



LAW REFORM COMMISSION

2008 Annual Program of Review, Reform and Development of the Law

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

[January 2008]

Port Louis, Republic of Mauritius

4th Floor, Cerné House

Tel: (230) 212-3816/212-4102

Fax: (230) 212-2132

E-Mail: lrc@mail.gov.mu

URL <http://lrc.gov.mu>

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

Secretary : Mrs. Saroj BUNDHUN

Members : Mr. Satyajit BOOLELL

Mr. Rashad DAUREEAWO

Mr. Pazhany RANGASAMY

Mr. Roland CONSTANTIN

Ms. Odile LIM TUNG

Ms. Juliette FRANÇOIS

Introduction

The Commission is submitting, in accordance with the provisions of section 4(3) of the Law Reform Commission Act [Act No. 26 of 2005], its annual programme for the review of specific aspects of the law of Mauritius with a view to their reform and/or development.

Background

The mission of the Law Reform Commission, as laid down in section 4(1) of the Act, is to review in a systematic way the law of Mauritius, recommend reforms and advise on ways in which the law can be made understandable and accessible, as is practicable.

Our laws, in the opinion of the Commission, should (a) be responsive to the needs and challenges of society, (b) reflect best international practices, and (c) be in line with our international obligations.

The Commission is 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 ensure our laws are adapted to the practical realities of life in society.

Consultations with all relevant stakeholders [Government, Business, Civil Society, Citizens as well as Foreign Investors and Workers] are regarded as crucial for the performance of the Commission's functions, and are 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.

Proposals for review of any aspect of the law and its reform can be referred to the Commission by the Attorney General. Any other person can also make proposals. The Commission has the power, on its own, to initiate proposals for the review, reform or development of any aspect of the law.

Projects are selected according to the following criteria:

- (1) Importance of the issues: there is a major problem in that area of law; the law is unsatisfactory (it is unfair, unduly complex, unclear, inaccessible or outdated); and the potential benefits likely to accrue from undertaking reform are significant (it affects many people and there is a real demand for reform);
- (2) Suitability of the issues to be dealt with: the problem is predominantly legal and there is likely to be a solution; changes and improvements in the law can appropriately be put forward after legal (including socio-legal) research and consultation, and there is a fair chance that the proposed solution is likely to be implemented. This would tend to exclude subjects where the considerations are shaped primarily by political judgments;
- (3) Availability of resources in terms of both expertise and funding: legal expertise and funding are likely to be available; there is a real prospect for the project to be completed to a very high standard and in a reasonable period.

Review of Projects completed in 2007 & Ongoing Projects

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 were, inter alia:

- (a) **Access to Justice and the issue of Limitation of Actions against Public Officers and the State**¹: A Discussion paper on this area of the law was released last year. Stakeholders and interested parties have been consulted. The constitutional principles at stake have been examined in the light of the evolution of similar provisions in other Commonwealth jurisdictions. The Commission looks forward to report thereon during the first semester of this year.
- (b) **Opening Mauritius to International Law Firms and Allowing the Formation of Law Firms/Corporations**²: The Commission has already completed this project and has reported thereon in May 2007 (with a draft Bill attached to its recommendations). At its meeting held on 26 October 2007, Cabinet took note of the main recommendations of the Commission and that the draft Law Practitioners (Amendment) Bill would be discussed with relevant stakeholders before its introduction in the National Assembly.
- (c) **Public Interest Litigation**: The Commission decided to examine whether, in support of a broader public policy role for NGOs and other interested groups, 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.³ This project is

¹ 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. The presently constituted Commission had thus decided to take up this issue as a matter of priority.

² A request was made on 21 November 2006 by the Honourable Attorney General, under section 6 of the Act, to review and examine this aspect of the law and to report thereon, 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.

³ The Commission had taken the view that the ability of NGOs to participate in public policy development are fundamental to a healthy NGO/Government relationship and to ensuring a greater voice for individual citizens.

ongoing. The Commission plans to release an Issue paper on this aspect of the law during the second semester of this year.

