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WORLD ENVIRONMENT DAY

LAW REFORM COMMISSION OF MAURITIUS

LRC

LAW REFORM COMMISSION

13th Floor, SICOM Building 2,
Reverend Jean Lebrun Street
Port-Louis
Republic of Mauritius

Phone: (230) 212 3816 / 212 4102
Fax: (230) 212 2132

E-mail: lrc@govmu.org
Website: lrc.govmu.org

Édito par Sabir KADEL
Chief Executive Officer, Law Reform Commission

L'écologie est un humanisme

Et si l'humain, ce « roseau pensant », cet être si fier de sa pensée, de ses monuments, de ses inventions, n'était plus l'architecte du monde, mais son vandale ? Et si la nature, lasse de nos serments creux et de nos lois aveugles, nous regardait désormais comme on regarde un feu mal éteint, prêt à tout ravager ? Dans les yeux livides d'un dauphin échoué, dans la fuite d'un singe qui n'a plus d'arbre, dans le cri muet des coraux blanchis, ne lit-on pas déjà notre condamnation ? Le chant étouffé des rivières mortes, le soupir d'un arbre abattu, la plainte invisible d'un ciel en feu - voilà les nouveaux versets d'une prière sans destinataire.

Il faut dire que nous avons été constants : extraction, béton, déchets, extinction — le quatuor de notre symphonie civilisationnelle. Et pendant que nous débattons sur le recyclage des pailles en plastique, les tortues de mer, elles, rédigent déjà leur lettre de rupture avec l'humanité.

Ce 5 juin, à l'occasion de la Journée mondiale de l'environnement, la *Law Reform Commission* se joint à la communauté internationale non pas pour distribuer des bons points, mais pour se poser une question rude et essentielle : **sommes-nous encore capables de vivre avec le monde, plutôt que simplement *à ses dépens* ?**

Depuis plusieurs années, la Commission a entrepris un travail de fond pour inscrire les préoccupations écologiques dans le tissu même du droit mauricien. Non pas comme un ornement vert, mais comme une refondation de nos priorités normatives. Le droit, outil d'organisation sociale par excellence, ne saurait rester indifférent à la grande bascule environnementale que connaît notre siècle.

Un premier chantier a porté sur la nécessaire évolution de **notre conception juridique des animaux**. Le Code civil mauricien les traite encore comme des *biens meubles*, échappant ainsi aux régimes protecteurs que la morale contemporaine et la science éthologique imposent. Inspirée des réformes françaises de 2015, la Commission a proposé que soit reconnue dans le droit positif la qualité d'**êtres vivants doués de sensibilité**, dotés de droits spécifiques et protégés contre les traitements cruels. L'animal ne parle pas, mais il souffre : cela suffit pour fonder un devoir.

La Commission a également réexaminé, avec une vigueur critique, les lois et règlements relatifs à l'accès aux plages - ces lignes de rencontre entre l'humain et l'océan, souvent privatisées, parfois volées. Dans une île où l'espace littoral est restreint mais constitutif de l'identité nationale, garantir **l'accès libre, équitable et durable aux plages** est un impératif de justice sociale autant qu'un acte écologique.

Dans une autre veine, plus discrète, mais tout aussi urgente, la Commission a mené des travaux préliminaires pour encadrer et **réduire le gaspillage alimentaire**, fléau paradoxal d'un pays où coexistent l'abondance et le manque. S'inspirant des législations étrangères, elle a plaidé pour un cadre légal qui incite les entreprises et supermarchés à redistribuer les invendus, plutôt que de les jeter. L'idée est simple : faire du *droit au rebut*, non pas un permis de polluer, mais une obligation de partage.

Édito par Sabir KADEL
Chief Executive Officer, Law Reform Commission [Cont'd]

L'écologie est un humanisme

Mais au-delà des actions ponctuelles, ce sont les **fondements philosophiques du droit écologique** que la Commission entend aujourd'hui rappeler. **Hans Jonas**, dans son maître-ouvrage *Le Principe responsabilité*, lançait cet avertissement resté trop confidentiel : *« Agis de façon que les effets de ton action soient compatibles avec la permanence d'une vie authentiquement humaine sur terre ».* Jonas propose **un principe de précaution élargi**, où le législateur ne se contente plus de réparer, mais anticipe, prévient, protège l'irréversible. Le risque ne se calcule plus seulement en dommages, mais en dettes envers les générations futures - et même envers les formes de vie non humaines.

Ce devoir de précaution s'inscrit dans une tradition plus ancienne encore : **celle de Spinoza**, pour qui la nature n'est ni un décor, ni une ressource, mais une totalité vivante, dotée de sa propre rationalité. Dans l'*Éthique*, il distingue deux *natura* : *Natura naturans*, la nature créatrice, principe actif, et *Natura naturata*, la nature créée, effets et manifestations. Dans cette perspective, détruire l'environnement, c'est se mutiler soi-même. Faire une loi contre la déforestation ou la pollution, ce n'est pas préserver un patrimoine, c'est **se préserver** - corps pensant parmi d'autres corps pensants, partie parmi d'autres parties d'un Tout qui nous dépasse.

À cette réflexion philosophique s'ajoute un appel moral d'une rare intensité, venu non pas d'un philosophe, mais d'un chef spirituel : **le pape François**, dans son encyclique *Laudato Si'* (2015), a formulé avec puissance la nécessité d'une **conversion écologique intégrale**.

Il y écrit : *« Il n'y a pas deux crises séparées, l'une environnementale et l'autre sociale, mais une seule et complexe crise socio-environnementale »*. Pour ce pape, inspiré par François d'Assise, le soin de la planète est inséparable du soin des pauvres ; la destruction de l'environnement est toujours aussi une forme de violence faite aux plus vulnérables. Il y appelle à repenser nos lois et nos modes de vie à l'aune de la sobriété, de la responsabilité intergénérationnelle, et d'une éthique de la fraternité avec toute la création. *Laudato Si'* ne parle pas seulement aux croyants, mais à toute conscience encore capable de trembler devant l'effondrement du vivant. Dans cet esprit, notre mission juridique se fait aussi **mission éthique**, voire spirituelle : donner aux lois le pouvoir de protéger ce qui, sans nous, ne peut se défendre.

De là découle une évidence, encore absente de notre loi suprême : **les droits environnementaux doivent être inscrits dans la Constitution mauricienne**. Certes, la jurisprudence a parfois interprété le droit à la vie ou à la santé comme englobant un environnement sain. Mais cette lecture, implicite et fragile, ne saurait suffire. L'exemple de pays comme l'Équateur (art. 71 à 74) ou la France (Charte de l'environnement, 2004) montre qu'un véritable tournant écologique exige une reconnaissance **explicite, contraignante, et justiciable** de la nature comme sujet de droit.

Le droit de respirer un air pur, de boire une eau propre, de voir le ciel sans filtres - tout cela doit cesser d'être une faveur administrative ou une politique publique parmi d'autres : **ce sont des droits fondamentaux**. Et la Constitution, miroir de nos valeurs les plus profondes, ne peut plus les ignorer.

Édito par Sabir KADEL
Chief Executive Officer, Law Reform Commission [Cont'd]

L'écologie est un humanisme

À ceux qui objecteraient que l'économie prime, que le droit de l'environnement ralentit l'initiative privée, nous répondons ceci : **il ne s'agit pas de ralentir, mais de rediriger**. De choisir la vie plutôt que la ruine, le durable plutôt que l'éphémère, le juste plutôt que le rentable.

Il est un lien ancien, subtil, presque oublié, entre la nature et la vie intérieure. Un lien que nos sociétés modernes, pressées de conquérir, d'extraire et de maîtriser, ont relégué dans les marges du sacré. Et pourtant, depuis les premiers balbutiements de la conscience humaine, la nature fut notre premier temple, notre première école mystique, notre premier miroir. Avant les dogmes, avant les livres, il y eut l'arbre. Il y eut la mer. Il y eut la nuit.

Ce n'est pas un hasard si, dans toutes les spiritualités premières, le divin se murmure dans le bruissement des feuilles, se devine dans la danse du feu, se redoute dans le grondement du tonnerre. Chez les animistes d'Afrique ou d'Amazonie, chez les moines taoïstes, chez les mystiques soufis ou les druides celtes, la nature n'est pas décor : elle est *présence*. Elle est vivante, agissante, résonante. On ne l'interroge pas comme on interroge un objet, on l'écoute comme on écoute un oracle. La nature y est sacrée non parce qu'elle serait séparée du monde, mais parce qu'elle *est* le monde.

La modernité cartésienne, en réduisant la nature à une somme de phénomènes mesurables, a instauré une césure radicale entre l'homme et son environnement. En transformant la forêt en volume de bois exploitable, le fleuve en débit hydraulique, la montagne en carrière potentielle, elle a tué le mystère au profit du profit. Et avec ce mystère, elle a étouffé une part de notre propre intériorité.

Car si la nature n'a plus d'âme, pourquoi en aurions-nous une ?

Et si la catastrophe écologique à laquelle nous faisons face n'était pas seulement une crise des ressources, mais aussi une crise de la transcendance ? Si le silence de nos forêts dévastées résonnait aussi comme le silence de nos âmes désertées ? L'écologie, dès lors, ne serait plus une simple branche de la politique environnementale. Elle serait une tâche spirituelle, une liturgie sans dogme, une reconquête de notre capacité d'émerveillement.

En cette Journée de l'Environnement, la *Law Reform Commission* réaffirme son engagement : œuvrer à une **réinvention du droit à la lumière du vivant**, défendre les silences que le droit n'entend pas encore, écrire la justice pour ceux qui ne parlent pas notre langue - ni humaine, ni juridique.

Car peut-être que le droit de demain ne sera pas celui du plus fort, mais du plus fragile.

Et cela, c'est une révolution.

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Key Publications of the Law Reform Commission

The Law Reform Commission of Mauritius has, over the past several years, demonstrated a sustained and principled commitment to the development of a coherent legal framework that recognises the environment not merely as an object of regulation, but as a subject of rights and a domain of moral and constitutional concern. The Commission's work in this area has sought to align domestic law with evolving international environmental standards, while also responding to the unique ecological, social, and legal realities of Mauritius as a small island developing state.

Taken together, these publications reflect the Commission's commitment to fostering a culture of legal ecology - one in which the rights of nature, future generations, and vulnerable communities are treated not as peripheral concerns, but as foundational to the rule of law. As environmental degradation accelerates and climate risks become more pronounced, the need for a robust legal response is no longer optional. The Commission will continue to support legislative, constitutional, and jurisprudential reforms that aim to secure environmental justice and ecological dignity for all who call Mauritius home - humans and non-humans alike.

