalties and offences. As such, the new section could potentially make it a strict liability offence to

⁸⁶ Article 538 of the Civil Code provides that “*Les chemins, routes et rues à la charge de la nation, les fleuves et rivière navigables ou flottables, les rivages, lais et relais de la mer, les ports, les havres, les rades, et généralement toutes les portions du territoire national qui ne sont pas susceptibles d’une propriété privée, sont considérées comme des dépendances du domaine public.*”

whoever denies the public in general the free and unhindered access to public beaches. Consequently, anyone restricting access to public beaches could be found guilty of a fine not exceeding Rs 100,000 and to imprisonment for a term not exceeding 5 years.

86. With regards to Option 2, the Law Reform Commission has proposed a draft bill, namely the ‘*Public Beach Access and Protection Bill*’ and which has been annexed to this Issue Paper as “*Annexe 4*”. The aim of this Bill is to provide a legal framework to protect the rights of local citizens and foreigners alike, to freely access any public beach and without any obstruction or harassment that could hinder these individuals from enjoying this right.
87. The Commission has duly considered that the Beach Authority would be responsible for enforcing the proposed Bill, given that its main objective under the Beach Authority Act 2002 is to manage and control public beaches. Under the new proposed Bill, the Commission has introduced key criminal offences, which were inexistent in the current Mauritian legislation, namely the obstruction and harassment of the general public by any individual or private entity from accessing or attempting to access any public beach in Mauritius. The Law Reform Commission is fully aware of the unfortunate injustice and possible discrimination that could be reigning in the country with regards to access to public beaches. Below is an extract from a local newspaper, relating to the incident when a person was “*repoussée sur la plage de Pointe-aux-Canonnières alors qu'elle avait posé ses affaires pour aller se baigner. Le propriétaire de la maison située sur cette plage aurait dit que cette partie de la plage lui appartient avant de donner un coup de pied dans ses affaires*”.⁸⁷
88. By drafting this Bill, the Law Reform Commission intends to send the right signal to individuals as well as owners or staffs of private entities (including hotels, resorts, ‘*campements*’) that public beaches, even when leased, cannot be privately owned by anybody, and so, it is unlawful to obstruct, harass or deny access to any public beach to the general public as long as the latter exercise his rights with civility and restraint.

⁸⁷ Defimedia.info (12 Feb 2023)

CONCLUSION

89. Governments and authorities, in line with the Universal Declaration of Human Rights, should ensure that access to public beaches is safeguarded as a part of broader human rights principles, promoting inclusivity, equal access, and non-discrimination in enjoying these natural resources.
90. Establishing stringent penalties for harassment or obstruction holds individuals and entities accountable for their actions. This accountability is vital in promoting responsible behaviour among those in positions of power or authority, including hotel employees and other stakeholders. Public beaches are communal spaces that should foster social cohesion and mutual respect among diverse groups. Harassment or obstruction not only denies individuals the enjoyment of public spaces but also infringes upon their dignity. Severe penalties reaffirm the value that society places on individual rights and the unacceptable nature of such violations.
91. Consequently, the Commission has suggested two options, the first option being that the Beach Authority Act could be amended so that the Beach Authority would have a new function, i.e., to ensure that anyone has free and unhindered access to public beaches in Mauritius and the imposition of penalties for anyone who contravenes this Act by denying access to public beaches. The second option relates to a new draft Bill, namely ‘*The Public Beach Access and Protection Bill*’, which would provide for a legal framework to protect the rights of local citizens and foreigners alike, to freely access any public beach and without any obstruction or harassment that could hinder these individuals from enjoying this right.
92. Mauritius, being an idyllic island destination, is entirely surrounded by the sea, thus giving it stunning coastlines and beautiful beaches all around its perimeter. While it is essential to develop the tourism industry by erecting new hotel and accommodation facilities, due care and attention must be given not to infringe the rights of Mauritians as well as foreigners from accessing the public beaches.