(d) Disclosure of Information in Criminal Proceedings: This aspect of the law is being reviewed – in the light of developments in UK law - following a request from the Attorney General. The Commission has prepared an Issue Paper on this area of the law containing its recommendations [to which a draft Criminal Procedure (Amendment) Bill has been attached], and is consulting relevant stakeholders. The Commission shall finalize its recommendations in the first semester of this year.

(e) Introduction of the System of ‘Juge d’Instruction’ in the Criminal Justice: The Commission, upon referral from the Attorney General, has been examining Government’s proposal of putting in place a system of ‘juge d’instruction’ in order to ensuring greater transparency and professionalism in the conduct of criminal investigations. This project is ongoing and the Commission plans to release an Issue paper thereon during the first semester of this year.

(f) Law on Admissibility of Confessions: The Commission decided to review the law on the admissibility of confessions⁴ 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. The Commission has, pursuant to section 5(2)(d) of the Act, requested and obtained – through the Senior Chief Executive at the Prime Minister’s Office - information from the Mauritius Police Force in relation to this issue. The Commission plans to issue a Discussion Paper on this aspect of the law before the end of the first semester.

⁴ 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.

(g) Criminal Law Review: The Commission considered it should review the Criminal Code and other penal legislation. This project is ongoing.

The Commission has responded to Government’s proposals for reform of the law on sexual offences [Sexual Offences Bill No. VI of 2007] and has released an Issue Paper on the human rights dimensions of this Bill.

(h) Review of the Constitution and the Electoral System: The Commission decided it should keep the supreme law of Mauritius, and the electoral system, under review.⁵ This project is ongoing and the Commission expects that by the end of this year it shall be in a position to release its Preliminary Report on Reforms to the Constitution and the Electoral System.

(i) Compliance of Laws, Policies and Practices with Human Rights Norms: The Law Reform Commission has been of the opinion that 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 human rights treaty obligations. The Commission is currently finalizing an Issue Paper on “Securing Human Rights”.⁶

⁵ We share the views expressed by Professor Anyangwe in his report on ‘Situation Analysis of the Human Rights Landscape in Mauritius’:

“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.”

⁶ We have considered that it is premature, at this stage, to examine the proposals made by Mrs. Narayan, Vice-Chairperson of the Sex Discrimination Division of the National Human Rights Commission, about giving effect to the right to gender equality and to dignity. These proposals would be looked into after the Findings of the UNDP-

(j) 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 decided to review, in the light of developments in French law, our law regarding the relationship of children with grandparents and other persons. The Commission reported last year on this aspect of the law: we recommended the addition, after Article 371-3, of new Articles 371-4 and 371-5 to the Code Civil Mauricien on the same lines as in the French Civil Code [a draft Code Civil Mauricien (Amendment) Bill was attached to our recommendations]. On 8 November 2007, Cabinet approved our recommendations and agreed to the introduction in the national Assembly of the Code Civil Mauricien (Amendment) Bill [Bill No. XXVIII of 2007]. The Bill was passed on 11 December 2007. It has now become law [Code Civil Mauricien (Amendment) Act 2007 - Act No. 24 of 2007]: the Presidential assent was given on 20 December 2007.

(k) Conformity of Postal Legislation with Obligations under Universal Postal Union

Convention: On a proposal made by a member of the public, the Commission had decided review the conformity of our postal legislation with the international obligations under the Universal Postal Union Convention. This project is ongoing and the Issue Paper on this aspect of the law shall be made available during the year.

(l) Commercial Law Review: The Commission considered it was desirable that it examines proposals aimed at providing a new legal framework, which would be more conducive to business activities.

The Commission had the opportunity to consider the legislative proposals of the ‘Steering Committee on Insolvency and Creditor Rights’ [Consultation Paper on Proposed Insolvency Legislation]. It looked at the proposals in the light of the work accomplished by the Working

Group V of the United Nations Commission on International Trade Law [UNCITRAL] since 1991, and which has led to the issue of legislative guides [2004 Legislative Guide on Insolvency Law and 1997 Model Law on Cross-Border Insolvency]. The Commission also considered legislative developments in various Commonwealth jurisdictions and paid particular attention to the work of overseas law reform agencies on the subject-matter and it was satisfied the legislative proposals contained in the Consultation Paper are, by and large, in line with best international practices and would significantly improve our law.