Below is an overview of significant documents published by the Commission on environmental rights, highlighting the breadth and impact of its contributions:

Issue Paper on "Constitutional Protection of Human Rights" [October 2010]

In October 2010, the Law Reform Commission of Mauritius published an *Issue Paper on the Constitutional Protection of Human Rights*, a bold and thoughtful reconfiguration of the Mauritian Constitution's human rights provisions, one that places environmental rights at the heart of constitutional discourse. While its broader objective is to modernise and deepen the catalogue of fundamental rights, the document firmly situates these reforms within the planetary crisis we now inhabit, particularly by calling for the explicit constitutional recognition of the *right to a healthy and sustainable environment.*

This proposal aligns Mauritius with a global shift in constitutionalism where the environment is no longer viewed merely as an economic resource but as a subject of legal dignity and intergenerational concern. The paper draws inspiration from comparative constitutional experiences, notably South Africa, India, and Trinidad and Tobago, to propose the enshrinement of environmental rights as justiciable, enforceable claims under the supreme law of the land. It advocates a twofold protection: first, a negative right whereby individuals are shielded from environmental harm that jeopardises their health or well-being; and second, a positive obligation upon the State to legislate and act to protect ecosystems, prevent ecological degradation, and foster sustainable development for present and future generations.

Key Publications of the Law Reform Commission [Cont'd]

This dual conception reflects the evolving understanding that environmental rights are inextricably linked to human dignity, public health, and climate justice.

The proposed right to a healthy and sustainable environment is not presented in isolation. It is part of a constellation of economic and social rights that includes access to education, housing, basic amenities such as clean water and health services, and freedom of trade and occupation. This holistic approach recognises the indivisibility and interdependence of rights: environmental degradation undermines educational access, aggravates housing insecurity, compromises health, and disrupts livelihoods. By embedding environmental protection within this broader framework, the Commission articulates a vision of human rights that is not anthropocentric but eco-systemic. Attentive to the fact that human flourishing is contingent on ecological stability.

In proposing that the environment be constitutionally protected, the paper indirectly addresses the climate crisis, even if the terminology of "climate change" is not centrally employed. The logic is unmistakable: faced with rising sea levels, increasing cyclonic intensity, and unpredictable rainfall patterns, Mauritius must not only adapt administratively but constitutionally. The document implies that without legal mechanisms to secure environmental rights, other rights - such as health, life, and equality - are rendered precarious. The constitutionalisation of environmental duties would thus serve as both a normative compass and a strategic shield in the uncertain decades ahead.

Beyond rights, the paper also recommends procedural reforms such as the right of access to information, which is essential for environmental accountability and citizen engagement in ecological governance. Transparency, public participation, and the right to be informed are identified as democratic imperatives that are necessary for holding both State and private actors accountable for environmental harm.

This Issue Paper is a forward-looking document that prefigures contemporary debates on climate constitutionalism. It offers a powerful case for the integration of environmental rights within the foundational legal architecture of Mauritius, thus anticipating the moral and legal demands of an age defined by planetary boundaries. In recognising the environment as a constitutional subject, the Commission not only affirms the dignity of the natural world but also equips future generations with a juridical vocabulary to defend it.

Discussion Paper on "Legal Status of Animals in Mauritius" [LRC_R&P 164 July 2022]

The Law Reform Commission's *Discussion Paper on the Legal Status of Animals in Mauritius* [LRC_R&P 164, July 2022] aims to rethink the anthropocentric architecture of Mauritian law by confronting it with the moral imperative and jurisprudential momentum of recognising animals not as mere property or chattel, but as sentient beings worthy of protection, dignity, and rights.

Key Publications of the Law Reform Commission [Cont'd]

The document opens with a philosophical and historical excavation of animal rights, drawing on religious traditions such as Jainism and on Enlightenment thinkers like Bentham, who famously asked not whether animals can reason or speak, but whether they can suffer. The discussion proceeds through the contributions of modern philosophers like Peter Singer, who coined the term "speciesism" to denounce the arbitrary privileging of human interests over animal suffering. From metaphysics to law, the paper then traces the legislative evolution of animal welfare protections, highlighting milestones from the 17th century to recent global case law that has granted legal personhood to chimpanzees and acknowledged the constitutional rights of wild animals.

Turning to Mauritius, the paper examines the existing legal framework, primarily the *Animal Welfare Act 2013* and relevant provisions in the *Criminal Code*. While these laws penalise various forms of cruelty, such as mutilation, neglect, and poisoning, and offer some degree of judicial recourse (as seen in a case where offenders were sentenced for dragging a dog to death), they fall short in comparison to more progressive jurisdictions. Notably absent are provisions acknowledging animal sentience, protections for service and emotional support animals, and mechanisms like protection orders for pets in domestic violence cases.

The report conducts an extensive comparative legal analysis, surveying legal systems in the United Kingdom, France, New Zealand, India, the United States, Canada, and Spain. These jurisdictions have not only recognised animal sentience but have developed an array of specific legislative measures addressing pet custody, the inclusion of animals in protective orders, mandatory CCTV in slaughterhouses, prohibition of fur farming, microchipping regulations, bans on fireworks and live animal exports. The paper also draws attention to judicial decisions where courts considered the best interests of animals in custody disputes, equating their treatment to that of children under family law principles.

In light of this analysis, the Commission formulates eight major reform proposals. First, it recommends that Mauritian laws formally recognise animal sentience by amending the *Civil Code* and the *Animal Welfare Act*. Second, it proposes the introduction of a "hot car" law to penalise leaving animals in confined vehicles under life-threatening conditions, with immunity for rescuers. Third, the report suggests enshrining "pet bereavement leave" in the *Workers' Rights Act* to acknowledge the psychological loss experienced by pet owners. Fourth, it calls for the legal recognition of service and emotional support animals, with accompanying rights of access to public spaces and accommodations. Fifth, the Commission advocates for stricter regulation of fireworks, citing their deleterious impact on animals' physical and psychological well-being. Sixth, it urges a significant increase in penalties for animal cruelty, raising maximum sentences from six months to ten years and fines up to Rs 500,000. Seventh, it recommends amending the *Domestic Violence Act* to allow courts to issue protection orders for animals. Finally, it proposes the establishment of an Ombudsperson for Animals, an independent advocate who would act in the interest of animals in courts and legislative forums.

Key Publications of the Law Reform Commission [Cont'd]

In sum, the Discussion Paper makes a compelling case for the modernisation of Mauritian animal welfare legislation. It is both a legal and ethical manifesto, seeking to harmonise national law with global best practices and to elevate the moral and legal standing of animals within the Republic's jurisprudence. The tone is reformist, rooted in compassion and rationality, and the paper is infused with the conviction that how a society treats its animals reflects the depth of its humanity and its commitment to justice.

Issue Paper on "Prevention of Food Waste in Mauritius: an environmental and economic Pandora's box" [LRC_ R&P 166, September 2022]

The Issue Paper on "*Prevention of Food Waste in Mauritius: an environmental and economic Pandora's box*" [LRC_R&P 166, September 2022] is a pioneering document that boldly links the challenge of food waste to the larger ecological and climatic questions of our time. It lays bare the stark contradiction at the heart of modern consumption: that while nearly a billion people suffer from hunger and malnutrition, a third of all food produced globally is discarded - an act of collective negligence with devastating environmental consequences. The Law Reform Commission of Mauritius, through this paper, confronts this paradox head-on and positions food waste not only as a socio-economic failure but as an environmental transgression demanding legal reform.

Framed within the paradigm of sustainable development and climate resilience, the document highlights how food waste contributes massively to greenhouse gas emissions - principally methane, a gas far more potent than carbon dioxide.

By drawing attention to the fact that food waste alone accounts for nearly 10% of all global emissions, the paper makes an unambiguous case that tackling food waste is an essential strategy in mitigating climate change. In Mauritius, where 27% of landfill waste is composed of food and the waste sector is the second-largest emitter after energy, reducing food waste becomes not merely desirable, but imperative for achieving the country's commitment to reduce emissions by 40% by 2030.

The Issue Paper establishes a compelling narrative that situates food waste at every juncture of the food chain - from production and processing to retail and consumer behaviour - making it clear that the problem is systemic and cultural. The environmental footprint of this waste is staggering: water, land, energy, and labour are squandered to produce food that is never consumed. Every uneaten mango or unsold baguette becomes, in essence, a tiny ecological disaster. A missed opportunity to nourish, to preserve, to act wisely. Against this backdrop, the paper explores the inadequacy of Mauritius' current legislative framework, revealing that while food hygiene and environmental protection are addressed in existing statutes such as the *Food Act 2022* and the *Environment Protection Act 2002*, there is no binding legal instrument dedicated to the prevention of food waste.

Comparative analysis of foreign jurisdictions forms the beating heart of the paper's argument for reform. Drawing on France's national pact against food waste, South Korea's biometric bin bag system, the United States' Emerson Act, and Italy's tax incentives for food donation, the Commission shows that legislative imagination is not only possible but already flourishing elsewhere.

Key Publications of the Law Reform Commission [Cont'd]

These jurisdictions have treated food waste as both a climate policy issue and a human rights matter - recognising that sustainable consumption is key to ecological justice. By examining how governments, private actors, and civil society can form synergistic partnerships to reduce waste through laws, incentives, and public awareness campaigns, the paper proposes that Mauritius needs to follow a similar route - not only to align itself with international best practice, but to protect its own fragile ecological equilibrium.

The recommendations offered are nuanced and ambitious. The Commission suggests legal provisions requiring restaurants to offer doggy bags, mandating food donation from supermarkets and large retailers, introducing tax deductions proportional to donated food, and enacting liability protections for good-faith donors, thus addressing the structural and psychological barriers to responsible behaviour. These are not isolated legal fixes but components of a cohesive environmental justice framework. They are designed to embed a culture of ecological accountability in the everyday practices of food producers, distributors, and consumers.

In its conclusion, the document reframes food waste as a profound ethical and ecological failure, one that violates not only human dignity and economic rationality, but our obligation to the Earth and its future inhabitants. The proposed reforms are thus not merely legislative tweaks but moral imperatives in the Anthropocene era. Reducing food waste becomes a means of respecting planetary boundaries, of making visible what is too often invisible: the silent suffering of wasted resources and the warming of a world out of balance.

Through this lens, the Commission's work appears not only as a legal intervention but as a call to environmental citizenship - a reminder that justice, today, must include justice for the Earth.

Report and Draft Bill on "Prevention of Food Waste in Mauritius" [LRC_ R&P 177, December 2023]

Mauritius has taken a resolute and unusually far-sighted step in confronting a crisis that is too often invisible and yet catastrophically real: the silent avalanche of food waste and its devastating environmental consequences. In its *Report and Draft Bill on the Prevention of Food Waste* [LRC_ R&P 177, December 2023], the Law Reform Commission does not merely propose a set of regulatory tools, it issues a call to conscience, a legislative blueprint rooted in the understanding that the fight against food waste is inseparable from the fight for climate stability, environmental rights, and human dignity.

What is at stake here is not just the morality of throwing away food in a world where hunger still haunts millions, but the very biospheric stability on which human civilisation depends.

Key Publications of the Law Reform Commission [Cont'd]

The document dissects food waste as a multi-dimensional threat: economic, social, and ecological. The figures are grim - 118,632 tonnes of food wasted annually in Mauritius, generating enormous greenhouse gas emissions and overburdening already strained landfill infrastructure. The Report reminds us that food waste is not a neutral act: it is an emitter of methane, a gas far more potent than CO_2, and it directly undermines the Republic's declared commitment to reduce its greenhouse gas emissions by 40% by 2030 under the Paris Agreement.

