



LAW REFORM COMMISSION

2013 Annual Report on the Activities of the Commission

(Under section 17 of the Law Reform Commission Act)

(Period 1 January to 31 December 2013)

[January 2014]

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>

About the Commission

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.

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) 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.

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 also responsible, under the supervision of the Chief Executive Officer, for the administration of the Commission.



LAW REFORM COMMISSION

Chairperson : Mr. Guy OLLIVRY, QC, GOSK

Chief Executive Officer : Mr. Pierre Rosario DOMINGUE [Barrister]

Members : Mr. Satyajit BOOLELL, SC [Director of Public Prosecutions]

Mrs. Aruna D. NARAIN [Parliamentary Counsel]

Mr. Nicholas F. OHSAN BELLEPEAU [Deputy Master & Registrar]

Mr. Rishi PURSEM, SC [Barrister]

Mr. Narendra APPA JALA, SA [Attorney]

Mrs. Luvishka SEEJORE BILTOO [Law Academic (UoM)]

Mrs. Daisy Rani BRIGEMOHANE [Civil Society]

Mr. Navin GUNNASAYA [Civil Society]

Secretary : Mrs. Saroj BUNDHUN

Law Reform Cadre

Chief Executive Officer : Mr. Pierre Rosario DOMINGUE

Law Reform Officer : Mr. Sabir M. KADEL

: Dr. Goran GEORGIJEVIC

Administrative Support Staff

Secretary : Mrs. Saroj BUNDHUN

Confidential Secretary : Mrs. Neelamani BANSRAM

Senior Officer : Mrs. Marie Roseliette SOOBRAMANIA

Management Support Officer : Mrs. Kajal RAMDUT

Senior Office Attendant/Technical Assistant : Mr. Subhas CHUMMUN

Driver/Office Attendant : Mr. Claude François JEAN-PIERRE

Mr. Naraindranathsingh JANKEE

Introductory Note to this Report

1. This is the Seventh Report of the Law Reform Commission [LRC] to the Honourable Attorney-General, under section 17(1) of the Law Reform Commission Act. This Report concerns the activities of the Commission during the calendar year 2013.

The Commission: its Resources, Working Method and Law Reform Strategy

Membership of Commission

2. The Board is currently constituted as follows:
 - (a) The Chairperson is Mr. G. OLLIVRY, QC, GOSK, who is in office since 1 May 2006 and has been re-appointed on 1 May 2011 for a further term of five years;
 - (b) Members are:
 - (i) Mr. N. OHSAN BELLEPEAU [Deputy Master and Registrar & Judge in Bankruptcy, appointed by Chief Justice as Representative of the Judiciary as from 7 October 2011];
 - (ii) Mrs. A.D. NARAIN [Parliamentary Counsel and Representative of the Solicitor-General as from 14 April 2011];
 - (iii) Mr. S. BOOLELL, SC [Director of Public Prosecutions] (Member of the Commission since 1 May 2006, save for a few weeks);

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- (iv) Mr. R. PURSEM, SC [Barrister, appointed by Hon. Attorney-General (after consultation with Mauritius Bar Council) as from 1 May 2011 for a term of five years];
- (v) Mr. N. APPA JALA, SA [Attorney, appointed by Hon. Attorney-General (after consultation with Mauritius Law Society) as from 1 May 2011 for a term of five years];
- (vi) A Notary, to be appointed by Hon. Attorney-General after consultation with the Chambre des Notaires;
- (vii) Mrs. L. SEEJORE BILTOO [full-time member of the Department of Law of the University of Mauritius, appointed by Hon. Attorney-General (after consultation with the Vice-Chancellor of the University of Mauritius) as from 1 May 2011 for a term of five years];
- (viii) Mrs. D.R. BRIGEMOHANE [Member of Civil Society, appointed by Hon. Attorney-General as from 1 July 2010 for a term of five years]; and
- (ix) Mr. N. GUNNASAYA [Member of Civil Society, appointed by Hon. Attorney-General as from 1 July 2010 for a term of five years].

3. During the year 2013, the Commission held nine meetings.

Funding of the Commission

4. During the financial year 2013, the Commission was afforded a grant of Rs 14,100,000, appropriated by the National Assembly for meeting the operating expenses linked with the fulfillment of its mission.

Human Resources of the Commission

5. The staff of the Commission was composed as follows:
 - (a) The Chief Executive Officer;
 - (b) The Secretary to the Commission and other administrative support staff [one Confidential Secretary, one Senior Officer, one Management Support Officer, one Senior Office Attendant/Technical Assistant, and two Office Attendant-Drivers];
and
 - (c) Two Law Reform Officers.

