

THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL BILL

(No. IV of 2012)

Explanatory Memorandum

The main object of this Bill is to provide for the establishment of a single Tribunal that will hear appeals relating to matters that are directly or indirectly related to the environment and the manner in which land is made use of. The Tribunal will accordingly exercise jurisdiction in respect of –

- (a) Building and Land Use Permits and Outline Planning Permissions issued or refused by Municipal City Councils, Municipal Town Councils and District Councils under the Building Act, the Local Government Act 2011 and the Town and Country Planning Act;
- (b) morcellement permits granted or refused under the Morcellement Act;
- (c) Environmental Impact Assessment licences and Preliminary Environmental Report approvals granted or refused under the Environment Protection Act.

Y. N. VARMA
Attorney-General

24 April 2012

THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL BILL

(No. IV of 2012)

ARRANGEMENT OF CLAUSES

Clause

1. Short title
 2. Interpretation
 3. Establishment of Tribunal
 4. Jurisdiction of Tribunal
 5. Proceedings of Tribunal
 6. Appeal to Supreme Court
 7. Rules
 8. Consequential amendments
 9. Transitional provisions
 10. Commencement
- SCHEDULE
-

A BILL

To provide for the establishment of an Environment and Land Use Appeal Tribunal and for related matters

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Environment and Land Use Appeal Tribunal Act 2012.

2. Interpretation

In this Act –

“Chairperson” means the person appointed as such under section 3(1)(a);

“division” means a division of the Tribunal set up in accordance with section 3(5)(b);

“member” –

(a) means a person appointed as such under section 3(3)(a); and

(b) includes an expert appointed under section 3(4);

“party”, in any proceedings before the Tribunal, includes the State;

“relevant Act” means –

(a) the Building Act;

(b) the Environment Protection Act;

(c) the Local Government Act 2011;

(d) the Morcellement Act;

(e) the Town and Country Planning Act; or

(f) such other Act as may be prescribed;

“Secretary” means the Secretary to the Tribunal referred to in section 3(6);

“Tribunal” means the Environment and Land Use Appeal Tribunal established under section 3(1);

“Vice-Chairperson” means a person appointed as such under section 3(1)(b).

3. Establishment of Tribunal

(1) There is established, for the purposes of this Act and the relevant Acts, a Tribunal to be known as the Environment and Land Use Appeal Tribunal which shall consist of –

- (a) a Chairperson, who shall be a barrister of not less than 10 years’ standing, appointed by the Public Service Commission;
- (b) one or more Vice-Chairpersons, who shall be a barrister or barristers of not less than 5 years’ standing, appointed by the Public Service Commission;
- (c) such other members as may be necessary to enable the Tribunal to discharge its functions under this Act and the relevant Acts, who are not –
 - (i) public officers of the Ministry responsible for the subject of environment, housing, land use or local government;
 - (ii) members, chief executives or officers of a local authority; or
 - (iii) members of, or candidates for election to, the Assembly, the Rodrigues Regional Assembly or a local authority, or persons otherwise actively engaged in politics.

(2) The Chairperson and a Vice-Chairperson may be called upon by the Public Service Commission to act as Chairperson or Vice-Chairperson of any tribunal established under any other enactment.

(3) The members referred to in subsection (1)(c) shall –

- (a) be appointed by the Attorney-General, after consultation with the Ministers to whom responsibility for the subjects of environment, housing, local government and civil service are assigned, on an ad hoc basis and for such period as he considers necessary;

(b) be paid an all-inclusive allowance, subject to the approval of the Minister to whom responsibility for the subject of finance is assigned ; and

(c) be under the administrative control of the Chairperson.

(4) Where the subject matter of an appeal relates to a technical field, the Attorney-General may, on the recommendation of the Chairperson, enlist the services of a suitable expert in the field, to act as member of the Tribunal on an ad hoc basis for such period as he considers necessary.

(5) (a) The Tribunal shall sit in one or more divisions.

(b) A division shall consist of the Chairperson, or a Vice-Chairperson, and 2 other members selected by the Chairperson.

(c) A division may be set up on a temporary basis for a period not exceeding one year where there is a backlog of cases before the Tribunal and such division shall be chaired by a Senior District Magistrate, who shall be designated by the Chief Justice, to act as Vice-Chairperson of the Tribunal during that period.

