



LAW REFORM COMMISSION

**2007 Annual Report on the Activities of the Commission
(Under section 17 of the Law Reform Commission Act 2005)
[Period 1 May 2006 to 30 June 2007]**

[July 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 : Mr. Satyajit BOOLELL

Mr. Rashad DAUREEAWO

Mr. Pazhany RANGASAMY

Mr. Roland CONSTANTIN

Ms. Odile LIM TUNG

Ms. Juliette FRANÇOIS

Mr. Bismajaye JASODANAND

Constitution, Function and Powers of the Law Reform Commission

1. The Commission was restructured in 2006.¹ This change in structure had, time and again, been requested by the commissions² and was prompted by the need to have a Law Commission adequately structured and staffed to fulfill its mandate.³

2. The functions of the Commission are to –
 - (a) keep under review in a systematic way the law of Mauritius;
 - (b) make recommendations for the reform and development of the law of Mauritius;
 - (c) advise the Attorney General on ways in which the law of Mauritius can be made as understandable and accessible as is practicable.⁴

¹ The Law Reform Commission Act No. 33 of 1992, which came into force on 01 December 1992 [Proclamation No. 2 of 1993], was repealed by Law Reform Commission Act No. 26 of 2005, which came into force on 10 January 2006 [Proclamation No. 2 of 2006].

² *Vide* 1997 Annual Report on the Activities of the Law Reform Commission, at para. 4, and the 2004 Report on “Reform of the Law Reform Commission”. Our records show that the first Chairperson of the Law Reform Commission, Mr. Madun Gujadhur, felt likewise.

³ The Attorney General, Honourable Jayarama Valayden, in his speech in the National Assembly during the 2nd Reading of the Law Reform Commission Bill No. XXIX of 2005, had this to say:

“One of the challenges faced by Government today is how to develop a meaningful strategy of law reform to ensure that laws on our statute books are not cocooned in a past which is divorced from the current social and economic realities. The law, Mr. Speaker Sir is not an end in itself, it is an instrument of social progress, a means of achieving a just and equitable society and for that to happen it must adapt to the changing needs of society ...

Mr. Speaker Sir, when we compare our Law Reform Commission Act to similar legislation in other parts of the Commonwealth, we cannot help being surprised at the brevity of our law and the inadequacy of its provisions to meet the statutory functions of the Commission as it exists to-day ...

The experience of many commonwealth jurisdictions has taught us that it is important to put in place institutional arrangements for tackling law reform in the interests of the people. Admittedly the primary responsibility of law reform rests with Government, but taken up as it is with current political matters, this role can only be fulfilled by a Law Commission adequately structured and staffed to fulfill its mandate.

The Law Reform Commission Bill provides for a newly structured Commission and addresses the defects of the present legislation.”

⁴ Section 3(1) of Act No. 26 of 2005.

When making its recommendations, the Commission is expected to attach, where applicable and as far as practicable, a draft bill to the recommendations.

3. Section 5(2) of the Law Reform Commission Act 2005 confers on the Commission 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;
 - (c) publicise such parts of its work in such manner as it thinks expedient, conduct public hearings, seek comments from the public on its proposals, and consult any person or class of persons;
 - (d) request information from any Government department, any organization or person in relation to the review, reform or development of any aspect of the law of Mauritius.
4. By virtue of section 6(1) of the Act, the Honourable Attorney General may, at any time, request the Commission to examine any aspect of the law of Mauritius, and the Commission shall review that aspect of the law accordingly and report to the Attorney General thereon with its recommendations.
5. Under section 17(1) of the Act, the Commission is required to make to the Honourable Attorney General an annual report on its activities. The Commission has decided to submit its report as at the end of June of each year. The present annual report covers the period spanning from 1 May 2006 to 30 June 2007.

Membership of Commission

6. 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.⁵

7. The Chairperson and Members took office on 01 May 2006.⁶ They are:

- | | |
|------------------------------|--|
| (a) Mr. G. Ollivry | [Chairperson] |
| (b) Mrs. P. Balgobin | [Representative of the Judiciary (until 1st April 2007)] |
| (c) Mr. S. Boolell | [Parliamentary Counsel] |
| (d) Mr. R. Daureeawo | [Barrister-at-Law] |
| (e) Mr. P. Rangasamy | [Attorney-at-Law] |
| (f) Mr. R. Constantin | [Notary] |
| (g) Ms O. Lim Tung | [Law Academic at University of Mauritius] |
| (h) Mr. B. Jasodanand | [Civil Society Representative] |
| (i) Ms J. François | [Civil Society Representative] |

Funding of the Commission

8. During the financial year 2006-2007, the Commission was afforded a grant of Rs 1,700,000. The funding was insufficient for meeting all operating expenses. This situation has now been remedied.

