



LAW REFORM COMMISSION

2007 Annual Program of Review, Reform and Development of the Law

(Under section 4(3) of the Law Reform Commission Act 2005)

[January 2007]

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About the Commission

The Commission consists of –

- (a) a Chairperson, appointed by the Attorney-General;
- (b) a representative of the Judiciary appointed by the Chief Justice;
- (c) the Solicitor-General or his representative;
- (d) a barrister, appointed by the Attorney-General after consultation with the Mauritius Bar Council;
- (e) an attorney, appointed by the Attorney-General after consultation with the Mauritius Law Society;
- (f) a notary, appointed by the Attorney-General after consultation with the Chambre des Notaires;
- (g) a full-time member of the Department of Law of the University of Mauritius, appointed by the Attorney-General after consultation with the Vice-Chancellor of the University of Mauritius; and
- (h) two members of the civil society, appointed by the Attorney-General.

The Chief Executive Officer has responsibility for all research to be done by the Commission in the discharge of its functions, for the drafting of all reports to be made by the Commission and, generally, for the day-to-day supervision of the staff and work of the Commission.

The Secretary to the Commission is responsible, under the supervision of the Chief Executive Officer, for the administration of the Commission and taking the minutes of all the proceedings of the Commission.



LAW REFORM COMMISSION

Chairperson : Mr. Guy OLLIVRY, QC, GOSK

Chief Executive Officer : Mr. Pierre Rosario DOMINGUE

Ag. Secretary : Mrs. Saroj BUNDHUN

Members : Hon. Justice Premila BALGOBIN

Mr. Satyajit BOOLELL

Mr. Rashad DAUREEAWO

Mr. Pazhany RANGASAMY

Mr. Roland CONSTANTIN

Ms. Odile LIM TUNG

Ms. Juliette FRANÇOIS

Mr. Bismajaye JASODANAND

Values and Vision of the Law Reform Commission

The Commission considers its primary function is of ensuring our laws are in conformity with constitutional and human rights standards, as well as with our international obligations.

Our laws should reflect best international practices. The Commission is thus committed to comparative legal research in order to evaluate the merits and demerits of our law in the light of the experience of other jurisdictions. The Commission also holds the view that, where possible, any proposed solution must be tested against empirical evidence.

In order to fulfill its mission effectively, the LRC will have to recruit research staff, hire the services of local consultants and of foreign experts to work on its law reform projects. The Commission hopes it shall be in a position to set-up three research teams:

- (1) Access to Justice & Criminal Justice System;
- (2) Public Law Review & Compliance of National Law with Human Rights Standards and International Obligations;
- (3) Civil & Commercial Law Review.

It is expected each team shall be composed of a local consultant, a foreign expert and a research assistant. The team will work under the supervision of the Chief Executive Officer on the current projects. Co-operation with other overseas law reform agencies is equally necessary for the LRC to operate efficiently, thereby enabling it to benefit from the experience and expertise of those bodies.

The LRC will seek the support of embassies and international organizations to assist it in the performance of its functions.

Consultations with all the relevant stakeholders are regarded as crucial for the performance of the Commission's functions and will invariably be resorted to in order to develop greater awareness of legal issues and contribute to capacity building for those called upon to apply the law. The Commission regards it as imperative that it organizes legal awareness campaigns, conferences and seminars.

Current Projects

By virtue of section 5(2) of the Act, the Commission have the power to-

- (a) Initiate proposals for the review, reform or development of any aspect of the law of Mauritius and to receive and consider any such proposal made or referred to it by the Attorney General or any other person;
- (b) Initiate, sponsor and carry out such studies and research as it thinks expedient for the proper discharge of its functions.

The Commission is of the opinion that the following projects, including those referred to it by the Attorney General, shall during the calendar year 2007 retain its attention:

Project No. 1: Access to Justice & the provision of legal services

The Commission is committed to the legal empowerment of the poor, and will thus reflect on ways and means that will help poor people enjoy access to justice. Justice systems that are remote, unaffordable, slow, or incomprehensible to ordinary people effectively deny them legal protection.

