



LAW REFORM COMMISSION

2008 Annual Report on the Activities of the Commission

(Under section 17 of the Law Reform Commission Act)

[Period 1 July 2007 to 30 June 2008]

[July 2008]

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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

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 [until 31.12.07]

Introductory Note to this Annual Report

1. This is the Second Annual Report of the Law Reform Commission [LRC] to the Honourable Attorney-General, under section 17(1) of the Law Reform Commission Act 2005, on its activities during the period 01 July 2007 to 30 June 2008.

LRC's Mission

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.¹

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;

¹ Section 3(1) of Act No. 26 of 2005.

- (c) publicize 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.

The Organization and its Resources

The Commission

5. 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.²
6. During the year, the Commission was constituted as follows:
- (a) Mr. G. Ollivry, QC, GOSK [Chairperson]
 - (b) Mr. S. Boolell [Parliamentary Counsel]
 - (c) Mr. R. Daureeawo [Barrister-at-Law]
 - (d) Mr. P. Rangasamy [Attorney-at-Law]
 - (e) Mr. R. Constantin [Notary]
 - (f) Ms O. Lim Tung [Law Academic at University of Mauritius]
 - (g) Ms J. François [Civil Society Representative]
 - (h) Mr. B. Jasodanand [Civil Society Representative, until 31.12.07]
7. The Commission held 14 meetings.

Funding of the Commission

8. During the financial year 2007-2008, the Commission was afforded a grant of Rs 3,700,000, appropriated by the National Assembly for meeting the operating expenses linked with the fulfillment of its mission.

² Section 7(1) of the 2005 Act.

The Commission and International Co-operation in the field of Law Reform

9. The Commission is a member of the Commonwealth Association of Law Reform Agencies [CALRAs]³ and the Association of Law Reform Agencies of Eastern and Southern Africa [ALRAESA]. During the year, the Commission helped in the preparation of a paper on ‘Small States and Law Reform’ presented by the Hon. General Secretary of CALRAs, Mr. Michael Sayers, at the meeting of Law Ministers and Attorneys General of Small Commonwealth jurisdictions on 4-5 October 2007.

10. The Commission has been working on the establishment of partnerships with other law reform agencies.

Staffing of the Commission: its Human Resources

11. It has been felt that in order to enable the Commission evolve into a strong institution it is necessary for it to have high level core personnel which can develop expertise in law reform and keep the impetus over time. The Commission has thus caused changes to be brought to the Law so that it can recruit staff, should the need arise, on its permanent and pensionable establishment and that service with the Commission be regarded as “approved service” for the purpose of the Pensions Act.⁴

³ Our Chief Executive Officer was nominated and duly elected Member of the Executive Committee of CALRAs at the General Meeting held in Nairobi on 9 September 2007.

⁴ Statutory Bodies Pension Funds (Amendment of Schedule) (No. 4) Regulations 2007 [GN 132/07] and General Notice No. 1731 of 2007 by the President of the Republic approving, under section 2 of the Pensions (Amendment) Act of 1971, service with the Commission being defined as “approved service” for the purpose of the Pensions Act.

12. Section 11 of the Law Reform Commission Act 2005 provides for the post of Chief Executive Officer. 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. In line with the recommendation made by the Commission in its 2004 Report on “The Reform of the Law Reform Commission”⁵, the Commission has, after a fixed term performance contract of one year and on being satisfied of his performance, appointed the Chief Executive Officer on its permanent and pensionable establishment.

13. Under section 12 of the Law Reform Commission Act 2005, the Secretary 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. The officer from the Attorney-General’s Office, who had been performing this function part-time, was permanently transferred to LRC by the Public Service Commission under Regulation 25(2) of PSC Regulations 1997, following appointment on the permanent and pensionable establishment.

14. Under section 13 of the Act, the Commission has also appointed other administrative support staff: an Executive Officer and an Office Helper. Other support staff working at the Commission is seconded from the public service.