9. The Commission hopes that in the future it may obtain assistance from sources, other than the Government of Mauritius, for its programs and is actively working on developing links and partnerships with other institutions.

⁵ Section 7(1) of the 2005 Act.

⁶ By virtue of section 7(2) of the 2005 Act, the Chairperson and Members hold office for a period of five years.

Staff, Office Premises and Facilities of the Commission

10. The post of Chief Executive Officer, as provided by section 11 of the Act, was advertised in July 2006. Following interview and the selection process, Mr. Pierre Rosario Domingue, former Head of the Department of Law at the University of Mauritius, was appointed and assumed duty on 17 October 2006. The Chief Executive Officer, who is the Responsible 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.
11. The Commission has not been able to recruit a Secretary, whose function under section 12 of the Act, is to be 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. The services of officers from the Attorney General's Office have had to be retained on a part-time basis to perform this office: Mr. M. Lallah acted as Secretary from May to October 2006; Mrs. S. Bundhun has been performing this function since October 2006. The Commission looks forward to having a full-time Secretary in the very near future.
12. Although under section 13 of the Act the Commission has the power to appoint staff, it has so far, owing to lack of funds, refrained from doing so. It has recruited only an Office Helper. The support staff has been seconded from the public service.
13. For the reasons stated above, the Commission has not been in a position to recruit Research Assistants nor to hire the services of Consultants.
14. The Commission occupies as from October 2006 office space of about 500 square feet on the 4th Floor of Cerné House and has been holding most of its meetings in the Conference Room found on that floor. The office space presently occupied is inadequate for its activities and the needful is being done to remedy this situation.

15. Computer and other IT facilities, crucial for the smooth running of the institution, have been made available by the Attorney General's Office. We are thankful to the Honourable Attorney General for his help.

Vision and Values of the Commission

16. 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.
17. The Commission is also committed to the legal empowerment of the poor and the vulnerable. We are of the opinion that Justice Systems that are remote, unaffordable, slow, or incomprehensible to ordinary people effectively deny them legal protection. The Commission thus considers it must always reflect on ways and means that will help poor and vulnerable people enjoy access to justice, and effectively enjoy their rights.

Programme of Law Reform

18. In accordance with section 4(3) of the Act, early this year an annual program for calendar year 2007 was prepared and submitted to the Honourable Attorney General. The program was elaborated after press releases were issued inviting members of the public to forward to the Commission proposals they may have regarding areas of the law which they feel are in need of reform.

19. The Commission has taken the view there are three areas on which it might have to focus:
- (1) Reform of the Provision of Legal Services and of the Judicial System, Public Law Reform, Compliance to Constitution and Human Rights;**
 - (2) Reform of the Criminal Justice System and the Criminal Laws;**
 - (3) Business Law (including Tax Law) and Civil Law Reforms.**
20. In its 2007 Annual Program of Review, Reform and Development of the Law, the Commission earmarked some of the projects, including those referred to it by the Attorney General, on which it would embark. These are, inter alia:
- (a) Access to Justice and the issue of Limitation of Actions against Public Officers and the State⁷;**
 - (b) Opening Mauritius to International Law Firms and Allowing the Formation of Law Firms/Corporations⁸;**
 - (c) Public Interest Litigation:** It has been 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; it has thus decided to examine whether in support of a broader

⁷ 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. In its 1998 Report, the Presidential Commission considered [at paragraph 4.12] 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. The presently constituted Commission has thus decided to take up this issue as a matter of priority.

⁸ A request was made on 21 November 2006 by the Honourable Attorney General, under section 6 of the Act, in the light of Government policy to open Mauritius to international law firms by amending the Law Practitioners Act to allow the formation of law corporations as announced by the Honourable Deputy Prime minister and Minister of Finance and Economic Development in his 2006-2007 Budget Speech, to review and examine this aspect of the law and to report thereon.

