



LAW REFORM COMMISSION

Information Booklet on the Work and Functioning of the Law Reform Commission

Port Louis, Mauritius

[January 2009]



LAW REFORM COMMISSION

Chairperson : Mr. Guy OLLIVRY, QC, GOSK

Members : Mr. Satyajit BOOLELL

Mr. Rashad DAUREEAWO

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LAW REFORM COMMISSION

The Law Reform Commission of Mauritius is an independent Statutory Body set-up by Parliament, under Act No. 26 of 2005, to review in a systematic way the law of Mauritius, to make proposals for its reform and development, and to ensure the law is understandable and accessible.

Any person who considers an area of the law is in need of reform is invited to contact us at:

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The Work of the Commission

The main 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.

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

The Commission prepares and submits to the Attorney-General, at the beginning of each calendar year, a program for the review of specific aspects of the law of Mauritius with a view to their reform or development.

The 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 Commission submits every year in July an annual report to the Attorney-General on its activities during the preceding year. A copy thereof is laid before the National Assembly.

The Commission's Powers

The Commission has 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) 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;
- (e) publicize such parts of its work in such manner as it thinks expedient,

The Commission's Structure and Functioning

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 Commission employs staff and may have recourse to the services of lawyers and professionals for the efficient carrying out of its functions. 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. 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.

In order to advise and assist it on any project, the Commission may establish 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. The Commission may also engage, on such terms and conditions as it may determine, persons with suitable qualifications and experience as consultants.

Values and Methodology of the 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 must be responsive to the needs of society, in the light of the exigencies of globalization, reflect best international practices. Its vision is that of just, fair and efficient laws that reflect and advance the Nation's social and economic interests.

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 (including data gathered by the Central Statistical Office).

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.

Following the necessary research, discussion and consultation on any project, the Commission normally produces one of the following publications:

- (a) Issue Paper: this is a paper identifying issues on which interested parties are invited to make submissions;
- (b) Review or 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 or Working 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 Review/Research Paper, as well a Consultation or Discussion/Working Paper, will usually be followed by a report (to which is attached a draft Bill).

Achievements of the Commission

The Commission has so far adopted the following reports/areas on aspects of the law reviewed:

- (a) Report (together with draft Bill) about “Law on Divorce” [December 2008];
- (b) Report (together with draft Bill) on “Disclosure in Criminal Proceedings” [December 2008];
- (c) Working Paper on ‘Reform of Local Government Legislative Framework’ [December 2008];
- (d) Issue Paper on “Equality/Anti-Discrimination Legislative Framework (*Re* Equal Opportunities Bill No. XXXVI of 2008)” [November 2008];
- (e) Report (together with draft legislation) on “Law relating to NGOs” [November 2008];
- (f) Review Paper on “The Criminal Justice System and The Rights of an Accused Person” [September 2008];
- (g) Report (together with draft Bill) on “Access to Justice and Limitations of Actions against Public Officers and the State” [May 2008];
- (h) Discussion Paper on “Law and Practice relating to Criminal Investigation, Arrest and Bail” [April 2008];
- (i) Issue Paper on “Disclosure in Criminal Proceedings” [December 2007];
- (j) Issue Paper “Commentary on some of the Human Rights dimensions of the Sexual Offences Bill No. VI of 2007” [June 2007];
- (k) Discussion Paper on “Access to Justice and Limitations of Actions against Public Officers and the State” [June 2007];
- (l) Report (together with draft Bill) on “Relationship of Children with Grand Parents and Other persons under the Code Civil Mauricien” [June 2007];
- (m) Report (together with draft Bill) on “Opening Mauritius to International Law Firms and Formation of Law Firms/Corporations” [May 2007].

The law reform proposals contained in the Reports 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**”, were approved by Cabinet and legislation has been introduced in the National Assembly: the **Law Practitioners (Amendment) Act No. 8 of 2008** and the **Code Civil Mauricien (Amendment) Act No. 24 of 2007**. The other law reform proposals are under consideration.

Current Projects

The Commission is currently working on the following:

- (a) Constitutionalism, local governance, and the electoral system;
- (b) Harmonization of laws with human rights treaties and other international treaty obligations;
- (c) Judicial System and the provision of legal services;
- (d) The Criminal Justice System and aspects of Criminal Law;
- (e) The Civil Justice System [including the Code de Procédure Civile, public interest litigation];
- (f) The Civil Code and other civil law legislation;
- (g) Legislative Framework for Doing Business and the Tax Law System.