ANNEXE 1: Extract from the Mauritius Government Gazette concerning proclamation of public beach

1109 The Mauritius Government Gazette

~~1109 The Mauritius Government Gazette~~

**NOTICE UNDER SECTION 2 OF THE
 BEACH AUTHORITY ACT 2002
 PUBLIC BEACH**

Notice is hereby given that I have decided to declare as "public beach" the two portions of land described in the schedule below being part of State Land Roches Noires Village situate in the district of Rivière du Rempart of the respective extent of two thousand five hundred and forty eight and twenty five hundredths square metres (2548.25m²) and one thousand three hundred and eighty six and eight hundredths square metres (1386.08m²).

This 08 July 2022

The Honourable Louis STEVIE OBEICADGO
*Deputy Prime Minister,
 Minister of Housing and Land Use Planning,
 Minister of Tourism*

SCHEDULE

Portion 1

A portion of State Land of an extent of two thousand five hundred and thirty eight and twenty five hundredths square metres (2538.25m²), bearing PIN 1312100185, being part of State Land Roches Noires Village situate in the district of Rivière du Rempart bounded as follows:-

Towards the North by the High Water Mark of the sea

Towards the East by the High Water Mark of the sea

Towards the South by Poutre D'Or - Poste De Flag Road (B15) on a developed length measuring ninety six metres and six centimetres (96.15m)

Towards the West by Surplus of State Land Roches Noires Village (leased to Mrs. Marie Philippe Françoise MAILLET as evidenced by deed transcribed in TN 458/102) on twenty six metres and sixty nine centimetres (26.69m)

SCHEDULE

Partion 2

A portion of State Land of an extent of one thousand three hundred and eighty six and eight hundredths square metres (1386.08m²), bearing PIN 1312100167, being part of State Land Roches Noires Village situate in the district of Rivière du Rempart bounded as follows:-

Towards the North partly by the High Water Mark of the sea and partly by Surplus of State Land Roches Noires Village (leased to Monsieur Kuni Ram) as evidenced by deed transcribed in TB 462/82) on thirty three metres and thirty centimetres (33.30m)

Towards the East by Surplus of State Land Roches Noires Village on twenty two metres and thirty three centimetres (22.33m)

Towards the South by Poutre D'Or - Poste De Flag Road (B15) on a developed length measuring one hundred and sixty two metres and twenty two centimetres (162.22m)

Towards the West by the High Water Mark of the sea

ANNEXE 2: List of Public Beaches in Mauritius (Region-wise)

NORTHERN REGION

(Baie du Tombeau to Von Moltke)

SN	Name	Extent (Ha)	Sea frontage (m) (approx.)	G.N.
1.	Baie du Tombeau	0.987	108	563/2018
2.	Le Goulet	3.5455	470	439/1991
3.	Pointe aux Piments (Pointe Oberoi) – Portion 1	1.4054	146	179/1991
4.	Pointe aux Piments (between Le Meridien & Victoria Hotels) – Portion 2	1.0857	122	179/1991
5.	Pointe aux Piments (near Fish Landing Station) – Portion 3	2.4861	715	179/1991
6.	Pointe aux Piments (Main Beach)	0.1632	111	2138/2001
7.	Pointe aux Piments (opposite Aquarium) – Portion 4	1.4345	300	179/1991
8.	Part of P.G. & Govt Reserves at Pointe aux Piments	0.6064	138.8	2175/2014
9.	Pointe aux Piments (Pnear Colonial Hotel) – Portion 5	0.6493	244	179/1991
10.	Pointe aux Piments (known as Pointe Cimetière) – Portion 6	4.0055	740	179/1991
11.	Pointe aux Piments (Pointe aux Biches) – Portion 7	0.4998	40	179/1991