- 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;
- (d) **Disclosure of Information in Criminal Proceedings:** The Honourable Attorney General has asked the Commission, on 21 November 2006, 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];
- (e) **Introduction of the System of ‘Juge d’Instruction’ in the Criminal Justice:** This project has been referred to the Commission by the Honourable Attorney General, on 21 November 2006, 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;
- (f) **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’ regarding the need not to place reliance on uncorroborated confessions, the Commission has decided to review the law on the admissibility of confessions in the light of UK experience in the matter, which lead to the enactment of PACE [Police and Criminal Evidence Act] and the elaboration of guidelines for investigating officers;
- (g) **Public Law Review:** In the light of observations made by Professor Carlson Anyangwe in his report on ‘Situation Analysis of the Human Rights Landscape in Mauritius’ and proposals in the 2005-2010 Governmental program on Constitutional and Electoral Reform [paragraphs 257-259], the Commission decided it needs also to keep the supreme law of Mauritius under review;
- (h) **Compliance of Laws with Constitution, Human Rights Standards and International Obligations:** The Law Reform Commission is of the opinion its mandate 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; this requires on its part that it undertakes a systematic review of our

- domestic law and practice with a view to ensuring conformity with international standards; it has been decided gender issues would be dealt with in priority;
- (i) **Review of the Relationship of Children with Grand Parents and other Persons under the Code Civil Mauricien:** 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;
 - (j) **Business Law and Tax law Review:** The Commission is of the opinion that it is its duty to come up with proposals which would provide a legal framework ever more conducive to business activities and to ensure there are appropriate safeguards as regards review of tax assessment.

Working Method and Meetings of the Commission

- 21. In order to advise and assist it on any project, the Commission may establish, under section 8 of the Act, an Advisory Panel presided over by a Member and consisting of persons having specialized knowledge in, or particularly affected by, the matter to be studied and such other members as the Commission may deem appropriate. In relation to the project “Opening Mauritius to International Law Firms and Formation of Law Firms/Corporations”, an Advisory Panel was set-up comprised of representatives of the legal professions.
- 22. Consultations with all the relevant stakeholders are regarded as crucial for the performance of the Commission’s functions and are invariably resorted to in order to develop greater awareness of legal issues and contribute to capacity building for those called upon to apply the law.
- 23. The Commission regards it as imperative that it organizes legal awareness campaigns, conferences and seminars. Unfortunately, owing to lack of resources, it has not been able during the past year to engage in such type of activity.

24. During the period spanning from 01 May 2006 to 30 June 2007, the Commission had 26 meetings: 13 ordinary meetings, 6 Ad Hoc meetings of Members and 7 meetings of Advisory Panel.
25. The Commission has decided that, following the necessary research, discussion and consultation on any project, it shall produce one of the following publications:
- (a) **Issue Paper: this is a paper identifying issues on which interested parties are invited to make submissions;**
 - (b) **Research Paper: this contains the findings of research (analytical or empirical) done on specific topics;**
 - (c) **Consultation Paper: a paper highlighting matters regarded as problematic and outlining reform options;**
 - (d) **Discussion Paper: a thorough paper on an area of the law regarded as unsatisfactory with proposals for reform;**
 - (e) **Report: This sets out the results of the Commission's research and consultation and usually makes a number of recommendations for law reform to Government.**

An Issue Paper or Research Paper, as well a Consultation or Discussion Paper, will usually be followed by a report (to which is attached a draft Bill).

Projects Outputs and Other Performance Indicators

26. Despite the resource constraints it had been facing over the past year, the Commission has strived to do the best it could in the circumstances. **Two Reports** (with Bills annexed thereto) have been submitted to the Honourable Attorney General:
- (1) “**Opening Mauritius to International Law Firms and Formation of Law Firms/Corporations**”;
 - (2) “**Relationship of Children with Grand Parents and Other persons under the Code Civil Mauricien**”.
27. A **Discussion Paper** on “**Access to Justice and Limitations of Actions against Public Officers and the State**” has also been submitted.
28. An **Issue Paper** in the form of a commentary on some of the Human Rights dimensions of the **Sexual Offences Bill No. VI of 2007** has been prepared and submitted to the Attorney-General and to the Select Committee of the National Assembly set up to review the policy issues underlying this bill.