Project 1(A): Access to Justice and the issue of Limitation of Actions against Public Officers

The Presidential Commission, which was set up, in accordance with the Presidential Commission Act 1997, to examine and report upon the structure and operation of the Judicial System and Legal Professions of Mauritius and was chaired by Lord Mackay of Clashfern, received representations that the present rule of limitation of actions against public officers was having a detrimental effect on the perception of fairness in the judicial process.¹

In its Report, the Presidential Commission considered the short period of limitation available to protect public officers as distinct from other persons against whom litigation can be taken puts the State and other authorities served by such officers in a privileged position in comparison with other litigants, and that this privileged position was not justified. It therefore recommended that the special position of public officers should be abolished, but that what the correct limitation period should be for different types of action was beyond the scope of the remit with which it was charged and it therefore further recommended that consideration be given to this problem by the Law Reform Commission who would no doubt wish to proceed by way of public consultation.²

¹ Report of the Presidential Commission, chaired by Lord Mackay, set up to examine and report upon the structure and operation of the Judicial System and Legal Professions of Mauritius (1998) at paragraph 4.12.

² *Loc. Cit.*

Since the privileged position of public officers and the State as litigants has a bearing not only on the time limit within which an action has to be entered, but also on the procedure to be followed and on the scope of liability, and gives rise to constitutional and human rights issues, it has been thought appropriate to consider afresh this problem.

The Commission has been working on this project since October 2006 and is finalizing a Discussion Paper and hopes to report thereon during the year.

Project 1(B): Opening Mauritius to International Law Firms and Allowing the Formation of Law Corporations

In the last Budget Speech, it was announced that Government has decided to open Mauritius to international law firms by amending the Law Practitioners Act to allow the formation of law corporations. The Commission has been asked by the Hon. Attorney General to review and examine this aspect of the law and to report thereon. Since November 2006, the Commission has been working on this project. An Advisory Panel has been set-up under section 8 of the Act. The LRC will report thereon, together with a Draft Bill, before the 2007 Budget speech.

Project 1(C): Review of Tax Assessment – Access to Justice by an Aggrieved Tax Payer

The Commission has decided to review the provisions of Part X of the Income Tax Act relating to ‘Assessments, Objections and Review of Assessments’. The Commission is considering the desirability of repealing sections 131A(2)(b) and 131A(8) of the Income Tax Act as they may inter alia entail deprivation of property for an aggrieved tax payer, without the requirements of due process having been met.

Project 1(D): Public Interest Litigation

It is the considered opinion of the Commission that the ability of NGOs to participate in public policy development is fundamental to a healthy NGO/Government relationship and to ensuring a greater voice for individual citizens. The Commission has thus decided to examine whether in support of a broader public policy role, the legal system of Mauritius should allow for public interest litigation so that an NGO can bring a legal action in its own name where its interests or those of its members are directly affected.

Project No. 2: Review of the Criminal Justice System and Evidential Rules

In line with the announcement made by the Hon Attorney General in November 2006 in the National Assembly of his intention to request the Commission to review criminal procedure and evidential rules, the Commission has decided to embark on this project. The Commission is also examining the prospect of starting work on a reform of the Criminal Code.

Project 2(A): Disclosure of Information in Criminal Proceedings

The Hon. Attorney General has asked the Commission to review this aspect of the law in the light of developments in UK [Criminal Procedure and Investigations Act 1996, the 1997 Code of Practice and the 2000 Guidelines issued by the Attorney General on disclosure of information in criminal proceedings]. The Commission will release a Discussion Paper on the matter and forward a Report (together with a Draft Bill) during the year.