(d) Any decision of a division of the Tribunal shall be considered to be the decision of the Tribunal.

(6) (a) There shall be a Secretary to the Tribunal who shall be appointed by the Public Service Commission and who shall be responsible for –

(i) keeping a record of the proceedings of the Tribunal;

(ii) keeping in safe custody the papers and documents of the Tribunal;

(iii) issuing summonses and recording statements of witnesses called before the Tribunal; and

(iv) performing such other duties as the Tribunal may require.

(b) The Secretary to Cabinet and Head of the Civil Service may, at the request of the Chairperson, designate such public officers as may be necessary to enable the Tribunal to discharge its functions under this Act.

(c) The Secretary and public officers referred to in this subsection shall be under the administrative control of the Chairperson.

(7) For the proper discharge of the functions of the Tribunal, the Master and Registrar shall designate such number of ushers as, in the opinion of the Chairperson, are required for that purpose.

4. Jurisdiction of Tribunal

(1) The Tribunal shall –

(a) hear and determine appeals –

(i) under section 54 of the Environment Protection Act;

(ii) from a decision of a Municipal City Council, Municipal Town Council or District Council under section 117(14) of the Local Government Act 2011;

(iii) under section 7B of the Morcellement Act; and

(iv) under sections 7 and 25 of the Town and Country Planning Act; and

(b) exercise such other jurisdiction as may be prescribed in any relevant Act.

(2) The Chairperson or, in his absence, the Vice-Chairperson, may, in respect of any matter which is due to be heard by the Tribunal, on application made to him by a party, sit alone for the purpose of making such orders, including an order in the nature of an injunction, as he thinks fit, where he is of opinion that, for reasons of urgency and the likelihood of undue prejudice, it is necessary to do so pending the hearing of the matter.

5. Proceedings of Tribunal

(1) (a) Subject to this section, the Tribunal shall regulate the manner in which proceedings shall take place before it.

(b) Where an appeal is lodged under section 4(1), the Chairperson shall refer the matter to a division for hearing and a determination.

(c) A determination of the Tribunal shall, unless all the persons constituting a division are agreed, be that of the majority.

(2) (a) The Tribunal shall sit at such time and place as the Chairperson may determine.

(b) Where the Tribunal adjourns any proceedings, it shall resume them at such place and time as the Chairperson may determine.

(3) Any proceedings of the Tribunal shall –

- (a) be held in public;
- (b) be conducted with as little formality and technicality as possible; and
- (c) not preclude an endeavour by the Tribunal to effect an amicable settlement between the parties.

(4) (a) Every appeal under section 4(1) shall, subject to paragraph (b), be brought before the Tribunal by depositing, with the Secretary, a notice of appeal in the form set out in the Schedule, setting out the grounds of appeal concisely and precisely, not later than 21 days from the date of the decision under reference being notified to the party wishing to appeal.

(b) Where a decision referred to in paragraph (a) is one which is not, under the relevant Act, required to be notified to the person wishing to appeal, he shall deposit the notice and grounds of appeal with the Secretary not later than 42 days from the date on which public notice of the decision was given.

(c) Any proceedings before the Tribunal, other than an appeal under section 4(1), shall be initiated by way of proceipe and affidavit within 21 days of the date when the cause of action arose.

(5) A party before the Tribunal may be represented by a barrister or an attorney or, with the leave of the Tribunal, be assisted by a person having expertise in the subject matter of the appeal.

(6) The Tribunal may –

- (a) make such orders for requiring the attendance of any person or the production of any article or document as it thinks necessary or expedient; and
- (b) take evidence on oath and, for that purpose, administer an oath.

(7) The Tribunal shall make a determination not later than 90 days after the start of the hearing of the appeal, except where there is a valid reason, and with the consent of the parties.

(8) The Tribunal may, upon consideration of the grounds of appeal set out in the notice of appeal and the objections made against the appeal, dismiss

the appeal, where it appears to the Tribunal that it is trivial, frivolous or vexatious.

- (9) Any person who –
- (a) wilfully fails to attend a sitting of the Tribunal on being required to do so;
 - (b) refuses to take an oath before the Tribunal or to answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him in any proceedings before the Tribunal or to produce any article or document when required to do so by the Tribunal;
 - (c) knowingly gives false evidence or evidence which he knows to be misleading before the Tribunal; or
 - (d) at any sitting of the Tribunal –
 - (i) wilfully insults the Chairperson, the Vice-Chairperson or a member; or
 - (ii) wilfully interrupts the proceedings, or commits any contempt, of the Tribunal,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 12 months.