The text does not frame food waste in isolation, but as a vector of injustice and a violation of environmental rights. As climate change intensifies, so too do the responsibilities of lawmakers to move beyond palliative responses and design forward-looking systems of accountability. By grounding the draft legislation within the architecture of the United Nations' Sustainable Development Goals - especially SDG 12.3 on halving food waste - the Commission provides Mauritius with a juridical vehicle to operationalise international obligations while reinforcing the constitutional values of equality and sustainability.

At the core of the draft Bill is the vision of a circular economy in which waste is no longer the endpoint, but a resource to be redirected, repurposed, or redistributed. The Bill mandates that food business operators must donate unsold yet consumable food to charitable organisations, and that such donations will be incentivised through tax credits. These provisions are buttressed by statutory protections from civil and criminal liability for donors acting in good faith, thereby addressing a key obstacle to food donation. In effect, the Bill constructs a legal ecology where food is treated not as disposable commodity, but as a social good, and where generosity is scaffolded by public law.

Environmental coherence is also central to the draft legislation. It introduces a system of biodegradable or compostable waste bags, priced to internalise the cost of disposal and ensure proper handling of food waste. These regulatory innovations are complemented by amendments to the *Waste Management and Resource Recovery Act*, embedding the reduction of food waste into the broader waste governance regime of the island.

The strategy is not one of punishment, but of systemic redesign. Shifting responsibility upstream, encouraging segregation at source, and enabling composting and other valorisation strategies.

But perhaps the most powerful intervention made by the Report is not legal, but cultural. By treating food waste as a violation of the social contract, it revives the Durkheimian notion of functional equilibrium within society. Food waste, in this vision, is not simply a technical glitch but a rupture in our collective ethics, a reflection of a society that has grown numb to the slow violence it inflicts on both the hungry and the Earth. The proposed awareness campaigns and education programmes are thus not decorative elements but vital organs of the law's effectiveness. Law, in this context, becomes a pedagogy, a means of transforming habits and social expectations.

The document's philosophical horizon stretches beyond the mechanics of food redistribution or landfill management. It invokes a sense of intergenerational responsibility, an ecological trusteeship where today's consumption patterns must be accountable to tomorrow's planetary conditions. In a nation with finite natural

Key Publications of the Law Reform Commission [Cont'd]

resources, hemmed in by the sea and exposed to the vicissitudes of global food systems, preventing food waste is not only rational. It is existential.

In legislating for food waste prevention, Mauritius positions itself as an innovator in climate governance within the Global South. It demonstrates that small island states, often at the receiving end of climate injustices, can nonetheless be authors of bold, intelligent, and ethically grounded legislation.

The Commission's Report and Draft Bill, taken together, are more than an answer to food waste, they are a template for environmental dignity in law.

Discussion Paper on Criminalisation of denial of access to public beaches in Mauritius [LRC_ R&P 181, June 2024]

The *Issue Paper on "Criminalisation of Denial of Access to Public Beaches in Mauritius"* [LRC_R&P 181, June 2024] stands at the confluence of environmental justice, legal reform, and the preservation of natural commons. Though couched in the idiom of public access and constitutional fairness, its true force lies in the assertion of environmental rights as foundational to human dignity and ecological equilibrium. The Law Reform Commission situates public beaches not merely as recreational zones but as vital, living elements of the Mauritian ecosystem, natural assets that nourish biodiversity, climate resilience, and cultural identity alike.

Beaches in Mauritius are portrayed in this document not as luxuries, but as environmental commons intrinsically bound to the broader struggle for sustainable living and intergenerational equity. With only 14% of the nation's coastline officially accessible to the public, and the remainder increasingly enclosed or leased for private use, the Commission underscores a growing ecological and social injustice. The denial of access is not merely a legal infraction, it is an environmental wrong that disrupts the human-nature relationship and undermines the democratic promise of shared natural heritage. In doing so, the Paper advances the argument that access to public beaches is a derivative environmental right, a manifestation of the right to participate in and benefit from natural resources without arbitrary exclusion.

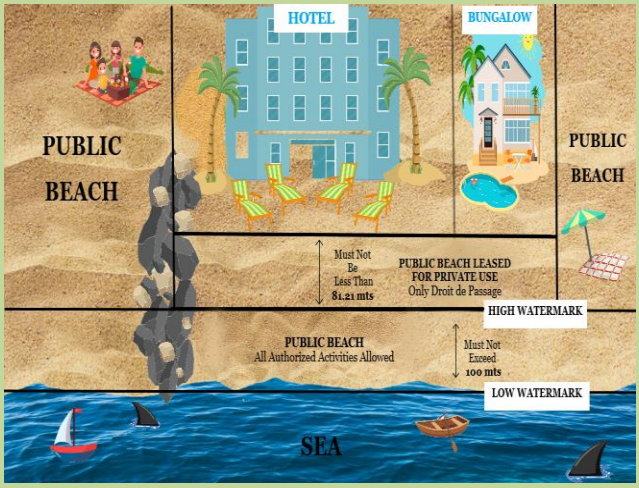
This environmental framing becomes more pointed when one considers that beaches form critical buffers against rising sea levels, contribute to coastal biodiversity, and are essential components in climate adaptation strategies. By highlighting how the denial of access can lead to degradation, pollution, or even unsafe development along the coastline, the document makes an implicit but powerful link between exclusion and ecological harm. When hotel developers or private landowners assert control over what is inalienable public land - such as the *pas géométriques*, defined as part of the *domaine public* - they do more than fence off the beach, they privatise environmental stewardship, often to the detriment of sustainable coastal management.

By recommending the criminalisation of the denial of access to declared public beaches, the Law Reform Commission aligns Mauritius with an emerging body of international practice that treats public access to coasts as a climate and environmental justice imperative. Jurisdictions such as New Zealand and Seychelles, surveyed within the paper, have developed legal regimes where public access is not only preserved but

Key Publications of the Law Reform Commission [Cont'd]

legally protected as part of a broader ecological ethic. New Zealand's *Natural and Built Environment Act 2023*, for example, explicitly links public access to coastal areas with the wellbeing of the natural environment, a principle known in Māori as *te Oranga o te Taiao*, the health and wellbeing of the environment as interconnected with that of the people.

The document also illustrates how the absence of clear signage, boundary demarcation, and public education campaigns contributes to the erosion of environmental rights. Ignorance about where public access begins and ends enables abuse by private actors and weakens legal enforcement. Thus, the proposed reforms are not limited to punitive measures. They also include positive obligations on the State: to demarcate access zones, disseminate knowledge, and invest in sensitisation campaigns that anchor environmental rights in public consciousness. The underlying philosophy is that a citizen who does not know her rights is less likely to defend them, and that environmental rights - like any others - must be made visible, comprehensible, and enforceable.



Furthermore, the proposal to ban or restrict motorised vehicles on beaches represents an explicit environmental intervention. It recognises that coastal ecosystems are fragile zones where human activity, if unregulated, can cause irreversible damage. Buggies and other vehicles compact the sand, destroy vegetation, and threaten the nesting grounds of marine species. This recommendation echoes broader calls within the international environmental community for nature-sensitive zoning and regulation of access to ecologically sensitive areas.

Through its emphasis on the *domaine public*, servitude of passage (*droit de passage*), and the inalienable character of the *pas géométriques*, the document constructs a juridical scaffolding in which public access becomes a proxy for environmental stewardship. The act of walking freely along the shoreline becomes an exercise in ecological citizenship, a reclaiming of the Earth as a shared space rather than a commodified asset. The criminalisation of denial of access is thus not an end in itself, but part of a broader move toward a legal order that places environmental rights at its centre - where beaches, forests, and rivers are not merely "resources," but subjects of law and partners in our collective future.

Key Publications of the Law Reform Commission

Opinion Paper on "Recovery of Search and Rescue Costs and Prohibition of Venturing Out During Natural Disasters" [LRC_R&P 186, December 2024]

The *Opinion Paper on "Recovery of Search and Rescue Costs and Prohibition of Venturing Out During Natural Disasters"* [LRC_R&P 186, December 2024] marks a significant contribution by the Law Reform Commission of Mauritius to the emerging corpus of law that seeks to intertwine environmental rights, climate resilience, and individual responsibility.

In this document, the Commission transcends a merely administrative concern for public safety by anchoring its proposals within the broader environmental narrative of our time - a narrative shaped by the inexorable advance of climate change, the ethical imperative of sustainability, and the legal duty to protect both human life and natural ecosystems from reckless endangerment.

The Paper opens with an unflinching diagnosis: Mauritius, like many Small Island Developing States, stands at the frontline of climate disruption. With a geographic location that places it in the direct path of tropical cyclones and extreme weather events, the island is increasingly vulnerable to the violent expressions of a warming planet, floods, droughts, landslides, and storm surges. These are not episodic anomalies, they are, as the United Nations has repeatedly warned, the new normal in a world whose meteorological certainties are dissolving. In this context, the Commission frames disaster-related behaviour not only as a matter of public order but as a breach of what could be termed an emerging environmental ethic of restraint, one that demands that individuals respect the volatile rhythms of nature and the finite capacities of the emergency services mobilised to mitigate harm.

The central thesis of the Opinion Paper is the need to impose legal consequences on those who voluntarily expose themselves to danger during natural disasters, thereby triggering search and rescue operations that are costly, hazardous, and often preventable. This call for reform resonates deeply with the concept of *environmental justice*, which insists that public resources, especially in the context of disaster relief, should be equitably used and not squandered by the few to the detriment of the many. The Commission contends that those who disregard warnings and venture out in defiance of safety advisories effectively externalise the costs of their actions onto society. Such conduct undermines both fiscal sustainability and environmental solidarity, and thus must be counterbalanced by legislative mechanisms for cost recovery and movement restriction.

Importantly, the Commission aligns this legal proposal with the evolving recognition of environmental rights, understood here not only as rights to a healthy and safe environment but also as obligations to respect the limits of ecosystems and the laws designed to preserve them. The irresponsible act of seeking thrills amidst cyclonic conditions or embarking on hazardous hikes without adequate preparation is depicted as a form of ecological narcissism, one that treats nature not as a force to be reverently respected but as a stage for performative defiance. In response, the Commission invokes the principle of *intergenerational equity*, reminding us that emergency resources, environmental integrity, and public trust are not infinite commodities but part of the collective inheritance of future generations.

Key Publications of the Law Reform Commission [Cont'd]

Comparative legal insights from France, the United Kingdom, the United States, and Australia lend weight to the Mauritian proposal. These jurisdictions have recognised, each in their own idiom, that environmental risk management must be legally enforceable and that the "right to be rescued" cannot become a carte blanche for imprudence.