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12.	Trou aux Biches (opposite Ex-Aquarium)	2.5826	700	206/1940
13.	Trou aux Biches (in front of Police Station)	0.8827	73.15	143/1984
14.	Trou aux Biches (opposite Casuarina)	0.95	215	438/1991
15.	Mont Choisy	16.7386	1377	1529/1982
16.	The Vale	0.3207	62.5	206/1940
17.	Part of P.G. The Vale	0.115	73.75	2175/2014
18.	Grand Baie (near National Coast Guard)	0.0844	96	290/2010
19.	Grand Baie	1.22	346	604/1991
20.	Grand Baie (Lot 3)	0.1670	130	93/2017
21.	Grand Baie (near Sunset Boulevard)	0.117	138	1337/2021
22.	La Cuvette	1.7775	310	149/1991
23.	Pereybere	1.7635	108	1329/1991
24.	Bain Boeuf	2.2	727	494/1991
25.	Cap Malheureux	0.22	39	497/1991
26.	P.G. Union Ribet	17.37	1162.5	496/1991 & 1253/2019
27.	Anse La Raie	0.625	110	385/1991
28.	Butte à l'Herbe	8.7675	560	386/1991
29.	Belle Vue Cugnet	0.3044	155.88	998/2005
30.	Belle Vue Cugnet	0.5719	197.67	998/2005
31.	Belle Vue Cugnet	0.65	220	610/1991
32.	Grand Gaube	0.32	62	606/1991
33.	P.G. Melville (Part of)	2.113	330	560/2010
34.	P.G. Melville (Part of)	2.149	525	560/2010
35.	Islet Matapan & Pt. of P.G. Melville	4.9588	1050	687/1963

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36.	Poudre d'Or	4.23	848	607/1991
37.	Pointe des Lascars	0.5679	176	2240/2015
38.	Von Moltke -- original Ext: o.6590 Ha – Deproclaimed Ext: 0.058 Ha GN 689/1997	0.601	137	1424/1990
39.	Roche Noires (Portion 1)	0.2538	-	1177/2022
40.	Roche Noires (Portion 2)	0.1386	-	1177/2022
Total		89.6283	13,064.25	

SOUTHERN REGION

(Remy Ollier to Baie du Cap)

SN	Name	Extent (Ha)	Sea Frontage (m) (approx.)	G.N.
1.	Remy Ollier Square	0.41	180	440/1991
2.	Mahebourg Village	0.18	107	440/1991
3.	P.G. Rivière La Chaux	0.13	114.25	1565/2019
4.	Blue Bay	4.8361	400	206/1940
5.	La Cambuse	4.829	692	1227/2014
6.	Part of La Cambuse	1.902	0	1226/2014
7.	Le Bouchon	10.9743	1475	747/1984
8.	Pont Naturel	0.844	162.5	2145/1996
9.	P.G. Virginia	2.5325	314.1	366/2013
10.	Le Souffleur	2.05	180	2146/1996
11.	Terracine	6.14	1048	605/1991
12.	Gris Gris	3.798	220	206/1940
13.	Telfair	1.3715	285	206/1940
14.	Telfair (Lot 2)	0.292	65.85	1266/2018
15.	Near Souillac Cemetery	1.266	885	206/1940
16.	Surinam	0.3376	100	206/1940
17.	Riambel	0.8094	145	221/2017
18.	Pomponette	4.3858	477	222/2017
19.	Saint Felix (inclusive of 0.6343 ha – GN 495/1991)	6.6456	819	214/2005
20.	Rivière des Galets	11.6074	1530	493/1991
21.	Bel Ombre	6.5423	579	1324/04
22.	P.G. Bel Ombre	0.1351	73.13	367/2013
23.	Ruisseau des Creoles	0.9286	666.82	368/2013
24.	Part of Ruisseau des Créoles Village	1.5474	222	45/2014

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25.	Baie du Cap	0.0642	40	1212/2016
Total		74.5588	10,780.65	

EASTERN REGION

(Roche Noires to Rivière des Créoles)

SN	Name	Extent (Ha)	Sea Frontage (m) (approx.)	G.N.
1.	Roche Noires	2.13	350	1471/1990
2.	Poste Lafayette	0.963	130	1393/1990
3.	Poste Lafayette (near Police Memorial)	7.174	620	20/1991
4.	Poste Lafayette	0.439	30	347/1991
5.	Bras d'Eau	2.732	650	206/1991
6.	Choisy (Part of P.G.)	1.6883	200	206/1991
7.	Mare aux Lubines	1.485	140	645/2009
8.	Belle Mare (Part of P.G.)	0.27	280	180/1991
9.	Belle Mare (Main Beach)	17.3858	1500	180/1991
10.	Belle Mare (near Residence Hotel)	8.4417	430	976/1964
11.	Belle Mare (near Residence Thalassa Hotel)	2.955	210	180/1991
12.	Palmar (near Ambre Hotel)	1.1438	150	180/1991
13.	Palmar (near Surcouf Hotel)	0.6458	230	180/1991
14.	Palmar (Main Beach)	18.4874	1400	180/1991
15.	Quatre Cocos Village (Carro Bringel)	0.2596	100	718/1991
16.	Trou d'Eau Douce (near Le Tropical Hotel)	0.9075	360	719/1991
17.	Trou d'Eau Douce (near Four à Chaux)	3.1631	750	1421/1991
18.	G.R.S.E.	0.477	110	1234/1997
19.	Camp des Pêcheurs	0.1748	155	1234/2015