Project 2(B): Introduction of System of “Juge d’Instruction” in the Criminal Justice System

This project has been referred to the Commission by the Hon. Attorney General as Government is looking into the putting in place of a system of ‘juge d’instruction’ in order to ensuring greater transparency and professionalism in the conduct of criminal investigations. The Commission has been asked to examine and review this aspect of the law and report thereon. The Commission is of the opinion that an Issue Paper or Research Paper should be elaborated in relation to the above matter and plans to release same by July/August 2007. It expects to come forward with a Final Report (together with a Draft Bill) during the year.

Project 2(C): Law on Admissibility of Confessions

In the light of observations made by Professor Carlson Anyangwe (UNDP Consultant) in his report on ‘Situation Analysis of the Human Rights Landscape in Mauritius’ (at pp. 38-39) and a team of French experts [Jean-Pierre Zanoto and Samuel Laine) in their report on ‘Propositions pour la réforme du système judiciaire mauricien’ on the need not to place reliance on uncorroborated confessions, the Commission has decided to review the law on the admissibility of confessions. UK experience in the matter, which lead to the enactment of PACE and the elaboration of guidelines for investigating officers, is retaining the attention of the Commission. The Commission hopes it shall be in a position to release a Discussion Paper on this matter and to forward its Final Report and a Draft Bill during the year.

Project No. 3: Public Law Review

The LRC is reflecting on the necessary reforms to bring to the Public Law and will hopefully before the end of the year release an Issue Paper on this matter.

Project No. 3(A): Constitutional and Electoral Reforms

Professor Anyangwe in his report made the following observations:

“The Independence Constitution ought to be revisited to take on board many crucial matters the critical mass in Mauritius would want to see included in the Constitution. A mere tinkering of the existing Constitution might not do. A new home-grown, autochthonous constitution would commend itself to the generality of the people. A Constitution Review Commission put in place would propose a draft new constitution after holding public hearings round the country, after having full consultation with and receiving input from all stakeholders. Such an exercise would provide a unique opportunity for resolving contentious national issues, building national consensus around hotly disputed matters, adapting the constitution and national legislation to reflect international human rights standards, and adopting appropriate and effective legal mechanisms and guarantees to ensure effective enforcement of these standards.”

In the light of the above observations and proposals in the 2005-2010 Governmental program on Constitutional and Electoral Reform [paragraphs 257-259], the Commission has decided to keep the supreme law of Mauritius under review.

The Commission has also decided to review the application of laws in Rodrigues and to study any proposed development to our local government law.

Project No. 4: Compliance of Laws with Human Rights Standards and International Obligations

The mandate of the Law Reform Commission includes keeping track of treaties to which Mauritius is a State party and making proposals on which provisions of those treaties are capable of being domesticated. That implies undertaking a systematic review of our domestic law and practice with a view to ensuring conformity with international standards.

Project 4(A): Gender Equality and Right to Dignity

The Commission has decided, in the light of observations made by Mrs. Narayen, Vice-Chairperson of the Sex Discrimination Division of the National Human Rights Commission, and the Consultants on the Harmonization of National Legislation with ILO Convention No. 111 (which prohibits discrimination in respect of employment and occupation), to examine to what extent our law is in conformity with requirements of the right to gender equality and to dignity. The Commission plans to release a Consultation Paper thereon and looks forward to submit its Final Report and Draft Bill during the year.

Project 4(B): Conformity of postal legislation with obligations under Universal Postal Union Convention

The Commission has decided to embark on this project in the light of a proposal made by a member of the public. An Issue Paper will be released towards the end of the year.

Project No. 5: Civil Code & Civil Law Review

The Commission is examining those areas of the Civil Code and our Civil Law, which may be in need of reform.

Project No. 6: Family Law Reform

On a proposal made by a member of the public, the Commission has decided to review, in the light of developments in French law, our law regarding the relationship of children with their grandparents. A Report shall be submitted during the year.

Project No. 7: Commercial Law Review

The Commission has considered it desirable to examine those areas of the Commercial Law, which may need to be reviewed.