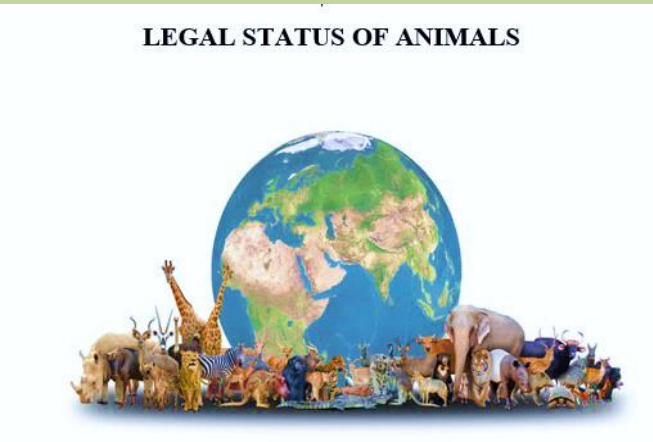
Particularly compelling is the French model, where cyclone alerts in overseas territories such as Réunion trigger automatic movement bans, enforceable by fines, in recognition of both public safety and environmental precarity. Similarly, the Paper points to the discussions in the United States around billing for rescues in national parks, a practice motivated not by punitiveness, but by the principle that environmental irresponsibility should not be subsidised by the public purse.

Throughout, the Law Reform Commission remains keenly aware of the need to tailor international best practices to the unique socio-cultural and climatic realities of Mauritius. It does not propose to penalise the unfortunate, but to deter the reckless. It does not aim to criminalise vulnerability, but to legislate against gratuitous exposure to risk. The Paper explicitly calls for a statutory framework that distinguishes between necessary presence in high-risk areas (e.g., for essential work or evacuation) and the kind of frivolous or defiant behaviour that, in the words of the Commission, "magnifies the fiscal and human cost of disaster."

Thus, what emerges is not merely a set of recommendations, but a jurisprudential gesture toward a more robust environmental citizenship. By treating the failure to heed disaster warnings as a breach of collective responsibility - one that endangers not just human lives but diverts attention and resources from wider environmental recovery - the document forges a link between individual conduct and planetary ethics. In so doing, it contributes to the constitutional imaginary in which environmental rights are not abstract ideals, but concrete duties enforceable through law.

In conclusion, this Opinion Paper should be read as an act of anticipatory governance: a legal instrument designed not only to reduce deaths and injuries during natural disasters, but to embed within Mauritian law a culture of environmental respect, precaution, and accountability. It is climate-responsive law reform par excellence, an effort to legislate against the ecological amnesia that so often precedes catastrophe, and to replace it with a civic ethic of humility before nature's unpredictable force.

Des animaux-machines à la reconnaissance juridique de leur souffrance : plaidoyer pour une réforme du droit animal en contexte environnemental



Il est des anniversaires qui, loin d'être de simples commémorations, imposent à la conscience collective de s'arrêter, de penser, de douter. La Journée mondiale de l'environnement, célébrée chaque 5 juin, est de ceux-là. Elle nous somme, non pas de célébrer une nature immaculée et intacte - ce serait naïf - mais de réfléchir à notre rapport à elle, et, dans ce rapport, à notre étrange schizophrénie morale face à ceux qui la peuplent à nos côtés : les animaux non humains.

Car l'histoire du droit animal, ou plus exactement de son absence historique, commence dans un fracas glaçant : celui des *ressorts brisés*. René Descartes, dans la foulée de son dualisme corps/esprit, postulait que les animaux étaient de simples automates biologiques, des « bêtes-machines » dépourvues d'âme et de conscience. Leur hurlement de douleur ? Rien de plus que le grincement de leurs engrenages internes. Le cri du chien battu n'était pas l'expression d'une souffrance, mais le bruit d'un ressort qui cède.

Ce paradigme a durablement contaminé nos représentations juridiques : pendant des siècles, l'animal fut *chose*. Meuble animé. Ni sujet, ni titulaire de droits, ni même récipiendaire de considération morale.

Et pourtant… *les animaux souffrent*. Ce renversement axiologique, Jeremy Bentham, père de l'utilitarisme moderne, l'a formulé dans une phrase restée célèbre : « La question n'est pas de savoir s'ils peuvent raisonner, ni s'ils peuvent parler, mais s'ils peuvent souffrir ». Par cette inflexion, la condition de l'animal cessait d'être un simple objet d'analyse zoologique ou philosophique ; elle devenait une question politique et juridique.

Du droit de l'animal au droit de l'environnement : une écologie des sensibilités

L'enjeu dépasse la seule reconnaissance d'un statut juridique aux animaux. Il s'inscrit dans la problématique plus vaste du droit de l'environnement. Car protéger les animaux, ce n'est pas simplement préserver des individus ; c'est préserver un tissu d'interdépendances, une écologie du vivant où chaque vie compte.

Il y a, dans notre époque, une dissonance cognitive déroutante : nous caressons avec tendresse nos chiens, nous pleurons sur les chats abandonnés, et nous hurlons au scandale face aux images de maltraitance domestique. À raison ! Mais dans le même temps, nous participons - souvent sans même y réfléchir - à un système qui torture à l'échelle industrielle des milliards d'animaux invisibles : poules enfermées à vie, porcs mutilés sans anesthésie, veaux arrachés à leur mère dès la naissance. Le philosophe italien Leonardo Caffo parle ici de « schizophrénie morale », et la formule mérite qu'on s'y attarde.

Des animaux-machines à la reconnaissance juridique de leur souffrance : plaidoyer pour une réforme du droit animal en contexte environnemental [Cont'd]

Le prix Nobel de littérature Isaac Bashevis Singer, écrivain juif et dont la famille a connu les atrocités nazies, allait plus loin encore : « Pour les animaux, tous les humains sont des nazis ; pour les animaux, c'est un éternel Treblinka ». Faut-il voir là une analogie choquante, un excès rhétorique ? Ou bien une tentative désespérée d'ébranler une indifférence structurelle, cimentée par l'habitude et la déresponsabilisation collective ?

L'anesthésie morale : l'effet boomerang de la cruauté

La violence que nous infligeons aux animaux ne s'arrête pas à leur chair. Elle ricoche. Elle nous transforme. Elle nous endort.

On ne maltraite pas impunément une espèce entière sans que cela n'altère notre capacité de compassion envers les autres. L'habitude de détourner le regard, l'éducation à « ne pas y penser », la rationalisation qui transforme l'agneau en gigot, ou la vache en produit laitier, finissent par altérer notre sens moral lui-même. Celui qui peut regarder sans trembler un abattoir industriel ne verra plus avec la même intensité les larmes d'un migrant, les cris d'un enfant battu, ou le sort d'un vieillard abandonné. La cruauté récurrente envers les animaux anesthésie notre empathie envers l'humain.

Le philosophe Theodor Adorno affirmait ainsi : *« Auschwitz commence partout où quelqu'un regarde un abattoir et pense : ce sont seulement des animaux. »*

Le langage de l'oubli : quand le glissement sémantique efface la souffrance animale

Le droit, dit-on, est affaire de mots. Mais il n'est pas seul. Le langage de la consommation est lui aussi un outil de régulation, non pas des comportements dans l'espace public, mais des comportements dans l'intimité de nos cuisines, de nos frigos et de nos estomacs. Et c'est à ce niveau, apparemment banal, que s'opère une alchimie discursive des plus troublantes : celle qui, pour que nous ne pensions pas à l'animal que nous mangeons, transforme l'animal… en mot.

Il ne s'agit pas d'une simple coquetterie lexicale. Il s'agit d'un processus systématique de *désanimalisation* du discours alimentaire. Un *euphémisme structurant*, inscrit dans les menus, les étiquettes, les publicités et les automatismes mentaux. Le « porc » devient « jambon », « lard » ou « saucisse ». Le « bœuf » devient « entrecôte » ou « steak tartare ». Les « poissons », quant à eux, se dissolvent dans cette expression poétique et trompeuse : « fruits de mer ». Fruits ? Vraiment ? Comme les pommes et les cerises ? Ce vocabulaire, pourtant courant, illustre une stratégie sémiotique de dissociation cognitive : *il faut masquer le vivant pour rendre la mise à mort consommable*.

Cette rhétorique du camouflage permet à la cruauté de se tapir dans les marges de la conscience. On ne tue pas un « filet mignon ». On ne saigne pas un « *nugget* ». Le langage devient anesthésie. Il remplace le sang par la sauce, l'oeil par l'emballage, le cri par le croustillant.

Des animaux-machines à la reconnaissance juridique de leur souffrance : plaidoyer pour une réforme du droit animal en contexte environnemental [Cont'd]

Or, comme l'a montré le linguiste George Lakoff, le langage n'est pas neutre ; il structure la pensée. Et dans ce cas précis, il structure l'oubli.

Mais cette amnésie n'est pas innée. La cruauté envers les animaux n'est pas un trait fondamental de l'être humain : elle est *apprise, rationalisée, ritualisée*. De nombreuses études en éthologie et en psychologie du développement convergent vers une même vérité candide : si vous présentez à un enfant en bas âge une mangue et un poussin, il jouera avec le poussin et mangera la mangue. Il ne fera pas frire l'un ni peler l'autre. Il reconnaîtra spontanément l'un comme compagnon de jeu et l'autre comme source de plaisir alimentaire. Le réflexe de violence, lui, viendra plus tard. Avec l'éducation. Avec l'habitude. Avec la transmission d'un système de pensée où certains animaux méritent notre affection, et d'autres notre fourchette.

Cette hiérarchie arbitraire - chien : ami ; cochon : aliment - est culturelle, non biologique. Et c'est précisément ce qui rend sa remise en question possible. Si elle est construite, elle peut être déconstruite.

Il ne s'agit pas ici de plaider pour une réforme lexicale autoritaire ou pour une censure du langage culinaire, mais de poser un regard critique sur les mots que nous utilisons, et sur le rôle qu'ils jouent dans le maintien d'un *régime moral de l'indifférence*. Car tant que l'animal souffrant restera absent de notre imaginaire gastronomique, tant que son nom sera gommé pour ne pas gêner notre appétit, aucune politique sérieuse de bien-être animal ne pourra véritablement prendre racine.

À une époque où le droit se penche de plus en plus sur la sensibilité des animaux, il devient urgent d'interroger non seulement les pratiques, mais aussi les *représentations* qui les sous-tendent. Nommer les choses, disait Camus, c'est déjà les changer. Alors, nommons-les.

L'élevage industriel : un écocide rampant

Ajoutons que cette maltraitance n'est pas seulement une faute morale ; elle est aussi une menace écologique majeure. L'élevage intensif est aujourd'hui l'une des premières causes de déforestation mondiale, un gouffre à eau douce, un pollueur de première catégorie (notamment en émissions de méthane), et un facteur non négligeable de pandémies zoonotiques. Selon la FAO, l'élevage serait responsable de 14,5 % des émissions mondiales de gaz à effet de serre**,** soit plus que l'ensemble du secteur des transports.

À ceux qui prétendent aimer la planète tout en s'adonnant quotidiennement à la viande industrielle, il faut poser la question que pose tout honnête juriste : *ne sommes-nous pas ici en contradiction manifeste ?*

Et le droit, dans tout cela ?

À Maurice, comme dans bien d'autres juridictions, le droit peine à s'extraire de l'ombre de Descartes. Certes, la législation reconnaît pénalement certains actes de cruauté. Mais l'animal reste, juridiquement, un bien. Et les animaux d'élevage - c'est là l'ironie amère - sont bien souvent les moins protégés, car les plus nombreux à souffrir.