(10) (a) The Tribunal may make such order as it thinks fit as to the costs payable by the losing party.

(b) An order made under paragraph (a) may be enforced by the other party in the same manner as an order for costs in proceedings before a Magistrate.

6. Appeal to Supreme Court

(1) (a) Any party who is dissatisfied with the final decision of the Tribunal, relating to an appeal under section 4, as being erroneous in point in law may appeal to the Supreme Court.

(b) Any party wishing to appeal under paragraph (a) shall, within 21 days of the date of the final decision of the Tribunal, give notice in writing of such appeal to the Secretary and lodge his appeal in the Registry of the Supreme Court.

(2) An appeal under this section shall be prosecuted in the manner provided by rules in respect of an appeal from the final judgement of a District Court in civil matters.

7. Rules

(1) The Tribunal may make such rules for the purpose of the institution and hearing of appeals before the Tribunal as it deems fit.

(2) Any rules made under subsection (1) may provide for the taking of fees or the levying of charges.

8. Consequential amendments

(1) The Environment Protection Act is amended –

- (a) in section 3, by deleting the definition of “Tribunal”;
- (b) by repealing Part VIII and replacing it by the following Part –

PART VIII – THE TRIBUNAL

53. Interpretation of Part VIII

In this Part, “Tribunal” has the same meaning as in the Environment and Land Use Appeal Tribunal Act 2012.

54. Jurisdiction of Tribunal

(1) The Tribunal shall hear and determine appeals against –

- (a) a decision of the Minister under section 16(6), 17(1), 23(2), 23(4), 24(3)(a), 24(3)(b) or 25(1);
- (b) the service of a notice by the Director under section 70(1), 71(1), 72(1), 73(1), 76(2) or 78(2);
- (c) a decision of the Director under section 70(4)(c).

(2) Where the Minister has decided to issue an EIA licence, any person who –

- (a) is aggrieved by the decision; and

- (b) is able to show that the decision is likely to cause him undue prejudice,

may appeal against the decision to the Tribunal.

(3) (a) Any person who has suffered damage or prejudice, as a result of a breach of an environmental law by another person, may make a claim to the Tribunal where the claim does not exceed 50,000 rupees.

(b) The Tribunal may, on a claim being made under paragraph (a), make such order as it thinks fit, including an award of damages, against the person who has caused the damage or prejudice.

(c) (i) The Tribunal shall not hear and determine a complaint under this Act unless the person making the complaint has voluntarily made a sworn statement, in such form as may be prescribed, that he has waived his right to initiate civil proceedings before any Court in Mauritius in respect of the facts that form the subject matter of the complaint.

(ii) A waiver referred to in subparagraph (i) shall constitute a bar to subsequent civil proceedings being initiated by the complainant before any Court in Mauritius in respect of the subject matter of the complaint.

(iii) In this paragraph, "civil proceedings" does not include an application made under section 17 or 83 of the Constitution.

(2) The Local Government Act 2011 is amended, in section 117(14), by deleting the words "Town and Country Planning Board, and the appeal shall be dealt with in accordance with section 7(6) to (8) of the Town and Country Planning Act" and replacing them by the words "Environment and Land Use Appeal Tribunal established under section 3(1) of the Environment and Land Use Appeal Tribunal Act 2012".

(3) The Morcellement Act is amended by inserting, after section 7A, the following new section –

7B. Appeals to Tribunal

(1) Any person aggrieved by a decision of the Minister or of the Board, as the case may be, granting or refusing to issue a letter of intent or a morcellement permit, may appeal against the decision to the Tribunal.

(2) In this section –

“Tribunal” has the same meaning as in the Environment and Land Use Appeal Tribunal Act 2012.

(4) The Planning and Development Act is amended –

(a) in section 2 –

(i) by deleting the definition of “Planning Appeals Tribunal”;

(ii) by deleting the definition of “Tribunal” and replacing it by the following definition –

“Tribunal” has the same meaning as in the Environment and Land Use Appeal Tribunal Act 2012;

(b) by repealing Part X and replacing it by the following Part –

PART X – THE TRIBUNAL

53. Jurisdiction of Tribunal

The Tribunal shall –

(a) hear and determine appeals against any –

(i) decision taken or notice or order issued by a permit authority;

(ii) decision of a local authority in respect of a morcellement; or

(iii) non-determination of an application for a Building and Land Use Permit under section 30(7); and

(b) have power to exercise such other jurisdiction as is conferred upon it under this Act.