Office Premises and Facilities of the Commission

6. The Office of the Commission is located on the 4th Floor of Cerné House and occupies an office space of about 500 square meters. The Commission has a conference room and a documentation centre.

Working Method & Law Reform Strategy

7. The Commission considers our laws should reflect best international practices, meet the exigencies of globalization, 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. The Commission also holds the view that, where possible, any proposed solution must be tested against empirical evidence.

8. 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.
9. The Commission has links with other law reform agencies. It is a member of the Commonwealth Association of Law Reform Agencies [CALRAs] and the Association of Law Reform Agencies of Eastern and Southern Africa [ALRAESA].

The Work of the Commission: Reports/Papers on Review of Laws and Proposals for Reform

10. The Commission has been reviewing, at the request of the Hon. Attorney-General, the Code Civil Mauricien and legislation relating to the criminal justice system (jury system).
11. The Commission has been reviewing, of its own initiative (or on proposal made by persons other than Hon. Attorney-General), the following aspects of the law: Framework for Business Facilitation; the Criminal Code and other penal legislation.
12. In the **Issue Paper on «Law of Contracts and Obligations under Code Civil Mauricien»** [March 2013], the Commission has reviewed the provisions of the Code Civil Mauricien relating to "Contrat & Obligations" [Articles 1101 to 1386 CCM] - which date back to 1804 - in the light of the 2005 Catala Report [*Avant-projet de réforme du droit des obligations et du droit de la prescription*], which had recommended reform of the provisions of the French Civil Code. A number of issues are raised for discussion with stakeholders as to changes which can be brought to those provisions in our Code.

13. In the **Issue Paper on «Law of Prescription under Code Civil Mauricien»** [March 2013], the Commission has compared the provisions of the Code relating to “Prescription” [Articles 2219 to 2283 CCM] with equivalent provisions in the French Civil Code [Articles 2219-2279 CCF], which were amended in 2008 to give effect to recommendations of the 2005 Catala Report [« Avant-projet de réforme du droit des obligations et du droit de la prescription »]. The Issue Paper highlights aspects of our law which can be reformed, such as time periods and mode of computation of time for limitation of actions. Views of stakeholders are being sought on those aspects.
14. In the **Issue Paper on «Nom de famille»** [July 2013], the Commission has reviewed the provisions on the “Nom” [Articles 23 to 48] and has been of the opinion that, to foster gender equality, changes can be brought to Rules of Devolution of Family Name. This Issue Paper highlights changes which can be effected to the *Titre Deuxième* of the *Livre Premier* of our Code. A number of issues are raised for discussion with stakeholders as to changes which can be brought to those provisions in our Code.
15. In the **Issue Paper on «Personnalité Juridique & Protection de la Personne Humaine»** [July 2013], the Commission has compared the provisions on “Personnalité Juridique” [Articles 7 to 22] with the provisions in the French Civil Code [Articles 7 to 16-14]. This Issue Paper highlights changes which can be effected to the *Titre Premier* of the *Livre Premier* of our Code to make provision for:
- (a) Right to respect of the presumption of innocence;
 - (b) Respect of the human body;
 - (c) Examination of the Genetic Particulars of a Person and the Identification of a Person owing to his Genetic Prints; and
 - (d) Use of the Techniques of Cerebral Imagery.
- Views of stakeholders are being sought on those aspects.

16. In the **Review Paper on «Law on Surrogacy» [“Maternité pour autrui”]** [July 2013], the Commission has analysed legal issues arising out of Mauritian couples opting for surrogacy. The Commission has also reviewed national approaches to surrogacy, and the arguments for and against a law authorising its practice in Mauritius.
17. In the **Issue Paper on «Filiation»** [October 2013], the Commission has compared the provisions on “Filiation” [Articles 312 to 342-1] with the provisions in the French Civil Code [Articles 310 to 342-8]. This Issue Paper highlights some of the changes which can be made to our Code: “filiation maternelle” to be established by the sole fact of giving birth to the child, legal proceedings to determine paternity should - as a general rule – be allowed in all cases. The views of stakeholders are being sought on those aspects of the Code in need of reform.
18. In the **Issue Paper on «Autorité Parentale»** [October 2013], the Commission has compared the provisions on “Autorité Parentale” [Articles 371 to 387] with equivalent provisions in the French Civil Code [Articles 371 to 387]. This Issue Paper highlights some of the changes which can be made to our Code regarding the exercise of parental authority, including delegation thereof. A number of issues are raised for discussion with stakeholders as to changes which can be brought to those provisions in our Code.
19. In the **Issue Paper on «Majeurs Protégés»** [October 2013], the Commission compared the provisions on “Majeurs Protégés” [Articles 488 to 515] with the provisions in the French Civil Code [Articles 414 to 495-9]. This Paper highlights changes which can be made to our Code aimed at ensuring greater respect for the human rights of the protected person: the “mesure de protection” to be guided by the principles of “nécessité, proportionnalité et subsidiarité”, respect for individual autonomy, and the introduction of new concepts such as “sauvegarde de justice” and “mandat de protection future”. The views of stakeholders are being sought on those aspects of the Code in need of reform.