15. As from May 2008, the Commission managed to retain the services of two Legal Research Assistants to assist it in the carrying out of its functions.

⁵ At pages 21-22.

Office Premises and Facilities of the Commission

16. The Office of the Commission is located on the 4th Floor of Cerné House. From August 2007 to April 2008, a Conference Block was also made available at the then Human Rights Centre for meetings of the Commission with stakeholders. The office space presently occupied is inadequate for the activities of the Commission and the needful is being done to remedy this situation.

17. The Commission has invested in library resources and IT facilities vital for the performance of its functions.

The Work of Law Reform and Development of the Law

Working Method

18. The Commission considers that its role as a law reform agency is anchored in the principle of constitutionalism and that as an institution it forms an integral part of the democratic dialogue in a State based on the rule of law. Given its advisory role, there must of course necessarily be close co-operation between the Commission and the departments of Government. The Commission nonetheless retains complete freedom in the selection of its projects, in line with its own selection criteria.⁶

⁶ As spelled out in the 2008 Annual Program of Review, Reform and Development of the Law.

19. The Commission views its primary function as that of ensuring that 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 and be adapted to the changing needs of the people. 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.

20. The Commission also holds the view that, where possible, any proposed solution must be tested against empirical evidence. To that end, the Commission has during the year made representations to the Central Statistical Office as to the data which needs to be collected in order to assist it in the performance of its functions. The Commission has also been preparing questionnaires for some of its projects.

21. Consultations with all the relevant stakeholders are regarded as crucial for the performance of the Commission's functions and have invariably been resorted to in order to develop greater awareness of legal issues and contribute to capacity building of those called upon to apply the law. The Commission had during the year a Brain Storming Session with NGOs and political parties on the law and practice relating to Criminal Investigation, Arrest and Bail.

22. The Commission is 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. To that end, the Commission has been involved in the Project of Reviewing the Legal Aid System.

Progress on the Programs of Law Reform and Development of the Law

23. In accordance with section 4(3) of the Act, early this year the Second Annual Program was submitted to the Honourable Attorney-General. The program was elaborated after press releases were issued inviting members of the public to bring to the attention of the Commission proposals they may have regarding any area of the law which they feel is in need of reform.
24. In accordance with its 2007 and 2008 Annual Programs of Review, Reform and Development of the Law, the Commission has during the past year been working on a number of projects⁷, including those referred to it by the Attorney-General:
- (a) **Access to Justice and Limitation of Actions against Public Officers and the State:**
A Discussion paper on this area of the law was released last year, in which we made provisional recommendations concerning reforms to be brought. This year we have, after consultation with stakeholders and interested parties, and after comparative legal research on the evolution of similar provisions in other Commonwealth countries as well as further reflection on the constitutional principles at stake, reported and made final recommendations on the issues raised. A draft Bill was attached to our report.
- (b) **Public Interest Litigation:** The Commission has been examining 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

⁷ The following areas of the law are being reviewed by the Commission: (1) Constitution, human rights, legal profession and court structure; (2) criminal justice system and criminal law; (3) civil justice system and civil Law; and (4) business and tax laws.

- legal action in its own name where its interests or those of its members are directly affected.⁸ This project is ongoing.
- (c) **Disclosure of Information in Criminal Proceedings:** The Honourable Attorney-General had asked the Commission to review this aspect of the law in the light of developments in UK. The Commission has done so and has released an Issue Paper on the matter, to which was attached a draft Criminal Procedure (Amendment) Bill. It is about to submit its report containing its final recommendations for reform.
- (d) **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. Progress has been made on this project and the Commission shall soon submit an Issue Paper on the desirability of introducing such an institution.
- (e) **Law relating to Criminal Investigation, Arrest and Bail:** The Commission has been examining the law and practice relating to criminal investigation, arrest and bail. In that context, a Discussion Paper was released during the year highlighting the key issues to be addressed by stakeholders and inviting their comments. We are about to come forward with specific recommendations for reform.
- (f) **Law on Admissibility of Confessions:** The Commission has been reviewing the law on the admissibility of confessions⁹ in the light of UK experience in the matter, which

⁸ 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.

