



LAW REFORM COMMISSION

## **2009 Annual Program of Review, Reform and Development of the Law**

**[January 2009]**

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# LAW REFORM COMMISSION

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## **Introductory Note: Background**

As required by section 4(3) of the Law Reform Commission Act [Act No. 26 of 2005], the Commission has elaborated, and is submitting to the Attorney-General, its 2009 Annual Programme for the review of specific aspects of the law of Mauritius with a view to their reform and/or development.

In preparing this programme, the Commission has been guided by its strategic objectives, which are to ensure our laws are responsive to the needs of society, in the light of the exigencies of globalization, are in conformity with our international obligations and reflect best international practices.

With the integration of Mauritius in the international economy, there is mounting pressure to adopt new laws to reflect international standards. Policies can no longer be devised in ignorance of international norms and practices, hence the need for adequate research so that policy makers are made fully aware of the integration of proposed legislative changes.<sup>1</sup>

## **Projects earmarked in the 2008 Annual Program & Other Ongoing Projects**

In its 2008 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:

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<sup>1</sup> Vide Keynote Address by Hon. Attorney-General on the opening of the ‘Training Program on Legislative Drafting for Officers of the Administrative Cadre’ [2 September 2008].

**(a) Access to Justice and the issue of Limitation of Actions against Public Officers and the State:** The Commission has reported on this issue in May 2008. A draft Public Officers' Protection (Amendment) Bill, containing our proposals for reform of this aspect of the law, was attached to our report. Our proposals are currently being considered by Government.<sup>2</sup>

**(b) Courts and the provision of legal services:** The Commission had the opportunity to examine proposals for *a new legal assistance scheme*, which can help poor people enjoy equal access to justice [Attorney General's Office Green Paper on Legal Aid Reform (July 2008)]. We reiterate our opinion that justice systems that are remote, unaffordable, slow, or incomprehensive to ordinary people effectively deny them legal protection. The poor must be legally empowered. We shall in due course forward our views on any proposed reform.

The **law on contempt of court proceedings** is still being reviewed and is an ongoing project.

**(c) Law and Practice relating to Criminal Investigation, Arrest and Bail:** The Commission has in April 2008 released a Discussion Paper on those aspects of the law.

In this paper, we highlighted issues which stakeholders and interested parties could reflect upon: requirements for effective investigation and police powers of arrest, search and seizure; rights of suspects and detainees; bail; rights of victims of crime; the juvenile justice system and the rights of children; rights of other vulnerable groups; the mechanism for ensuring compliance with legal and ethical standards. In order to ease understanding of the issues, we had on 7 May 2008 at

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<sup>2</sup> Vide National Report of Mauritius to Working Group on the Universal Periodic Review of the UN Human Rights Council [ref: A/HRC/WG.6/4/MUS/1], dated 30 October 2008, at para. 48.

the then Human Rights Centre a Brain Storming session with NGOs and other stakeholders.

We have since been reviewing the **Bail Act** and we expect soon to report on the matter, the more so as Dr. The Honourable Prime Minister has more than once, during his replies to PQs, informed the National Assembly that Government was looking forward to receiving our views/recommendations on this matter.<sup>3</sup>

On 27 May 2008, the political party LALIT submitted to us proposals regarding changes to the **law on admissibility of confessions**. We may this year release a paper or report on the matter. The Commission had already decided as far back as 2007 to review this aspect of the law in the light of UK experience in the matter, which led to the enactment of PACE [Police and Criminal Evidence Act] and the elaboration of guidelines for investigating officers.<sup>4</sup>

The desirability of introducing in our Criminal Justice System the ‘**System of Juge d’Instruction**’ has been considered by us and we have formed the opinion that it would not be appropriate. A more effective, transparent and accountable investigation system could be achieved through the introduction of a ‘**Mauritian PACE**’ (Police and Criminal Evidence Act). We plan during the year to release a paper on these issues.

The Prime Minister’s Office has sought our views on **Forensic use of DNA**: a draft DNA Identification Bill was brought to our attention. Such legislation is welcome by us and we plan, in the coming weeks, to submit a Review Paper on this matter.