20. Following the August 2012 Report on «Droit des Sûretés», the Commission, after considering the technical reports of the World Bank on *“Improving Access to Credit through Secured transactions Reform in Mauritius”*, further examined our law in the light of UNCITRAL Legislative Guide on Secured Transactions (2007) and the 2010 Supplement on Security Rights in Intellectual Property, the European Bank for Reconstruction and Development (EBRD) Model Law on Secured Transactions (2004) as well as its Core principles of law on secured transactions, the 2011 Acte Uniforme Révisé de l’OHADA [Organisation pour l’Harmonisation du Droit des Affaires en Afrique] portant Organisation des Sûretés, and World Bank’s revised Principles for Effective Insolvency and Creditor Rights Systems (2005). The Commission has analyzed anew the 2006 Reform in France, and considered Article 9 of the American Uniform Commercial Code, Personal Property Security Acts in various jurisdictions (such as Australia, and Papua New Guinea), and the Security Interests (Jersey) Law 2012. In the **Issue Paper on «Secured Transactions Reform»** [October 2013], the Commission recommended further changes to the Code Civil Mauricien, inspired from French law and the Acte Uniforme Révisé de l’OHADA portant Organisation des Sûretés, to modernize our law on secured transactions through improvements to the regime of “sûretés personnelles” (amendments to provisions on “cautionnement”, and the inclusion of the concepts of “garantie autonome” and “lettre d’intention”), “sûretés réelles mobilières” (further provisions on “gage”, and the inclusion of the concepts of “nantissement de créance” and “nantissement des droits de propriété intellectuelle”), and “sûretés réelles immobilières” [“l’antichrèse”].

21. In the **Issue Paper on «General Principles of Criminal Law»** [February 2013], the Commission has compared the provisions of Books I & II of the Criminal Code (sections 4 to 45) relating to general principles of Criminal Law [classification of offences, criminal liability and punishment] with equivalent provisions in the French Penal Code so as to identify those aspects of the law in need of reform, which need to be discussed with criminal justice actors.

22. In the **Issue Paper on “Offences against Property (1) (‘Des appropriations frauduleuses’)**” [December 2013], the Commission compared the provisions in our Criminal Code on “*vol, extorsion, chantage, abus de confiance, escroquerie, filouterie, etc*” with equivalent provisions in the French Penal Code.
23. In the **Issue Paper “Offences against Property (2) (‘Autres Atteintes aux Biens’)**” [December 2013], the provisions in our Criminal Code on “*destruction et dégradation des biens appartenant à autrui, incendie involontaire, prêt sur gage sans autorisation légale, abus frauduleux de l’état d’ignorance ou de faiblesse, etc*” have been compared with equivalent provisions in the French Penal Code. In both Issue Papers, a number of issues are raised for discussion with criminal justice actors and other stakeholders.
24. The Commission has compared, in the **Issue Paper on «Offences against the Nation, the State and Public Peace»** [December 2013], the first Title of Book Three of our Criminal Code (sections 50 to 214) with equivalent provisions in the French Penal Code [Articles 410-1 seq.] so as to identify those aspects of the law in need of reform, which need to be discussed with criminal justice actors.
25. In the **Issue Paper on «Contraventions in the Criminal Code»** [December 2013], the provisions of the first Title of Book Four of our Criminal Code (sections 378 to 387) have been compared with equivalent provisions in the French Penal Code so as to identify those aspects of the law in need of reform, which need to be discussed with criminal justice actors.

Government Implementation of the Commission's Recommendations for Reform of the Law

26. The recommendations contained in the **Report on “Mechanisms for Review of Alleged Wrongful Convictions or Acquittals”** [Nov 2012] were partly approved and have been implemented.¹
27. The Police and Criminal Evidence Bill No. of 2013 has been introduced in the National Assembly, which purports to give effect to the recommendations contained in the **Issue Paper on “Criminal Investigation: Reform of Police Procedures and Practices”** [July 2010].
28. At the 62nd Meeting of the Commission, held on 6 March 2013, Members took note that in England, the Law Commission Act 2009, which came into force on 12 January 2010, creates a duty on the Lord Chancellor to report annually to Parliament on the extent to which Government has implemented Law Commission recommendations. The Protocol between the Lord Chancellor (on behalf of the Government) and the Law Commission, which arose from the Act, sets out how Ministers of the Crown, Government Departments and the Law Commission should work together. The purpose of the Law Commission Act 2009 and the Protocol is to improve the rate at which the Commission's recommendations for reform of the law are implemented by Government.