⁹ 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.

led to the enactment of PACE [Police and Criminal Evidence Act] and the elaboration of guidelines for investigating officers. On this issue, the Commission has received representations from the political party LALIT. We are about to come forward with a report on the matter.

(g) The Criminal Justice System and the Concept of “Constitution de Partie Civile”:

The Commission has been examining 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 is in preparation.

(h) 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. A Review Paper on the Constitution shall soon be finalized.

(i) Compliance of Laws with Constitution and Human Rights Standards: The 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. A report on ‘Securing Human Rights’ is in the pipeline.

(j) Conformity of Postal Legislation with Obligations under Universal Postal Union Convention: On a proposal made by a member of the public, the Commission has reviewed the conformity of our postal legislation with the international obligations under the Universal Postal Union Convention. It shall soon release an Issue Paper on the matter.

- (k) **Civil Justice System - Code of Civil Procedure:** The Commission has been examining the Code de Procédure Civile, which is outdated. It expects soon to come forward with reform proposals.
- (l) **Business Law and Tax Law Review:** The Commission has been doing some preliminary work on the legal framework, which would be conducive to business activities and we have paid particular attention to the World Bank Indicators on Doing Business. We have also been reviewing aspects of our tax law. This project is ongoing.

Involvement in Other Activities related to Law Reform

25. The Commission has handled requests from various ministries/bodies for views or for review and reform of the law under their responsibility, such as (1) DNA Profiling [Prime Minister's Office], (2) Review of the 'Road Traffic Act' [Office of the Deputy Prime Minister and Minister of Public Infrastructure]; (3) Review of law relating to land transfer [Office of the Deputy Prime Minister and Minister of Finance and Economic Development]; (4) Review of Local Government Legislation [Ministry of Local Government], (5) Review of Probation-related Laws and Juvenile Justice System [Ministry of Social Security]; (6) Review of Rodrigues Regional Assembly Act [Office of Chief Commissioner, Rodrigues Regional Assembly]; (7) the Consultative Paper on the Proposed Insolvency Legislation [Steering Committee on Insolvency and Creditor Rights].¹⁰

¹⁰ The Commission 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 in line with best international practices and would significantly improve our law.

26. The Commission deposed before the Select Committee of the National Assembly on the Sexual Offences Bill (No. VI of 2007) regarding the human rights dimension of this Bill.

27. We have also examined requests from the profession and the public regarding the decriminalization of ‘issuing cheque without provision’ and the appropriateness of the ‘pouvoirs des conjoints’ under the legal regime of community of goods.

Performance in the field of Law Reform and Development

28. The Commission has during the year submitted to the Honourable Attorney-General the following Report and Papers:
 - (1) Discussion Paper on “**Law and Practice relating to Criminal Investigation, Arrest and Bail**”;

 - (2) Issue Paper on “**Disclosure in Criminal Proceedings**”;

 - (3) Report on “**Access to Justice and Limitation of Actions against Public Officers and the State**”.

Accomplishments in the field of Law Reform and Development – Impact of LRC’s Work

29. The two Reports submitted last year, respectively on “**Opening Mauritius to International Law Firms and Formation of Law Firms/Corporations**” and on the “**Relationship of Children with Grand Parents and Other persons under the Code Civil Mauricien**”, have been approved by Cabinet and our proposals have during the year been enacted by the National Assembly: the **Law Practitioners (Amendment) Act No. 8 of 2008** and the **Code Civil Mauricien (Amendment) Act No. 24 of 2007**.

Concluding Remarks: LRC’s Outlook and Future Prospects

30. The Commission is preparing a Strategic Plan 2009-2014, which would enable it achieve its vision of a world-class high-quality research law reform agency, responsive to the legal needs of society.