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<sup>3</sup> Vide reply to PQ B/846 on 15.07.08, and also replies given to PQ B/791 on 08.07.08, PQ B/378 on 06.05.08, and PQ B/314 on 29.04.08.

<sup>4</sup> 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.

Mindful of the **Rights of Victims of Offences**, we have also been examining the possibility of introducing in our law the concept of ‘**Constitution de Partie Civile**’. We may, during this year, release a paper or report on the matter.

The **Juvenile Justice System** is also being reviewed by us. We plan, during the year, to come up with a paper/report on this aspect of the law.

**(d) Disclosure of Information in Criminal Proceedings:** The Commission has last month reported on the matter, after consultation with stakeholders on our proposed changes to this aspect of the law.<sup>5</sup> A draft Criminal Procedure (Amendment) Bill, containing our final recommendations for reform, has been attached to the Report.

**(e) Criminal Law Review:** The Commission has done some preliminary work on the **Road Traffic Act** and it may during the year release a paper on the matter.

**(f) Review of the Constitution:** The Commission had indicated in its previous annual programs it should keep the supreme law of Mauritius, and the electoral system, under review.<sup>6</sup> To that end, we released last September a Review Paper

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<sup>5</sup> Issue Paper released in December 2007.

<sup>6</sup> We share the views expressed by Professor Anyangwe in his report on ‘Situation Analysis of the Human Rights Landscape in Mauritius’ (2006):

“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

on ‘**The Criminal Justice System and the Constitutional Rights of an Accused Person**’.

**(g) Compliance of Laws, Policies and Practices with Human Rights Norms:** The Law Reform Commission has expressed the view in its previous annual programmes 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 our part that we undertake a systematic review of our domestic law and practice with a view to ensuring conformity with international human rights treaty obligations. We have been doing so during the past year and the Commission is currently preparing a Paper on “**Securing Human Rights**”.

Mindful of our mandate, we released in November 2008 an Issue Paper on ‘**Equality/Anti-Discrimination Legislative Framework (Re Equal Opportunities Bill No. XXXVI of 2008)**’, in which we brought to the attention of policy-makers, and the public, some emerging issues on which there is a need to reflect.

**(h) Conformity of Laws with International Obligations:** The Commission had decided, following a 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. This project is ongoing and we shall during the year come forward with a paper on the ‘**Harmonization of our Laws with the Hague Conventions on Private International Law**’.

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reflect international human rights standards, and adopting appropriate and effective legal mechanisms and guarantees to ensure effective enforcement of these standards.”

On a proposal made by a member of the public, the Commission had decided to review the **conformity of our postal legislation with the international obligations under the Universal Postal Union Convention**. The Commission shall make available its views on the matter at some point in time during the year.

- (i) **Review of Civil Justice System:** We indicated in last year's annual program that the Commission shall review the Code de Procédure Civile, which is outdated. It has done so and shall during the year come up with recommendations for reform of this Code.

We have also formed the opinion that 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.<sup>7</sup> We shall report on the matter during the year.

- (j) **Civil Code and Civil Law Review:** In last year's annual programme, we intimated that we shall focus on family law issues, in need of reform. Last month, we reported about '**Law on Divorce**'. We made recommendations for changes in the law [new grounds for divorce based on mutual consent as well as changes in the judicial proceedings]. A draft Code Civil Mauricien (Amendment) Bill was annexed to our Report.

- (k) **Business Law Review:** As announced in last year's annual programme, we have started work on **Legal Empowerment of Poor through Reform of Business and**

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<sup>7</sup> 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.

**Labour Rights**, in the light of the policy research papers of the UN High-Level Commission on the Legal Empowerment of the Poor, which was set up in 2005 under the aegis of UNDP. We may during the year release a paper on this matter.

- (I) **Review of Tax Legislation:** We have examined 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, and we shall report during the year on the matter.

