

The IJLS, in its endeavour to fulfil its objectives under the IJLS Act 2011, organised its first panel discussion on the issue of unexplained wealth and the legislation to combat it, i.e, The Good Governance and Integrity Reporting Act 2015, the law under which Unexplained Wealth Orders (UWOs) can be passed.

The audience present consisted of about 80 law practitioners including Senior Counsels and officers of the DPP. Members of the judiciary and Police Officers from the Police Prosecutors Unit were also present.

In her welcoming address, the Director of the IJLS spoke about the functions of the IJLS in sensitizing the law practitioners on the latest developments in law, in Mauritius and abroad and this panel discussion on unexplained wealth is the perfect platform where prosecution, defence and the agency can each give their perspectives on the law and practice relating to unexplained wealth. She cited the recent case of Zamira Hajiyeva, wife of a banker from Azerbaijan, who failed to explain to UK courts how she was able to purchase property worth 22 million pounds in London, and this case has given rise to the first Unexplained Wealth Order in UK.

A keynote address by Lord Phillips, Chairman of the Integrity Reporting Board and past president of UK Supreme Court followed. In his address, Lord Phillips explained how the Mauritian legislation has provided us with is a weapon against crime and corruption through the above mentioned Act. In his own words, Lord Phillips says that “corruption is an insidious plaque which has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to dilation of human rights, distorts markets, erodes the quality of human life and allows crimes, terrorism and other threats to human security to flourish.” He compared the GGIRA of Mauritius to those similar laws in Columbia and Ireland to draw out the uniqueness and the efficacy of our law.

Amongst the panellists, Mr. Sanjay Bhuckory SC, forcefully expressed his views that the Act is a piece of draconian legislation which he believes encourages and leads to injustice. Referring to the term “Good Governance” in the Act, he intimates that it projects absurdity and is misguided. He further mentioned that the Act may provide a unique but dangerous precedent.

Further, he placed emphasis on the fact the law does not provide for compensation in cases where a person has been prejudiced due to a faulty Order. He made comparison to the Criminal Finances Act 2017 with regards to compensation that may be ordered by Court in UK.

The Director of Prosecutions, Mr. Satyajit Boolell SC, in his address to the audience, explained that this Act is a shift from action against person to action against property and that the aim of the Act is to protect the public at large. He briefly referred to a 3-tier process under the Act which involves, explanation with regards to the unexplained wealth, the consideration undertaken by the Board with regards to the explanation and the need to go to Court to initiate the necessary action. He reiterates that once an investigation process is reached and there is the need to act against the property, it becomes a civil case. He further pointed out to the two instances where the Act will not apply. First, where any property acquired or having come in possession or under the control of a person more than seven years before the commencement of the Act; and second, where a person has unexplained wealth of less than 10 million rupees. The procedure to seek a UWO within our judicial system was alluded to. He also intimated that the termination of appointment under Section 8A of the Act is a means to ensure independence of the Board.

Mr. Paul Keyton, Director of the Integrity Reporting Services Agency (IRSA) explained the functions of the agency focussing on the process involved at the agency level. He also highlighted the fact the Agency works together with other agencies such as the FIU, ICAC, MRA, Bank of Mauritius, Audit and also statutory corporations and bodies corporate. He pointed out that there is a need to fine tune the Act and recommended that guidance may be sought from the Criminal Finances Act 2017 (UK).

The Chair of the panel discussion, Mr. S.B.G. Domah, retired SC judge and member of the Integrity Reporting Board, in response to a question about the time frame and delays under the Act, responded that “The JCPC commented on this about 25 years ago and recently it repeated itself the delay in our Courts as a blot in our judicial system. I have seen before me the legal profession including parliamentarians. This is a question I ask others. What are you doing about it?”

After a successful and highly engaging panel discussion which accommodated several impactful questions from the audience, the session concluded with food for thoughts on the issue of unexplained wealth and the law in force to combat it.