Des animaux-machines à la reconnaissance juridique de leur souffrance : plaidoyer pour une réforme du droit animal en contexte environnemental [Cont'd]

La *Law Reform Commission* s'est, depuis quelques années, attelée à cette tâche immense, mais nécessaire : repenser la condition juridique des animaux dans un esprit de justice, de cohérence et de responsabilité. Des propositions ont été esquissées - sur la reconnaissance d'un statut intermédiaire entre « chose » et « personne » ou encore sur la réforme des sanctions pour maltraitance.

Mais il reste tant à faire.

Conclusion : de la réforme du droit à la réforme de nous-mêmes

À l'heure où le dérèglement climatique et l'effondrement de la biodiversité nous forcent à repenser notre relation à la nature, il serait indécent de continuer à exclure les animaux de notre horizon juridique et moral. La justice environnementale ne saurait être complète sans une justice animale.

Il ne s'agit pas seulement de réécrire des lois, mais de se réécrire nous-mêmes.

Car, au fond, protéger les animaux, ce n'est pas seulement parler d'eux. C'est parler de nous. De ce que nous acceptons. De ce que nous tolérons. Et de ce que nous devenons.

Sabir KADEL
Chief Executive Officer

Rethinking Nature's Legal Personhood

Introduction

In the indigenous cosmologies of the Andes, particularly among the Quechua and Aymara peoples of Bolivia, Peru, Ecuador, and parts of Argentina and Chile, nature is revered as sacred and interconnected with human life. Mountains (like Peru's Apus), rivers, and forests are considered living ancestors or deities. As example, in the Andes, *Pachamama* represents the Earth as a life-giving mother. However, with colonisation, these spiritual beliefs were suppressed or dismissed as superstition and replaced by extractive economic systems and legal doctrines like *terra nullius* and *res nullius*.

In a landmark article by Christopher D. Stone in 1972, the question "*Should Trees Have Standing?*" crystallised the legal debate for ecological personhood in modern jurisprudence. The American scholar observed that over the centuries, legal personhood extended from humans to property-owning entities such as corporations, religious places and ships. Hence, he argued that granting rights to forests, rivers and other natural objects would allow their interests to be represented in court and could transform environmental law from a fragmented, regulatory scheme into one grounded in the intrinsic value of nature itself.

Following the publication of Christopher D. Stone's article, Supreme Court Justice William O. Douglas, in his dissenting opinion in *Sierra Club v. Morton (1972)*, endorsed the idea of legal standing for "environmental elements," by asserting that natural resources ought to have a legal standing to sue for their own protection. This underscored the principle that legal personality and standing are tools to ensure that courts address harm to valuable interests, whether human or non-human.

Jurisdictions recognising the rights of nature

(i) Ecuador

In 2008, Ecuador became the first nation to enshrine the rights of nature in its *Constitution* under *articles 71 to 74*, granting nature or *Pachamama* the right to integral respect, restoration and protection from irreversible harm. The articles empower citizens and communities to defend these rights, while the State bears the duty to prevent destruction of ecosystems, extinction of species and uphold nature's integrity for the collective well-being. These constitutional rights are strictly safeguarded by the Ecuador's Constitutional Court, which in its landmark 2021 decision, revoked all government authorisations previously granted for mining operations in Los Cedros forest. It ruled that mining activities in the Los Cedros Protected Forest violated the constitutional rights of nature and were therefore prohibited. It further clarified that under *Article 73 of the Ecuador's Constitution*, the Government of Ecuador is required to take precautionary and restrictive measures to prevent extinction of species.

Rethinking Nature's Legal Personhood [Cont'd]

(ii) Bolivia

Subsequently in December 2010, Bolivia enacted the *Law of the Rights of Mother Earth* (Law 071), recognising Mother Earth or *Pachamama* as a living and dynamic being with inherent rights similar to humans. This Law marks a foundational step in embedding environmental ethics into national legal frameworks by granting legal personhood to nature, affirming rights such as life, biodiversity, water, clean air, balance, and restoration. Rooted in indigenous cosmology, the law obliges the State and society to protect and respect the integrity of ecological systems, shifting the legal paradigm from human-centred (anthropocentric) to Earth-centred (biocentric) governance.

(iii) New Zealand

In 2014, New Zealand, being one of the pioneers in the world to recognise nature's rights, granted legal personality Te Urewera forest by enacting the *Te Urewera Act 2014* as it is deemed to be a place of deep natural and spiritual significance through its untouched forests, native biodiversity, ecological systems, and cultural heritage. Rich in scenic beauty, it holds its own unique identity and life force, making it a sacred homeland for the Māori tribes and their heart of origins culture, language, and identity. The Act appointed them as its guardians, connected to it through generations of continuous presence and care. The Te Urewera forest is also cherished by other Māori groups and by the people of New Zealand as a whole. The Act aims to heal past injustices against Tūhoe, strengthen their connection to the land, and preserve Te Urewera in its natural state forever.

Similarly, New Zealand also granted legal personhood to Whanganui River (Te Awa Tupua) in 2017 through the *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*. The Act provides legal recognition to Te Awa Tupua as "*an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements.*" Te Awa Tupua is considered as "*a spiritual and physical entity that supports and sustains both the life and natural resources within the Whanganui River and the health and well-being of the iwi, hapū, and other communities of the River.*" As a legal person, Te Awa Tupua now possesses its own rights, powers, responsibilities, duties and liabilities, enforceable through its appointed guardian who is Te Pou Tupua. The primary purpose of this Act is to restore the Crown's obligations under the 1840 Treaty of Waitangi, which guaranteed Māori chieftainship (rangatiratanga) over their treasures (taonga), including the waterways that have been occupied by their people for centuries. The Treaty was breached by subsequent legislation, for example, the *Public Works Act 1981*, the *Resource Management Act 1991*, amongst other, and environmental degradation.

The more so, *Taranaki Maunga Collective Redress Act 2025* in New Zealand recognises Mount Taranaki (now known as "Taranaki Maunga") and its surrounding peaks as a legal person. This mountain is considered to be an ancestor to the Māori tribes which was confiscated from them at the times of colonisation. This Act recently came into force to address this historical injustice.

Rethinking Nature's Legal Personhood [Cont'd]

(iv) India

Influenced by the legislation in New Zealand, in March 2017, the High Court in Uttarakhand, India, ruled that the **Ganges and Yamuna rivers** are living entities with legal rights similar to human beings. It highlighted that rivers are "sacred and revered" and "central to the existence of half the Indian population." In view of the environmental degradation, the rivers were losing their very existence and therefore, necessitate protective measures to preserve them. However, this recognition of nature's right was short lived as the Supreme Court of India overturned the rulings of the High Court in Uttarakhand, stating that Ganges and Yamuna rivers cannot be viewed as living entities.

Should nature have constitutional rights in Mauritius?

Today, the question is no longer merely theoretical, but of growing practical relevance and threefold. Drawing on global trends, several jurisdictions as previously mentioned have moved from traditional legal paradigms where nature was treated as property towards the explicit recognition of nature such as rivers, lakes, forests, and other natural resources, as legal entities endowed with rights and crucially, with *locus standi* to assert those rights in a court of law.

In the Government Programme 2025 – 2029, the Government of Mauritius pledged to amend Part II of the Constitution by enshrining new generation rights with respect to environment, amongst others. This constitutional reform seeks not only to safeguard our fragile ecosystems and ensure future generations inherit a healthy planet, but also to harmonise our domestic law with international treaties and best practices. As a pivotal first step, the *Environment Protection Act* has been repealed and replaced by the *Environment Act 2024*, thereby elevating the right to a clean, balanced, and sustainable environment to the same status as other fundamental freedoms in a view to demonstrate Mauritius unwavering vision of stewardship and its solidarity in confronting the world's environmental challenges. The introduction of the *Environment Act 2024* marks a decisive shift towards modern and integrated environmental governance by complementing the *Climate Change Act 2020*. It has as objectives to protect the ecological fragility and high conservation value of the ecosystems.

The more so, there is the *Rivers and Canals Act 1983* which regulates access to rivers and canals, preventing obstruction and pollution, maintaining water resources for public use and safety and protecting infrastructure. In addition, the *Native Terrestrial Biodiversity and National Parks Act 2015* aims to protect the wild fauna and flora in Mauritius. The Act came into force to promote biodiversity conservation, environmental governance, regulating wildlife trade in line with the *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES*). Further, there is also the *Animal Welfare Act 2013* which caters for the welfare of animals in Mauritius. It imposes obligations on the owners of animals to protect the latter and prohibits cruelty against them.

Though Mauritian legislation emphasises the protection of the environment including animals, rivers, islands, lakes, canals, forests, mountains, volcanoes, endemic species and other natural parks and reserves, it remains anthropocentric instead of eco-centric as seen in other jurisdictions. In other words, it only safeguards the natural resources for the benefit

Rethinking Nature's Legal Personhood [Cont'd]

of human beings and future generations but does not actually cater for the intrinsic legal rights that the animals, rivers, forests or species possess – to exist, flourish or regenerate.

Given Mauritius is an island country and has a rich natural heritage including lakes, volcanoes, forests, mountains, rivers, islands, beaches, endemic species, nature parks and other natural reserves, it also faces severe environmental challenges such as coastal erosion, rising sea levels, loss of biodiversity, impacts of climate change and pollution. Therefore, granting legal personhood to nature could create a more harmonious, just, and resilient future while strengthening environmental governance and accountability. The benefit of recognising the rights of nature is that it could provide new legal remedies since natural resources would be attributed guardians who would gain *locus standi* to represent them in court. The law will become proactive instead of reactive in the sense that the focus will be shifted from post-damage compensation to preventive and restorative measures. The more so, appointing guardians to protect the rights of nature empowers public to participate proactively in environmental decision-making and thereby, reinforcing a shared sense of stewardship.

Nature's rights encourage low-impact, regenerative economic models such as eco-tourism, sustainable agriculture and renewable energy which thereby safeguard biodiversity while fostering inclusive growth. Since Mauritius has a rich biodiversity, these benefits would transform it from resource exploitation to rights-based stewardship.

Conclusion

By moving beyond conventional notions of human ownership, it reframes nature not as a resource to be possessed, but as an entity whose own interests in physical, spiritual and ecological terms must be upheld. This shift is particularly powerful for ecosystems of exceptional value, where entrenched disputes can otherwise obstruct meaningful stewardship. Likewise, granting legal rights to nature transforms our legal paradigm from one that treats nature as a backdrop for human activity to one that embraces interconnected systems and extends duties beyond merely protecting human interests.

Shaseeb MUNGUR
Law Reform Officer /
Senior Law Reform Officer

Constitutional Protection of the Environment in Mauritius: Integrating Environmental Equity and International Perspectives

On the occasion of the World Environment Day, the call to strengthen environmental protection in our legal systems has never been louder. Mauritius, a small-island state renowned for its natural beauty and biodiversity, faces increasing ecological pressures, from coastal erosion to biodiversity loss. Yet, conspicuously absent from the supreme law of Mauritius (*the 1968 Constitution*) is any explicit right or duty regarding the environment. The question thus arises: *should Mauritius entrench environmental protection in its Constitution*? This article argues that it should – raising environmental rights to constitutional status would cement environmental equity (both intra-generational and inter-generational) as a guiding norm and align Mauritius with an international trend recognising the environment as a fundamental aspect of human rights.