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20.	Quatre Soeurs	1.0945	723	1234/2015
21.	Grand Sable	0.0492	14.63	966/2007
22.	Grand Sable	0.105	66	150/1991
23.	Grand Sable (Lot 3)	0.1440	174	283/2016
24.	Petit Sable	0.8213	323	2265/2010
25.	Petit Sable (Toilet Block & Parking Space)	0.3901	0	1065/2012
26.	Pointe du Diable	0.19	71.18	146/1991
27.	Bambous Virieux (Portion 3)	0.1506	75.32	2264/2010
28.	Bambous Virieux (Portion 2)	0.2157	110.4	2264/2010
29.	Bambous Virieux (Portion 1)	0.1431	87	2264/2010
30.	Providence	0.2013	130.8	364/2013
31.	Bois des Amourettes (Lot 1)	0.971	275	178/1991
32.	Bois des Amourettes (Lot 2)	0.1449	45.73	283/2016
33.	Bois des Amourettes (Lot 3)	0.0936	80	283/2016
34.	P.G. Vieux Grand Port	0.1089	76	365/2013
35.	Old Grand Port	0.235	59	148/1991
36.	Rivière des Créoles	0.435	257	147/1991
Total		76.416	10,363.06	

WESTERN REGION

(P.G. La Prairie to Sable Noir)

SN	Name	Extent (Ha)	Sea Frontage (m) (approx.)	G.N.
1.	P.G. La Prairie	6.3454	509.87	372/2013
2.	La Prairie	2.216	300	348/1991
3.	P.G. La Prairie	3.1618	451.39	371/2013
4.	P.G. L'Embrasure	4.7	1930	1473/1997
5.	La Pointe Cassis (Le Morne Village)	5.5749	1940	2755/2014
6.	Le Morne Brabant (Pointe Sud Ouest)	10.9479	1000	384/1991
7.	P.G. Le Morne (near Berjaya Hotel) – original Ext 0.4560 Ha – Deproclaimed Ext: 397.75 m ²)	0.4162	40	812/1991
8.	P.G. Le Morne	5.327	500	1565/1995
9.	P.G. Comptesse La Marque	13.1	1395	62/1998
10.	P.G. Petit Case Noyale	0.9652	461.57	370/2013
11.	P.G. Petit Case Noyale	0.16	35.98	369/2013
12.	P.G. Petit Case Noyale	0.2448	282.37	374/2013
13.	P.G. Les Salines Koenig	2.0879	140.89	37/2013
14.	La Preneuse	0.5275	83	348/1991
15.	La Preneuse	0.0717	0	655/2010
16.	Tamarin	2.1859	410	206/1940
17.	Wolmar	1.26	50	348/1991
18.	Flic en Flac/Wolmar (near Pearl Beach Hotel)	12.7498	1795	142/1984

