



LAW REFORM COMMISSION

Opinion Paper

Legal Aid Reform

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LAW REFORM COMMISSION

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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.

Opinion on Legal Aid Reform

1. The Commission has been asked to express its views on the ‘Green Paper on Equal Access to Justice: Reform on the Legal Aid in Mauritius.’¹
2. The Commission has examined the ‘Green Paper’ in the light of the law and practice in various jurisdictions [UK, France, Canada, Australia, India, and Bangladesh], the reflections of other law reform agencies [such as the 2002 Cayman Law Reform Commission ‘Preliminary Discussion Paper (with draft legislation) on the Review of the Legal Aid System in the Cayman Island’, as well as the Law Commission of India 14th Report on ‘Reform of Judicial Administration’] and UNODC [United Nations Office on Drugs and Crime] in its 2006 publication on “Access to Justice: Legal Defence and legal Aid – Criminal Justice Assessment Toolkit”, regarding the policy issues at stake.
3. The Commission wishes to highlight that whilst the organization of publicly funded legal services differs from one jurisdiction to another and is much affected by local culture and history, one common feature is to be found: good public legal services equate with high levels of funding.
4. The Commission is of the opinion that
 - (A) The current legal aid system is certainly in need of reform: legal aid should include legal advice (and should not be restricted to legal representation) and a Legal Aid Board or Commission should be established;
 - (B) Pro bono work by law practitioners, as is the case in England and Wales, should be encouraged;

¹ On 3 December 2010, Cabinet took note that the Draft Green Paper on Equal Access to Justice: Reform on the Legal Aid in Mauritius, would be circulated for the views and comments of all stakeholders and the public.

(C) It would not make sense to legislate to provide that all law graduates be compelled to do compulsory community service at any service provider, as an admission requirement [this is inimical to the concept of community service which should be on a voluntary basis and the concept of a legal profession which is liberal in essence];

(D) Whilst the idea of a “multilingual twenty four hours per day and seven days a week Red line phone in legal advice service for persons arrested or detained and in need of legal advice” looks attractive, it may turn out to be unworkable in practice.

5. The Commission considers the key policy issues that have to be addressed by the Hon. Attorney-General in respect of the organization of the legal aid system are as follows:

(a) What mandatory duties should the jurisdiction accept in relation to publicly funded legal services?

(b) What discretionary services do you wish to provide?

(c) What criminal services do you wish to provide? In particular, what services do you wish to provide prior to a suspect being charged and during interrogation by the police?

(d) In relation to civil cases, how much of family, private, public and poverty law claims do you wish to cover?

(e) How do publicly funded services interrelate with other forms of funding services or different ways of resolving a dispute?

(f) Should legal services extend beyond representation to advice?

(g) Do you accept a need to provide information and public legal education?

- (h) Do you wish to incorporate funding for public interest litigation and casework? If so, how?
- (i) What test of means do you envisage for criminal cases?
- (j) What test of means and merit do you envisage for civil cases?
- (k) Who will administer the tests of means and merit?
- (l) How do you envisage criminal services being delivered? Do you favour private practitioners, salaried practitioners, some form of ‘public defender organization’ or some combination of delivery? What are the advantages and disadvantages of each system?
- (m) Whatever your means of delivery for criminal cases, does it meet the determinants of good services?
- (n) How do you envisage civil services being delivered? Do you favour private practitioners, community law centres, national agencies or some other model?
- (o) What body will manage publicly funded legal services?
- (p) How will responsibilities for management and policy be divided?
- (q) Which government department will be responsible for legal aid policy and how will you ensure that it obtains sufficient information about what is the effect of policy on the ground?
- (r) What will be the mechanisms for accountability of the managing body?

- (s) Do you value the co-operation of the existing legal profession and, if so, how will you obtain it?

- (t) What provisions do you envisage to assure quality?

- (u) How will you ensure that your policy on legal services integrates within a wider access to justice policy?

- (v) How big is the budget? And how will you demonstrate value for money?