In addition to those aspects of the law, which in our 2008 Annual Program we earmarked we would work on, we have had last year to devote some time to other pressing legal issues of great general public interest:

- (i) **Review of Local Government Legislative Framework:** At the request of the Ministry of Local Government, we have reviewed the existing law. Last December we submitted, in line with best international practices on local governance, a **Working Paper on ‘Reform of Local Government Legislative Framework’**. We are currently helping the Ministry with the legislative and policy reform process and we shall before end June report on the matter: a draft Local Government Bill shall be attached to the Report.
- (ii) **Review of Legislative Proposals for a New Legal and Regulatory Framework for NGOs:** The Commission had the opportunity last year to **report on legislative proposals for a new NGO law**. The Ministry of Labour is currently examining those proposals.
- (iii) **Review of Copyright legislation:** The Mauritius Society of Authors [MASA] brought to our attention its proposals for reform of the existing copyright law. We have reviewed the Copyright Act in the light of similar legislation in UK and

other Commonwealth jurisdictions, and have forwarded to MASA our preliminary views on the draft Copyright Bill.

### **New Projects in 2009**

The Commission has formed the opinion, after consultation with a number of interested bodies and careful consideration in the light of its project selection criteria,<sup>8</sup> that it may start new projects on aspects of the following three areas of the law:

- (1) **Harmonization of Laws with Human Rights Treaties:** There is a need to have a *Consolidated Children's Bill*, which would harmonize all laws in line with the UN Convention on the Rights of the Child, especially in the areas of adoption and juvenile justice, and consolidate the various pieces of legislation on children's rights.<sup>9</sup> We plan therefore to work with the Ministry of Women's Rights, Child Development and Family Welfare on this matter.

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<sup>8</sup> As indicated in last year's annual programme, 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.

<sup>9</sup> Mauritius has ratified the UN Convention on the Rights of the Child (CRC) in 1990, and the Child Protection Act was enacted in 1994. Since then, efforts have been renewed to harmonize existing legislation with the Convention. In this respect, in 1998, the Protection of the Child (Miscellaneous Provisions) Act purported to amend a series of laws to make better provision for child protection. The amendments were wide and varied from amendments to the Police Act, the Civil Status Act to the Probation of Offenders Act. In 2005, the Child Protection Act was amended to provide, inter alia, for the

Should the need arise, we shall also give our support to the Ministry of Social Security, National Solidarity and Senior Citizens Welfare & Reform Institutions in its endeavour to introduce legislative measures, which would give effect to our obligations under the UN Convention on Disability [*Disability Bill*].

**(2) Improving the Legislative Framework for Doing Business** in line with best international practices: The Commission has taken note of Mauritius ambition to be amongst the ten best locations for doing business globally by the year 2010.<sup>10</sup> We plan to carry out research work which could help improve the legislative framework on issues such as *land transfer and registration of property*.

**(3) Strengthening the Rule of Law, Good Governance and Democracy:** With a view to better strengthening the rule of law, we may start work on the *law on judicial review* and in respect of *State liability*.

We shall during the year express our views about the most appropriate legislative framework in relation to *access to official information [freedom of information legislation]*.

The Commission also plans to start work on the need for a '*Regulatory Impact Assessment Legislation*'.

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offences of Child Trafficking, Abandonment of Child and Abducting Child. Several articles of the CRC have, however, not been included in any law. It has become clear over time that provisions relating to the protection of the child are found piecemeal in a number of Acts of Parliament, as opposed to being integrated in one comprehensive piece of legislation. This is why, in 2006, the UN Committee on the Rights of the Child recommended the "consolidation of the various pieces of legislation covering all aspects of children rights" (Paragraph 20 of the Concluding Observations, 2006).

<sup>10</sup> The World Bank carries annually a world-wide survey on the ease and cost of doing business. Mauritius's ease and cost of doing business is now ranked 24<sup>th</sup> globally in the World Bank's annual Doing Business Survey 2009. A set of regulations affecting 10 stages of a business's life are measured : starting a business, dealing with construction permits, employing workers, registering property, getting credit, protecting investors, paying taxes, trading across borders, enforcing contracts and closing a business.