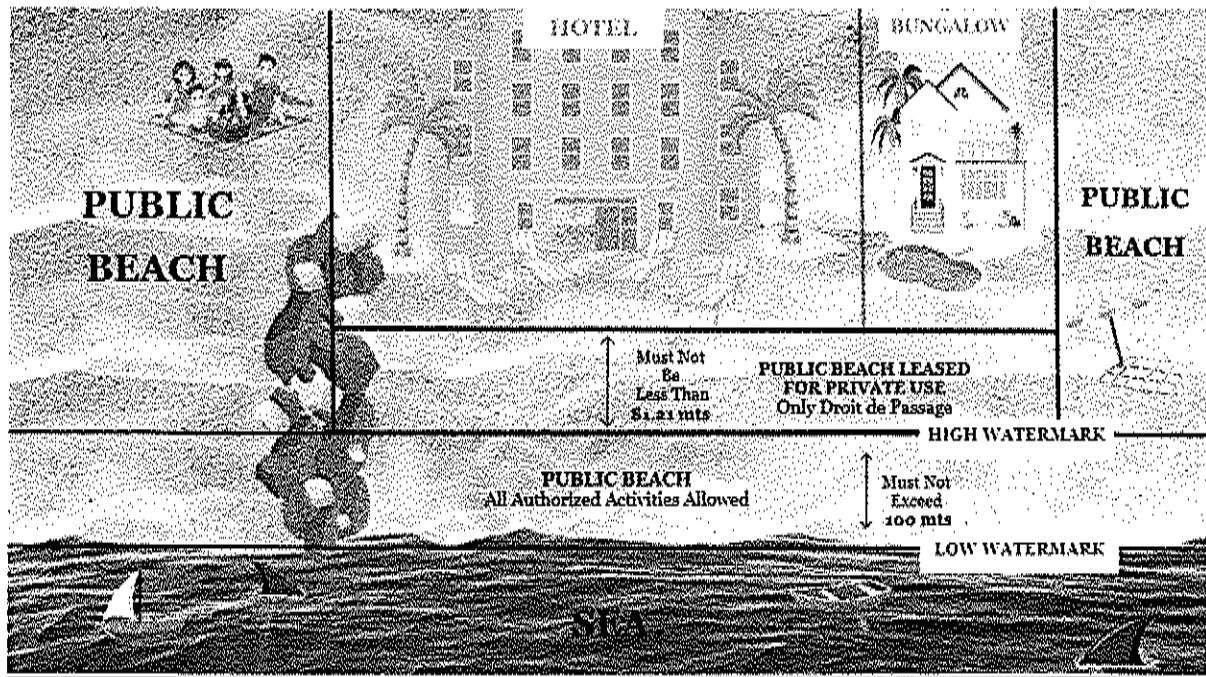
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19.	Flic en Flac (opposite Manisha Hotel)	2.1104	545	206/1940
20.	Flic en Flac (opposite Restaurant Ocean)	2.1	512	63/1998
21.	Flic en Flac (Ex – Nautical Centre Site)	0.4221	68	2426/2015
22.	Flic en Flac (near Débarcadère)	1.2805	180.3	730/2021
23.	P.G. Anna	0.42	105	348/1991
24.	P.G. Albion	1.75	205	61/1998
25.	P.G. Mon Plaisir	2.11	250	609/1991
26.	Petit Verger	0.219	62	206/1940
27.	Petit Verger	0.211	50	206/1940
28.	Petit Verger (near Prison) (Tilac)	1.7815	160	811/2017
29.	Pointe aux Sables	1.14	88	206/1940
30.	Pointe aux Sables (near Fisheries Post and Training Centre)	0.338	68	635/2006
31.	Pointe aux Sables (Martello)	0.634	77	1899/2009
32.	G.R.N.W (Sable Noir)	0.683	198	2118/1999
33.	Sable Noir (Extended)	0.38	132	1066/2012
Total		87.6215	14,025.37	

ANNEXE 3: Demarcation and usage guidelines for beaches



ANNEXE 4: Draft Bill

THE PUBLIC BEACH ACCESS AND PROTECTION BILL

(No. ... of 2024)

Explanatory Memorandum

The main object of this Bill is to provide for a legal framework to recognise the fundamental right of access to users of public beaches in Mauritius.

...

Minister of ...

.... 2024

THE PUBLIC BEACH ACCESS AND PROTECTION BILL

(No. ... of 2024)

ARRANGEMENT OF CLAUSES

Clause

PART I – PRELIMINARY

1. Short title
2. Interpretation
3. Application of Act
4. Prohibition from obstruction
5. Prohibition from harassment
6. No defence for acts committed by private entity’s staff
7. General conduct on public beaches

8. Right of access to public beaches
9. Enforcement
10. Public Awareness and Education
11. Powers of Minister
12. Protection from liability
13. Offences
14. Regulations
15. Consequential amendments
16. Commencement

A BILL

To make provisions for a legal framework for the right of access to users of public beaches and to criminalise any form of obstruction or harassment impeding access to public beaches

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Public Beach Access and Protection Act 2024.