- (c) in section 65, by deleting the word “Tribunal” and replacing it by the words “Supreme Court”.
- (5) The Town and Country Planning Act is amended –
- (a) in section 2(1), by inserting, in the appropriate alphabetical order, the following new definition –

“Tribunal” has the same meaning as in the Environment and Land Use Appeal Tribunal Act 2012;
 - (b) in section 7 –
 - (i) in subsection (6), by deleting the words “, within 2 months of receipt of the decision, appeal to the Board, which may hear a representative of any party to the appeal and, subject to the Minister’s approval, confirm, vary or revise the local authority’s decision” and replacing them by the words “appeal to the Tribunal in accordance with the Environment and Land Use Appeal Tribunal Act 2012”;
 - (ii) in subsection (8), by deleting the words “(6) or (7) may appeal to the Judge in Chambers in accordance with the procedures of section 25(3) and (4)” and replacing them by the words “(6) or (7) may appeal to the Tribunal in accordance with the Environment and Land Use Appeal Tribunal Act 2012”;
 - (c) in section 25 –
 - (i) in subsection (3), by deleting the words “, within one month of the receipt of the decision, appeal to a Judge in Chambers who may confirm, reverse or modify the decision of the Board” and replacing them by the words “appeal against the decision to the Tribunal”;
 - (ii) by repealing subsection (4).

9. Transitional provisions

(1) Where the hearing of any matter has, at the commencement of this Act, started before the Town and Country Planning Board or the Environment Appeal Tribunal, that matter which comes under the jurisdiction of the Tribunal shall continue to be dealt with by the Town and Country Planning Board or the Environment Appeal Tribunal, as the case may be, until its determination.

(2) Where the hearing of any appeal from the decision of the Town and Country Planning Board or Environment Appeal Tribunal has, at the commencement of this Act, started before the Judge in Chambers or the Supreme Court, as the case may be, the matter which comes under the jurisdiction of the Tribunal shall continue to be dealt with by the Judge in Chambers or the Supreme Court, as the case may be, until its determination.

(3) Where the hearing of any matter has not started, but is pending at the commencement of this Act, before the Town and Country Planning Board or the Environment Appeal Tribunal, that matter shall, at the commencement of this Act, be taken up and determined by the Tribunal.

(4) Where the President issues a Proclamation to bring into operation the Planning and Development Act, the effect of which is to repeal and replace, as from a certain date, those provisions of a relevant Act to which this Act applies, section 4(1) shall have effect, so as to confer on the Tribunal the necessary jurisdiction in that respect, and the Planning and Development Act shall, as from that date, be deemed to be a relevant Act.

(5) Notwithstanding section 3(2), the person who, at the commencement of this Act, is in office as Secretary to the Environment Appeal Tribunal, shall be entitled to be transferred to the office of the Secretary to the Tribunal under section 3, on terms and conditions not less favourable than those of his previous employment.

(6) Where this Act does not make provision for any transition, the Attorney-General may make such regulations as may be necessary for such transition.

10. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

SCHEDULE
[Section 5(4)(a)]

ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

**NOTICE OF APPEAL UNDER SECTION 5(4)(a) OF THE ENVIRONMENT
AND LAND USE APPEAL TRIBUNAL ACT 2012**

1. I/ We (*name of appellant(s)*)
-
- of (*address*)
-
- holder(s) of National Identity Card Number(s)
- hereby appeal against the decision, order, notice, determination or non-determination of the –
- (a)
- (b)
- (c)
- dated
2. Particulars of the decision, order, notice, determination or non-determination against which appeal is made –
- (a)
- (b)
- (c)
3. Grounds of appeal (*to be set out clearly and concisely*) –
- (a)
- (b)
- (c)

(Please attach separate sheet if additional space is required)

Name of attorney/barrister representing the appellant(s) –

Address of attorney/barrister –

..... Date –

Signature of appellant(s)

FOR OFFICIAL USE

Date on which application was filed –

Name of receiving officer –

..... Date –

Signature