The Mauritian Constitutional landscape and environmental gaps

The *Constitution of Mauritius* enshrines civil and political rights but remains silent on environmental protection.

Unlike many modern constitutions, it contains no explicit right to a clean and healthy environment, nor any reference to natural resources or sustainable development. This absence risks a Faustian bargain, where national development proceeds at the expense of ecological well-being. By embedding environmental stewardship into the Constitution, Mauritius would affirm that economic growth must be balanced with sustainability. It would also enshrine the public trust doctrine - the principle that the State holds the environment in trust for the benefit of both present and future generations, at the highest legal level. While statutory instruments such as the now-repealed *Environment Protection Act 2002* and the current *Environment Act 2024* promote environmental responsibility, they lack the enforceability of a constitutional guarantee. As the Latin maxim *ubi jus ibi remedium* reminds us, where there is a right, there must be a remedy. A constitutional amendment would give legal force to environmental equity, transforming moral duty into justiciable right and securing inter-generational justice for generations to come.

In practical terms, the absence of a constitutional right to a healthy environment presents significant hurdles for those seeking environmental justice in Mauritius. Under the current framework, a claimant must show that a fundamental right has been or is likely to be violated in relation to them personally. Courts have consistently interpreted this requirement narrowly, thereby excluding public interest litigation (*actio popularis*) in environmental matters unless specifically authorised by statute.

Constitutional Protection of the Environment in Mauritius: Integrating Environmental Equity and International Perspectives [Cont'd]

As a result, communities affected by ecological degradation, such as pollution or the loss of access to common resources, often lack standing to bring a claim unless the harm directly infringes upon their own rights. This limitation leaves many environmental wrongs without a viable remedy. In the absence of constitutional recognition, redress for ecological harm remains uncertain, and the enforcement of environmental duties largely discretionary. This legal gap undermines the pursuit of environmental justice, weakens the public trust doctrine, and fails to uphold inter-generational equity. Mauritius, thus, lags behind emerging global norms that recognise environmental protection as a constitutional imperative - not merely for the benefit of current citizens, but as a duty owed to future generations.

Mauritius has made significant progress in environmental legislation. The *Environment Act 2024*, which repealed the *Environment Protection Act 2002* (*Section 148*), sets out a detailed statutory framework encompassing pollution control, environmental impact assessments (EIAs), and the protection of sensitive ecological areas (Parts III, IV and VI). It provides for the principle of "environmental stewardship", imposing on every person a duty to care for the environment as a shared responsibility (*Section 4*). Yet, as with all ordinary statutes, its permanence is fragile. While the law may express noble intentions, it is not immune from the currents of political change. Notably, while *Section 30* mandates EIA licensing for prescribed undertakings, *Section 31* allows the Minister to exempt certain projects by declaring them "public interest undertakings". Although such undertakings still require ministerial approval, they bypass the full diligence of EIA scrutiny, placing ecological oversight at the discretion of the executive.

This creates a legal pathway where urgent development can override environmental assessment, however well-intentioned - a tension not uncommon in balancing public good with ecological cost.

Another element of the domestic environmental framework is the *Climate Change Act 2020*, which establishes a comprehensive climate governance regime. It expressly aims to make Mauritius "a climate-change resilient, and low emission, country", creating an Inter-Ministerial Council on Climate Change to set national objectives and a Department of Climate Change to oversee broad climate policy and reporting duties. Part V mandates formulation of a National Climate Change Adaptation Strategy and Action Plan and a Mitigation Strategy and Action Plan (each accompanied by an annual greenhouse-gas inventory), aligned with UNFCCC (United Nations Framework Convention on Climate Change) guidance to integrate national development priorities. A multi-sectoral Climate Change Committee is established to coordinate implementation including compiling inventories and recommending methods to monitor and control emissions across key sectors (thus laying the groundwork for national carbon budgeting). However, as ordinary legislation its targets remain subject to amendment by Parliament; constitutionalising environmental rights would embed these climate goals in supreme law, securing their enduring effect.

The Environment and Land Use Appeal Tribunal (ELUAT) adds an essential layer of environmental accountability by enabling citizens to challenge permitting decisions.

Constitutional Protection of the Environment in Mauritius: Integrating Environmental Equity and International Perspectives [Cont'd]

Its importance was affirmed by the Privy Council in *Eco-Sud and others v Minister of Environment [2024] UKPC 19*, which recognised the Tribunal as a substantive check on executive discretion, noting that it conducts a full rehearing on the merits and may overrule ministerial decisions. However, its jurisdiction remains narrowly confined to specific statutory appeals and does not extend to broader environmental grievances or policy-based harms. In the same case, the Tribunal had initially dismissed Eco-Sud's appeal on the ground that the organisation failed to show "undue prejudice" as required under *section 54(2)* of the then-applicable legislation, interpreting this as requiring personal or economic harm. This restrictive view was overturned by the Supreme Court and upheld by the Privy Council, which confirmed that environmental standing could extend to cases of collective or ecological interest, even where no direct personal injury was shown. Nonetheless, in the absence of an explicit constitutional right to a healthy environment, access to redress still depends on statutory thresholds and remains vulnerable to narrow interpretations. A constitutional environmental right would close this gap by affirming that the environment itself warrants legal protection, independent of proprietary or individual interests.

Environmental Equity: Intra- and Inter-Generational

At the heart of the push for constitutional environmental protection is the concept of environmental equity. This principle has two dimensions: intra-generational equity, which demands fairness among individuals and groups within the present generation, and inter-generational equity, which extends justice to future generations. Both dimensions are deeply rooted in international sustainable development discourse. Principle 3 of the Rio Declaration (1992) famously proclaims that "*the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations*." In other words, development today should not come at the cost of depriving our children and grandchildren of a healthy environment tomorrow. Philosophically, this idea of a partnership between generations echoes the proverb: "*We do not inherit the Earth from our ancestors; we borrow it from our children*."

Intra-generational equity requires that environmental benefits and burdens be fairly distributed among the current population. This overlaps with the concept of environmental justice – ensuring that no section of the population bears a disproportionate share of environmental harm or is denied equal access to natural resources. In Mauritius, issues like pollution in densely populated districts, allocation of water resources during droughts, or access to green spaces are all questions of intra-generational equity. Notably, the United Nations' Sustainable Development Goals underscore these principles: SDG 11 calls for inclusive, safe, resilient and sustainable communities (including universal access to green and public spaces) and SDG 16 urges access to justice for all and inclusive institutions. These goals reflect that sustainable development must be people-centred and equitable, leaving no one behind.

Inter-generational equity, on the other hand, imposes a duty to ensure that our actions today do not diminish the natural wealth and health of the planet for those yet unborn.

Constitutional Protection of the Environment in Mauritius: Integrating Environmental Equity and International Perspectives [Cont'd]

Climate change is the paramount example – every ton of greenhouse gas we emit or every coral reef we fail to protect will affect the welfare of future Mauritians. The *Paris Agreement on Climate Change*, to which Mauritius is a party, is fundamentally premised on inter-generational responsibility: it seeks to limit global warming for the sake of "*present and future generations*". Likewise, the *African Charter on Human and Peoples' Rights* affirms in *Article 24* that "*all peoples shall have the right to a general satisfactory environment favourable to their development*." This regional human rights guarantee, by referring to "peoples" collectively, encapsulates both current communities and posterity – linking environment to the development of both present society and future society. Incorporating such vision into our Constitution would align Mauritius with a pan-African commitment to environmental wellbeing.

The public trust doctrine also provides a useful conceptual tool connecting both dimensions of equity. Originating from ancient Roman law (the idea of *res communis*, that certain resources like air, sea, and shores are common to all), the public trust doctrine states that the State holds critical natural resources in trust for the public and future generations. It has been recognised in varying forms in other jurisdictions, for example, Indian courts have used it to prevent private encroachment on rivers and forests. In the context of Mauritius, embracing a public trust approach would mean that the government, as trustee, must protect common environmental resources for the public's use and benefit, now and in the future. This doctrine reinforces both intra-generational rights (the public today must have reasonable access and use) and inter-generational duties (tomorrow's public should inherit these resources unimpaired).

As we shall see, the current debate over public beach access in Mauritius vividly illustrates why these principles of equity and trust are so important – and why they warrant constitutional status.

Few issues illustrate the notion of environmental equity in Mauritius as tangibly as the ongoing debate over public beach access. Mauritius is famed for its idyllic beaches – yet the ability of ordinary Mauritians to enjoy these coastal commons has been a source of contention. Though large stretches of the shoreline are legally public, only a fraction — around 15% — is accessible, with hotels and developments walling off what is meant for all. The Law Reform Commission of Mauritius responded to these concerns in June 2024 by dedicating an Issue Paper to this topic. The paper titled "***Criminalisation of Denial of Access to Public Beaches in Mauritius***" – examines whether denying the public their right of way to the beach should be made a criminal offence. In doing so, the Law Reform Commission framed it as more than a land use matter —a question of social justice and constitutional values. Yet without a constitutional right to a healthy environment, these protections remain vulnerable to policy shifts or executive discretion.

The above touches on inter-generational concerns. If current trends continue, future generations of Mauritians could inherit an island where expansive stretches of coastline are effectively off-limits to them, eroded away or privatised in all but name. Ensuring legal access to beaches now is part of a broader strategy of coastal resilience and public trust for the future.

Constitutional Protection of the Environment in Mauritius: Integrating Environmental Equity and International Perspectives [Cont'd]

Indeed, the Government Programme 2025-2029 pledges to "reinforce coastal resilience" by rehabilitating eroded coasts, proclaim additional land as public beaches, and restore neglected pathways to existing beaches. The idea is that the coast is part of the national environmental heritage, to be equitably shared among present citizens and preserved for future ones. The public beach access debate exemplifies why a constitutional anchor for environmental rights (and duties) would be valuable: it would guide and constrain both public authorities and private actors, ensuring that environmental equity is not merely a policy preference but a legal mandate.

International trends: the rise of environmental rights

Mauritius would not be alone in elevating environmental protection to constitutional status — it would be joining a growing global consensus that views a healthy environment as a fundamental human right. In 2022, the UN General Assembly adopted Resolution 76/300, affirming this right as essential to the dignity and survival of present and future generations. Regionally, *Article 24 of the African Charter on Human and Peoples' Rights*, to which Mauritius is party, guarantees the right to a satisfactory environment — a right enforced in the landmark *SERAC v. Nigeria* case, where pollution and neglect were condemned as violations of that duty.

South Africa's *Constitution* balances the right to an environment not harmful to health with a State duty to protect it for future generations. Kenya not only guarantees this right, but through *Article 70*, enables any person to seek judicial remedy for environmental harm — no personal loss required. The Indian Supreme Court, though lacking an explicit environmental clause, has interpreted the right to life as encompassing environmental health, affirming in 2024 that clean air and water are constitutionally protected.