2. Interpretation

In this Act –

“Authority” means the Beach Authority established under the Beach Authority Act 2002;

“authorised officer” means an officer of the Authority authorised as such by the Authority;

“harassment” includes any form of reiterated intimidation or use of abusive languages;

“Minister” means the Minister to whom responsibility for the Beach Authority is assigned;

“Ministry” means the Ministry responsible for the Beach Authority;

“non-citizen” has the same meaning as in the Immigration Act 2022;

“obstruction” includes impeding access to users of public beaches by placing barriers; structures or buildings;

“private entities” includes hotels, resorts, ‘*campements*’;

“public beach” has the same meaning as in the Beach Authority Act 2002.

“public Beach Access Zone” means the area in front of properties to which leases of “*pas géométriques*” have been granted.

3. Application of Act

(1) This Act shall bind the State.

(2) This Act shall have effect notwithstanding any other enactment relating to public beaches.

(3) This Act shall be in addition to, and not in derogation of, the Beach Authority Act 2002 and the Environment Protection Act 2002.

4. Prohibition from obstruction

No person shall obstruct any individual from accessing or attempting to access any public beach, which comprises of the space between the high-water mark up to a distance of 100 metres from the low-water mark.

5. Prohibition from harassment

No person shall harass any individual from accessing or attempting to access any public beach, which comprises of the space between the high-water mark up to a distance of 100 metres from the low-water mark.

6. No defence for acts committed by private entity’s staff

The fact that an employee or staff of a private entity commits an offence under subsections 4 and 5, under an employer’s orders, shall not be a defence.

7. General conduct on public beaches.

- (1) No individual shall establish temporary or permanent settlements within the Public Beach Access Zone.
- (2) No individual shall establish fire camps within the Public Beach Access Zone.
- (3) Loitering within the Public Beach Access Zone is prohibited.
- (4) The creation of loud noises, whether through vocal activities, music, or any other means, that could disturb the tranquillity of beachfront owners is strictly prohibited.
- (5) Engaging in activities that are likely to disturb the privacy or enjoyment of beachfront owners who have been leased beachfront lands is prohibited.

8. Right of access to public beaches

- (1) The Ministry responsible for the subject of environment shall take appropriate measures to ensure the free and unhindered access of the

public in general to any public beach, at all times, subject to subsection (2).

- (2) The Minister, may, for reasons provided by law, impose a temporary restriction from accessing any public beach, for the public health, public safety or for environmental concerns.

9. Enforcement

(1) The Beach Authority shall be responsible for the enforcement of this Act.

(2) Any person who –

- (a) Has unlawfully been obstructed or harassed from accessing or attempting to access any public beach; or
 - (b) Witnesses any obstruction or harassment on any public beach;
- shall forthwith report the matter to the Authority.

10. Public awareness and Education

The Authority in collaboration with every Government department, local authority and statutory body, shall undertake public awareness campaigns to educate both the public and private entities about the provisions of this Act.

11. Powers of Minister

(1) The Minister may give such directions of a general nature to the Board, not inconsistent with this Act, as he considers necessary in the public interest, and the Board shall comply with such directions.

(2) The Minister may require the Board to furnish such information in such manner and at such time as he thinks necessary with respect to the activities of the Authority and the Board shall supply such information.

12. Protection from liability

No liability, civil or criminal, shall attach to the Authority, or to any member or officer, in respect of any act done or omitted to be done in good faith in the discharge of its or his functions under this Act.

13. Offences

Any person who commits an offence under sections 4, 5, 6 or 7 shall be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

14. Regulations

- (1) The Minister may make such regulations as he thinks fit for the purposes of this Act.
- (2) Any regulations made under subsection (1) may provide –
 - (a) for the levying of fees and the taking of charges; and
 - (b) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 1 year.

15. Consequential amendments

- (1) The Beach Authority Act is amended, in section 5, by inserting, after section 5(e), the following new section –

5(f) ensure free and unhindered access of public beaches by the public in general.
- (2) The Criminal Code (Supplementary) Act is amended by repealing Section 110.

16. Commencement

This Act shall come into operation on a date to be fixed by Proclamation.