



LAW REFORM COMMISSION

Opinion Paper

Establishment Court of Appeal & Composition of JLSC [Judicial and Legal Service Commission]

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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>



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About the Commission

THE LAW REFORM COMMISSION OF MAURITIUS 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) the Director of Public Prosecutions or his representative;
- (e) a barrister, appointed by the Attorney-General after consultation with the Mauritius Bar Council;
- (f) an attorney, appointed by the Attorney-General after consultation with the Mauritius Law Society;
- (g) a notary, appointed by the Attorney-General after consultation with the Chambre des Notaires;
- (h) 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
- (i) two members of the civil society, appointed by the Attorney-General.

Under the direction of the Chairperson, the Chief Executive Officer is responsible 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 for taking the minutes of all the proceedings of the Commission and is also responsible, under the supervision of the Chief Executive Officer, for the administration of the Commission.

The Commission may appoint staff on such terms and conditions as it may determine and it may resort to the services of persons with suitable qualifications and experience as consultants to the Commission.

Background Note

1. The Commission has considered the provisions of the 2010 Draft Constitution (Amendment) Bill¹ and the 2011 Revised Draft Constitution (Amendment) Bill² circulated by Hon. Attorney-General.

The main object of the Draft Constitution (Amendment) Bills is to implement the recommendations of the Presidential Commission, chaired by Lord Mackay of Clashfern, so as to-

- (a) Provide that the Supreme Court shall consist of a Court of Appeal Section and a High Court Section [which shall comprise of a Civil Division, a Commercial Division (which shall replace the Bankruptcy Court), a Criminal Division and a Family Division];
 - (b) Alter the composition of the Judicial and Legal Service Commission [JLSC].
2. The proposed changes have been examined in the light of observations made by the Sachs Commission.³ The structure of the Supreme Court in other Commonwealth jurisdictions has also been considered.

¹ At the 40th and 41st Meetings of the Commission held on 12 and 25 October 2010.

² At the 49th Meeting of the Commission held on 17 August 2011.

³ A Commission on Constitutional and Electoral Reform was appointed in 2001. The Commission was chaired by Justice Albie Sachs of the Constitutional Court of South Africa, and had as Members Mr. B.B. Tandon (Electoral Commissioner for India) and Mr. R. Ahnee (former Puisne Judge). The terms of reference of the Commission included inter alia the following:

- To review the composition of the Judicial and Legal Service Commission;
- To separate the Appellate Division of the Supreme Court from other divisions.

The Commission submitted its Report in January 2002.

Views as to the Re-Structuring of the Supreme Court

3. When examining the 2010 Draft, the Commission took the view that:
 - (a) There is no need to establish a High Court; the Judges of the Supreme Court should retain the jurisdiction which they now possess (save that they should no longer hear appeals from decisions of their brother or sister Judges);
 - (b) The Court of Civil Appeal and the Court of Criminal Appeal should cease to be divisions of the Supreme Court; a separate Court of Appeal should be established to hear appeals from decisions of the Supreme Court (be it by one or two Judges);
 - (c) The Supreme Court should act both as a court of first instance, and as a court of appeal from decisions of subordinate courts; the Supreme Court should thus be made up of six divisions: (a) Criminal Division, (b) a family Division; (c) a Commercial Division; (d) a Civil Division; (e) a Pre-Trial (Mediation) Division; and (f) an Appellate Jurisdiction.

4. After examining the 2011 Revised Draft Constitution (Amendment) Bill, the Commission considered it is desirable that
 - (a) The Supreme Court should comprise a Court of Appeal Section and a High Court Section;
 - (b) The Court of Appeal Section should, however, only hear appeals from the High Court Section;
 - (c) The High Court Section should act as a court of first instance and should also hear appeals from the subordinate courts [as is the case in Singapore];

- (d) A barrister of appropriate standing should also be qualified for appointment as a Justice of Appeal.

Views as to the Alteration of the Composition of the Judicial and Legal Service Commission [JLSC]

5. When examining the 2010 Draft, the Commission was of the view that:

- (a) There must be a change in the Membership of the Judicial and Legal Service Commission [JLSC];
- (b) Should a barrister be appointed as Member, an attorney-at-law also would have to be appointed;
- (c) Should the Solicitor-General be appointed as Member of the JLSC, the Director of Public Prosecutions also should be appointed, in view of the fact that the latter now has a separate Office with his own staff;
- (d) It is not necessary to have a representative of the private sector appointed as Member of the JLSC in order for it to adopt new methods of human resource management;
- (e) The Chairperson of the Public Service Commission need not be a Member of the JLSC [indeed the Presidential Commission chaired by Lord Mackay of Clashfern did not recommend that he/she be a Member].

6. The Commission welcomed the change in Membership of JLSC, proposed in the 2011 Revised Draft Constitution (Amendment) Bill, but expressed concern as to whether there will not be too many members on this service commission compared with what is provided for the other service commissions.