In Latin America, Ecuador has gone further, granting rights to nature itself — a bold stance rooted in indigenous philosophy that sees nature not as property, but as kin. While Mauritius need not go that far, these examples reflect a shared recognition: that human well-being is inseparable from ecological integrity. France, the Seychelles, and others have also enshrined environmental rights, embedding the idea that nature's protection is not a luxury, but a legal necessity.

Crucially, these constitutions do not only guarantee substantive rights, such as the right to a clean and healthy environment — they also enshrine procedural rights: public participation in decision-making, access to environmental information, and the ability to seek legal redress. These are the building blocks of environmental democracy. As *Principle 10 of the Rio Declaration* affirms, environmental governance must be participatory, transparent, and just. By constitutionalising these rights, Mauritius would not only meet its international commitments, from the SDGs to the African Charter, but affirm that its people have the right to be heard, the right to know, and the right to protect what is theirs.

Constitutional Protection of the Environment in Mauritius: Integrating Environmental Equity and International Perspectives [Cont'd]

Conclusion

The ancient thought experiment known as the *Ship of Theseus* invites us to reflect on the nature of identity through gradual change. First recorded by Plutarch and later explored by philosophers such as Hobbes and Locke, the paradox asks: if every plank of Theseus's ship is replaced over time, does it remain the same ship? Or does it become something else entirely? The analogy has particular resonance in environmental governance. Mauritius, like Theseus's vessel, is undergoing incremental transformation - coastlines retreat due to erosion, coral reefs bleach under warming seas, wetlands give way to development. The nation remains recognisable, but as environmental features are lost or altered one by one, we must ask: how much can change before Mauritius ceases to be the island we once knew?

This question is not merely philosophical, it is legal and constitutional. Much like the unchanging keel of Theseus's ship, a constitutional provision for environmental rights functions as the core framework that maintains the integrity of the nation's identity, even as circumstances change. Statutes such as the Environment Act 2024 or policies promoting beach access, while important, are susceptible to the winds of political convenience. A constitutional commitment, by contrast, provides legal permanence — a durable standard that ensures future alterations remain faithful to the original character of Mauritius.

In this light, environmental equity, both intra- and inter-generational, assumes constitutional significance. The principle that all Mauritians, regardless of class or era, ought to enjoy access to their natural heritage, must be more than policy rhetoric, it must be a binding constitutional promise. Without it, we risk a slow, unchallenged transformation of our environmental landscape, where the nation continues to function, but with an identity hollowed out by omission. Just as the Ship of Theseus poses the question of when change becomes a rupture, so does environmental degradation silently test the limits of our collective memory and moral accountability.

Ghirish RAMSAWOCK
Law Reform Officer /
Senior Law Reform Officer

Who speaks for Nature? Revisiting *Locus Standi* and Public Interest Litigation through the Eco-Sud precedent

Introduction

'*Locus Standi*', a term tossed around in civil legal disputes quite recurrently. Whether or not you have it, will make or break your case. *Locus standi*, in its literal sense, is the 'place where you stand', but in its legal sense, it is the right to bring a case to court. It is the fundamental concept that you need to have a direct and sufficient interest to justify judicial redress; absence of it will result in your case being dismissed. In Mauritius only private litigations are recognised, as opposed to 'public interest litigation' (PIL) (see *Tengur S v. The Ministry of Education & Scientific Research & Anor* [2002 SCJ 48]), which is brought forward, not by an immediate aggrieved party, but on behalf of the public. The *locus standi* test in PIL is less focused on the direct interest to the matter at hand, it is rather done in the spirit of equality or human rights. In numerous jurisdictions such as the United Kingdom and India, public interest litigation has not only been recognised, but also play a vital role in supporting the poor, the marginalised or the underrepresented; a lot of PIL precedents are actually environmental matters.

If you have been subject to medical negligence, you may sue the clinic for damages, and if you get into an accident, you are also liable for damages in a civil suit before court. But when the environment has been aggrieved, who can sue to protect its rights? Silent and unwavering, providing us with oxygen, supplying us with its bounty of food, the environment is the backbone of our survival; damage to it, is damage to our ecosystem and eventually to us. The domino effect of its destruction inevitably affects humankind. This brings us directly to the relevance of public interest litigation and how beneficial its introduction will be to the Mauritian jurisdiction.

In 2023, the Judicial Committee of the Privy Council, delivered a judgment which may very well be the first flicker igniting the flames of public interest litigation to be established in the Mauritian jurisdiction. The case of *Eco-Sud vs Minister of Environment, Solid Waste and Climate Change* did not initially set out to become the landmark that it is, as it all began when an application for an Environmental Impact Assessment (EIA) license, for a major construction project in Pointe d'Esny, Beau Vallon, was submitted to the Minister of Environment, Solid Waste Management and Climate Change. Eco-Sud, an association militating for the protection of the environment in Mauritius, firmly opposed this because the said construction will be having an immense environmental impact on the wetlands within the proximity of the construction site. The said wetlands site (Ramsar site) falls under the protection of the *Convention on Wetlands of International Importance (Ramsar Convention),* to which Mauritius has been a signatory to since 2002.

Who speaks for Nature? Revisiting *Locus Standi* and Public Interest Litigation through the Eco-Sud precedent [Cont'd]

Eco-Sud has made several attempts at objection prior to resorting to a judicial action, but all of them were in vain as the EIA license was in the end granted.

The First Ruling: Appeal before the Environment and Land Use Appeal Tribunal

The first decision was delivered by the Environment and Land Use Appeal Tribunal (ELUAT) in October 2021. Established in 2012 by the *Environment and Land Use Appeal Tribunal Act*, the ELUAT's jurisdiction was seized under *Section 54* of the repealed *Environment Protection Act of 2002* (now *Section 119 of the Environment Act 2024*), by Eco-Sud. The appeal to the ELUAT was against the decision of the Minister of Environment, Solid Waste and Climate Change to grant an EIA license for an Inland Integrated Residential Development on two plots of land, to Pointe d'Esny Lakeside Co. Ltd.

Before the matter was even heard on the merits, Pointe d'Esny Lakeside Co. Ltd (Co-Respondent No. 1), raised a *plea in limine litis* ex-facie the Statement of case and the Grounds of Appeal, on the ground that the Appellant (Eco-Sud), had no *locus standi* to enter such an appeal. It is the contention of Pointe d'Esny Lakeside Co. Ltd that Eco-Sud has failed to demonstrate that it is actually aggrieved by the decision to grant the EIA license to Co-Respondent No. 1, and that undue prejudice will likely be caused to it, which are the conditions for appeal to the Tribunal, as provided by the *Environment Protection Act* (EPA). The Minister of Environment, Solid Waste and Climate Change (the Respondent), as well as its Ministry (Co-Respondent No. 3), and the Ministry of Agro-Industry and Food Security (Co-Respondent No. 2), followed the suit of Co-Respondent No. 1 and raised a similar preliminary objection.

The appellant, as per its statement of case, appealed due to its legitimate interest to protect the environment and to promote balance between environmental protection and development. But the Tribunal found that at no time in its pleadings did the Appellant bring to light any averments evidencing any undue prejudice caused to it, nor did it disclose how it is an aggrieved party. The Tribunal further stated that the term 'legitimate interest' has a significant legal connotation and simply extrapolating its objectives to protect the environment and the initial issue of granting the EIA license, is not sufficient to establish 'legitimate interest' under the *Environment Protection Act*. The Tribunal did concur that environmental protection is a matter of public importance, but the ELUAT is bound by the principles laid down in the legislations and may only entertain matters which fall within its purview. Thus, the *plea in limine* was found by the Tribunal to be rightly taken and the appeal was set aside.

Appeal before the Supreme Court

Undeterred in its conviction, Eco-Sud lodged an appeal against the ruling of the ELUAT to uphold the preliminary objection on *locus standi*, before the Supreme Court. The Appellate Court, in fact, makes a complete 180 of the ELUAT's decision, and will go to grant Eco-Sud their appeal. The appellant's grounds of appeal rested mainly on the Tribunal's allegedly erroneous decision to adopt a restrictive interpretation of the *locus standi* test provided under *Section 54(2) of the Environment Protection Act of 2002*.

Who speaks for Nature? Revisiting *Locus Standi* and Public Interest Litigation through the Eco-Sud precedent [Cont'd]

Counsels on the opposing side urged the Court that the appeal is a form of public interest litigation, which does not exist in the Mauritian jurisdiction. But Court stated that this was utterly wrong as the matter is against a decision of the Minister of Environment, Solid Waste and Climate Change to grant an EIA license and not an action for constitutional redress or judicial review. The Court further stated that "*to deprive an appellant from appealing to the Tribunal, as duly provided by the relevant provisions of the EPA, on the basis that such an appeal would fall under the realm of public interest litigation, would be prejudicial, given that public interest litigation arises when a plaintiff brings an action in Court to litigate a matter of general public interest.*"

The Judges on appeal agreed with Eco-Sud on the ELUAT's conclusion that the appellant did not aver in its pleadings how it was aggrieved by the Minister's decision, or how it suffered undue prejudice, is erroneous. The appellate Court stated that *section 54(2) of the EPA* does not require the appellant at the start of the appeal to delineate the matter of *locus standi*, especially given that *ELUAT Act* states that the statement of case has to be precise and concise.

However, when discussing the matter of *locus standi*, the Court set forth that the restrictive interpretation of *locus standi* in other legal applications, such as judicial review or a constitutional matter, cannot be assimilated to the matter at hand. The appellate Court analysed the English case of *Walton v The Scottish Ministers [2012] UKSC 44*, and noted that although the Mauritian jurisdiction does not recognise public interest litigation, applying the same rigid rules to an action in environmental law, may *yield an undesirable result.* An extract from the case of *Walton*, quoted by the Appellate court, concerning an applicant's requirement to enter redress for an environmental question, is especially pertinent in this matter. It states that applicants must "*demonstrate that they have a genuine interest in the aspects of the environment that they seek to protect, and that they have sufficient knowledge of the subject to qualify them to act in the public interest in what is, in essence, a representative capacity.*"

The Court stressed the fact that although *section 54(2) of the EPA* should not be interpreted as restrictively, it is not an opportunity for busybodies to bring forth frivolous matters before the Tribunal. Only bona fide parties, who have shown genuine concern and adequate knowledge of the environmental protection cause, without having any personal gain to obtain in the matter will be eligible to action before the ELUAT; this will be subjected to determination on its particular factual and legal circumstances, as well as the specific grounds of appeal.

After in-depth exploration of the ground of appeals, the Supreme Court delivered a judgment which will become a pivotal cornerstone in matters of environmental law, even opening the door to the possibility of introducing the concept of 'Public Interest Litigation' in the Mauritian jurisdiction.

Appeal before the Judicial Committee of the Privy Council

Discontented with the decision of the Supreme Court, the Minister and the Ministry of Environment, Solid Waste Management and Climate Change, appealed against the decision before the Judicial Committee of the Privy Council (JCPC).