(m) Review of Tax Assessment – Access to Justice by an Aggrieved Tax Payer: The Commission decided to review the provisions of Part X of the Income Tax Act relating to ‘Assessments, Objections and Review of Assessments’, in particular sections 131A(2)(b) and 131A(8) of the Income Tax Act as they may entail deprivation of property for an aggrieved tax payer, without the requirements of due process having been met. This project is ongoing and is under consideration.

New Projects

The new projects have been selected after consultation with a number of interested bodies and careful consideration by the Commission, in the light of its project selection criteria.

Access to Justice, Courts & the provision of legal services

- The Commission is committed to the legal empowerment of the poor. Justice systems that are remote, unaffordable, slow, or incomprehensible to ordinary people effectively deny them legal protection.

- The Commission shall examine proposals for a new legal assistance scheme, which can help poor people enjoy access to justice.
- The Commission shall examine the extent to which the public is aware of court structure and procedures and the provision of legal services.
- The Commission is also committed to the independence and integrity of the judicial system and shall review the law on contempt of court proceedings.

Review of Criminal Procedural and Evidential Rules

- A Consultation Paper on Areas of the Criminal Justice System calling for Reform would be ready by the end of the year.
- A Consultation Paper on Areas of the Law of Evidence calling for Reform shall also be released by the end of the year.

Review of Civil Justice System

- The Commission shall examine any proposals, including proposals from the Rules Committee set up under section 199 of Courts Act, aimed at improving practice and procedure before Courts in civil matters.

- The Commission has deemed it fit to examine the desirability of introducing into our judicial system the concept of “constitution de partie civile” in road accident cases. A Consultation Paper on this aspect of the law shall be released during the year.
- The Code shall review the Code de Procédure Civile, which is outdated.

Civil Code and Civil Law Review

- The Commission shall focus on family law issues, in need of reform.

Criminal Law Review

- The Commission shall examine any proposal for reform of the Criminal Code or other penal legislation.

Review of Implementation of human rights treaties

- The Commission shall release a Status Report on a regular basis on the implementation of the human rights treaty obligations so as to enhance the human rights culture of the public.

Conformity of Laws with International Obligations

- The Commission has decided, following the suggestion made by the Solicitor General, to review the extent to which our laws are in line with the provisions of the Hague Conventions on Private International Law.

Legal Empowerment of Poor through Reform of Business and Labour Rights

In 2005, a High-Level Commission on the Legal Empowerment of the Poor was set up under the aegis of UNDP.⁷

- The Commission has decided to review Business and Labour Rights in the light of the policy research papers of this UN High-Level Commission.

⁷ The Commission has a six-fold agenda:

1. To galvanize political support and commitment to a broad reform agenda for legal inclusion and empowerment of the poor.
2. To examine ways to secure broader access to legal, fungible property rights over real and movable assets – thus replacing, supplementing or improving existing local or national arrangements for the purpose of expanding and improving their utility for bottom-up economic and social empowerment and poverty reduction.
3. To examine ways to provide broad access to legal organizational forms suited to the poor and enhance opportunities for growth so that poor people can combine labour, technology and investment in order to raise productivity, limit risks and protect economic and social achievements, and use their assets to access credit and capital.
4. To investigate any conceptual gaps in linking asset security, property rights and access to the rule of law to wider development issues. These include conflict prevention, gender equality, economic inclusion, governance, administration of justice, legal enforcement, identification systems, capital formation, access to credit, provision of infrastructure – especially land, energy, water and affordable housing – and other issues that will benefit poor and indigenous peoples.
5. To draw up an inventory of reforms to promote asset security, and other efforts to link the formal and informal sector, that are based on global experiences to date and contributions from relevant expertise and stakeholders from governments, civil society, the private sector and international organizations from around the world.
6. To produce a Tool Kit for policy makers as a basis for solid, demand-driven support programmes for reform at the country level.