Who speaks for Nature? Revisiting *Locus Standi* and Public Interest Litigation through the Eco-Sud precedent [Cont'd]

On the very outset, the Privy Council made it a point to analyse the factual background of Eco-Sud, and established the involvement of the non-governmental organisation, in the protection of the environment, but more especially the Pointe D'Esny wetlands, which is the Ramsar site. Ultimately, the JCPC positioned itself in favour of the decision of the Supreme Court to find Eco-Sud as being 'a person aggrieved by the decision,' well within the meaning of the EPA due its track records in the protection of wetlands, and the fact that its objections are neither trivial, frivolous, nor vexatious. The Board also laid down that a test of property rights or economic interests, reserved to a private interest litigation, will not be appropriate in an environmental context when considering the provisions of the *Environment Protection Act*.

Upon questioning itself as to what amount to prejudice in an environmental context, the JCPC stated that "*The answer is that prejudice, in the sense of harm, can be to an interest in the environment as well as being prejudice to an economic interest or to a private interest.*" At last, the Privy Council agreed with the Supreme Court's findings and underscored the obligation *that every person in Mauritius shall use his best endeavours to preserve and enhance the quality of life by caring responsibly for the natural environment of Mauritius*, as provided by *section 2 of the Environment Protection Act* (now *Section 4 of the Environment Act 2024*).

The need for a revision of the locus standi test to introduce Public Interest Litigation

The Supreme Court, as well as the JCPC, in their judgments properly showcased the global spirit of public interest litigation. PIL is not a concept that has been well developed in Mauritius; in reality it is actually frowned upon by the court in previous judgments such as the case of *Tengur S v The Ministry of Education & Scientific Research & Anor* (2002 SCJ 48), where the Court stated that "*public interest litigation is alien to our jurisdiction.*" Mauritian courts have always emphasised the requirement of 'personal interest', rather than public, when determining the *locus standi* of a Plaintiff in court. The test of *locus standi* has been debated time and again before our Courts, especially in matters of judicial review or constitutional redress. But legal actions are not always black and white; a legitimate interest may not always be personal interest. PIL's criteria for *locus standi* is more tolerant than regular private litigation as they do not demand strict adherence to having a personal and direct link to the matter in dispute; especially in environmental issues as the nexus between a plaintiff and the matter in dispute is not completely non-existent, but most often times extended. When a dispute arises for harm to the environment, the plaintiff may not be the one to suffer directly, but a consequence of the environmental harm will vicariously affect people in some way or another; if not today, in the future.

Consequently, the notion of Public Interest Litigation also invites consideration of class actions, a procedural mechanism that remains foreign to the Mauritian legal system but one whose potential merits are undeniable. Class actions, or *actions collectives*, fundamentally transcend the traditional doctrine of locus standi, which ordinarily restricts legal standing to individuals who can demonstrate a direct, personal interest in the matter at hand.

Who speaks for Nature? Revisiting *Locus Standi* and Public Interest Litigation through the Eco-Sud precedent [Cont'd]

By contrast, a class action allows a single person or an association to initiate proceedings on behalf of a larger group of individuals who share common claims, often arising from a collective harm. In the context of environmental law, for instance, the harm is typically suffered collectively by a community rather than by isolated individuals. A class action mechanism would not only make it procedurally more feasible and financially accessible for such plaintiffs to pursue their claims, but it also enhances judicial efficiency by consolidating numerous individual actions into a single coherent procedure.

Public Interest Litigation in foreign jurisdictions

Public interest litigation in foreign jurisdictions has proven to be quite beneficial to the environmental cause as this may lead to better environmental protection laws being implemented. India, which is quite liberal in its approach to PIL, has Mahesh Chandra Mehta to thank for its pivotal role in India's environmental litigation. Since 1984, M.C Mehta, a lawyer specialising in PIL, has lodged cases which will revolutionise India's stand on environmental protection, more especially on environmental pollution; one of the most notable jurisprudence is the case of *M.C. Mehta v. Union of India.* In this case, a poisonous gas leakage at a fertiliser factory in Delhi, left in its wake the death of one person, and the injury of several others. M.C Mehta raised before court, not only the issue of industrial safety, but also the rights of people to a healthy environment. This precedent eventually gave birth to enshrining the constitutional right to the environment in *Indian constitution*, under *Article 21*, 'the right to life'.

Another pertinent litigation is the Taj Trapezium case in 1985 which is about the negative effect of air pollution caused by the high level of industrial emissions to the Taj Mahal, turning the pristine white marble of this Indian landmark, yellow. This eventually led to the Supreme Court of India to issue directives for factories to cease the use of coal-based energy in favour of cleaner fuels.

In the United Kingdom, public interest litigation in the context of environmental protection is relatively more limited compared to jurisdictions like India, but nevertheless, the British judiciary has produced notable jurisprudence concerning PIL in environmental matters. One of the most prominent precedent, the case of *Walton v The Scottish Ministers [2012] UKSC 44,* was actually mentioned by the Supreme Court in the case of Eco-Sud. In this matter, albeit the applicant was not a person aggrieved within the meaning of the legislation in issue, the law lords stated that there are circumstances where although an individual may not be expressly affected by that environmental issue, he may still raise that issue before the appropriate forum and have his right protected. They further added that an individual cannot be pre-empted to a court recourse just because he cannot state the direct nexus of his interest to the environmental issue and this would be contrary to the purpose of environmental law, whose main basis is that the environment is a legitimate concern to every individual.

Who speaks for Nature? Revisiting *Locus Standi* and Public Interest Litigation through the Eco-Sud precedent [Cont'd]

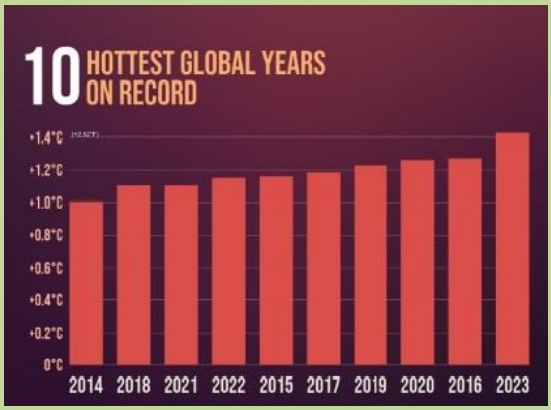
Conclusion

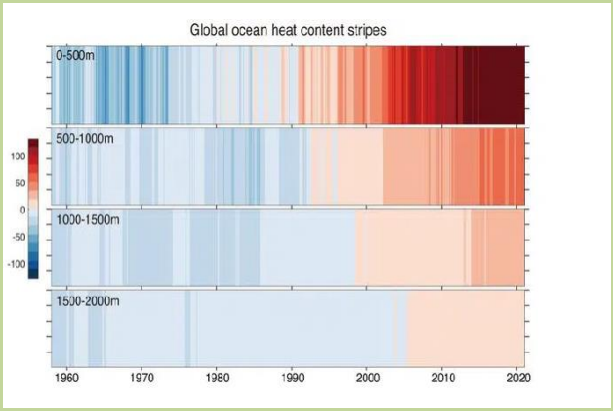
Being a small island nation surrounded by water, sheathed by lush greenery and spectacular mountains, the protection of the environment should be one of the biggest concerns of our society, especially given that we are more prone to the jeopardy of climate change and the rise of sea level. A revision of the Mauritian judicial procedures, to introduce the concept of Public Interest Litigation in light of the landmark decision of the JCPC is highly appropriate, especially with the prevailing commitment of the government to the protection of the environment. This will not only make Mauritius more in line with the general international standard, but also deepen its pledge to the protection of the environment. It will also not be of a disservice to the cause if the Mauritian legislator was to enshrine the right to the environment in the *Constitution of Mauritius*, which will strengthen the aggrieved person's case before a court of justice.

Public interest litigation and the evolving doctrine of *locus standi* have become powerful tools in environmental governance. With the pressing risks to the environment, affecting communities, ecosystems, and future generations, the definition of *locus standi* necessitates a proper remodelling, which is broader and more inclusive. Courts around the world have progressively recognised that individuals, non-governmental organisations, and civic groups must be allowed to act as guardians for the environment, especially where the inaction of the state, or corporate negligence, threatens public welfare. These advancements ensure that environmental laws are not just symbolic, but actively enforceable. Public interest litigation provides a vital democratic check, enabling citizens to demand transparency, accountability, and justice.

Hooriyyah Banu RUJUB
STM Intern

Statistics on Global Warming and Climate Change





2023: Earth's Hottest Year on Record

A recent report by the World Meteorological Organization (WMO) reveals that 2023 shattered previous records for greenhouse gas concentrations, surface temperatures, ocean heat and acidification, sea level rise, Antarctic sea ice loss, and glacier retreat. Extreme weather events such as heatwaves, floods, droughts, wildfires, and rapidly intensifying tropical cyclones disrupted daily life for millions and caused billions in economic damage. The report confirms that 2023 was the warmest year ever recorded, with the global average near-surface temperature reaching 1.45°C above pre-industrial levels, marking the hottest decade to date.

The ocean absorbs most of the heat we produce

Oceans have absorbed around 90% of the planet's excess heat since 1971, with 2020 alone seeing heat levels equal to two Hiroshima bombs every second. While oceans can store vast amounts of heat, marine life like coral reefs, highly sensitive to temperature changes, is now dying off at alarming rates.

Statistics on Global Warming and Climate Change [Cont'd]

Lesser known facts about global warming:

- Over 21% of the world's oceans have darkened in the past 20 years, limiting sunlight needed for marine life. This climate-driven change threatens biodiversity and weakens the ocean's role in regulating the planet's climate.
- A study across 17 countries found that rising temperatures are linked to increased rates of women's cancers, due to heightened exposure to climate-intensified carcinogens like UV radiation and air pollution.
- The Intergovernmental Panel on Climate Change warns that warming beyond 1.5°C could wipe out entire countries, especially low-lying Pacific islands, as sea levels rise and extreme weather worsens.
- Every 1°C rise in temperature may increase lightning strikes by 12%, as warmer air fuels more storms thereby posing growing risks to nature and human infrastructure.
- Rising seas and extreme weather are driving wealthier people to higher ground, displacing poorer communities, a trend called climate gentrification that deepens social inequality.

Environment statistics for Mauritius (Statistics Mauritius, 2023):

- Mauritius lost 5,005 hectares of forest in 2023, shrinking forest cover from 25.2% to 22.5% of the land area. This sharp decline, mostly in private lands, undermines biodiversity and carbon capture efforts.
- Greenhouse gas emissions rose by 5.3% in 2023, reaching 5,939.7 Gg CO_2-eq. After accounting for removals, net emissions still climbed by 6.3%, largely due to higher fuel use and reduced forest absorption.
- Fossil fuels supplied 90.2% of Mauritius' energy needs in 2023, with coal use surging by 12.5%. Renewable sources provided less than 10%.
- Solid waste at Mare Chicose landfill rose by 9.5%, reaching 541,141 tonnes. Per capita, waste disposal increased to 1.22 kg/day — nearly 30% higher compared to 2014.
- Electricity from renewable sources declined by 4.2% in 2023. The share of renewables in total generation dropped from 19.2% to 17.6%, with sharp falls in wind and hydroelectric production.

EDITORIAL TEAM

Shaseeb Mungur
Law Reform Officer/
Senior Law Reform Officer

Ghirish Ramsawock
Law Reform Officer/
Senior Law Reform Officer

Hooriyyah Banu Rujub
STM Intern