¹ The Criminal Appeal (Amendment) Bill No. XIX of 2013 was introduced by Hon. Attorney-General in the National Assembly on 12 July 2013. The Bill was debated on 16 and 24 July, and passed on 24 July (with amendments made at Committee stage). The President of the Republic gave his assent on 1 August 2013 and the Act has come into force on 3 August 2013.

During the debates in the National Assembly, reference was made to LRC's Report.

The Act gives effect to LRC's recommendation by providing a mechanism for review by the Court of Criminal Appeal of an alleged wrongful acquittal or conviction (in respect of a person acquitted or convicted following a trial before the Supreme Court or appellate proceedings before the Court). When there is fresh and compelling evidence, the Court shall quash the acquittal or conviction and order, in appropriate cases, a re-trial.

The Act expands the opportunity for errors in the criminal process, as to the determination of guilt, to be corrected.

In Mauritius, since the Appropriation (2013) Act, the Commission is expected to report on the percentage of recommendations implemented (as an Outcome Indicator).

Members have thus decided that it would be desirable that:

- (1) The Attorney-General's Office could consider providing an interim response to the Commission as soon as possible and in any event within three months of submission of a Report/Paper containing final recommendations for change to the law, unless otherwise agreed with the Commission;
- (2) The Attorney-General's Office could consider providing a full response to the Commission as soon as possible after delivery of the interim response and in any event within one year of publication of the Report/Paper unless otherwise agreed with the Commission. The response shall set out which recommendations the Attorney-General accepts, rejects or intends to implement in modified form, together with an indication as to timescale for implementation;
- (3) Should the Attorney-General's Office be minded either to reject or substantially modify any significant recommendations, it should first give the Commission the opportunity to discuss and comment on its reasons before finalizing the decision.

**Appendix: List of LRC Reports/Papers submitted to Hon.
Attorney-General on aspects of the law reviewed
[2007-2013]**

- (1) Report (together with draft Bill) on “Opening Mauritius to International Law Firms and Formation of Law Firms/Corporations” [May 2007];
- (2) Report (together with draft Bill) on “Relationship of Children with Grand Parents and Other persons under the Code Civil Mauricien” [June 2007];
- (3) Discussion Paper on “Access to Justice and Limitations of Actions against Public Officers and the State” [June 2007];
- (4) Issue Paper “Commentary on some of the Human Rights dimensions of the Sexual Offences Bill No. VI of 2007” [June 2007];
- (5) Issue Paper on “Disclosure in Criminal Proceedings” [December 2007];
- (6) Discussion Paper on “Law and Practice relating to Criminal Investigation, Arrest and Bail” [April 2008];
- (7) Report (together with draft Bill) on “Access to Justice and Limitations of Actions against Public Officers and the State” [May 2008];
- (8) Review Paper on “The Criminal Justice System and The Rights of an Accused Person” [September 2008];
- (9) Report (together with draft legislation) on “Law relating to NGOs” [November 2008];
- (10) Issue Paper on “Equality/Anti-Discrimination Legislative Framework (*Re* Equal Opportunities Bill No. XXXVI of 2008)” [November 2008];
- (11) Working Paper on ‘Reform of Local Government Legislative Framework’ [December 2008];
- (12) Report (together with draft Bill) on “Disclosure in Criminal Proceedings” [December 2008];
- (13) Report (together with draft Bill) about “Law on Divorce” [December 2008];

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- (14) Issue Paper on “The Office of Director of Public Prosecutions [DPP] and its Operational Autonomy” [March 2009];
- (15) Discussion Paper on “Forensic Use of DNA” [April 2009];
- (16) Report (together with draft Local Government Bill) on “Local Government Reform” [June 2009];
- (17) Report on “Bail and other Related Issues” [together with draft Bail (Amendment) Bill] [August 2009];
- (18) Issue Paper on “Social Partnership Framework” [November 2009];
- (19) Discussion Paper on “Judicial Review” [November 2009];
- (20) Issue Paper on “Evidence of Reluctant/Intimidated Witness in criminal Proceedings: Proposal for Reform of the Law” [May 2010];
- (21) Issue Paper on “Criminal Investigation: Reform of Police Procedures and Practices” [July 2010];
- (22) Background Paper on “Reform of Codes (Code Civil Mauricien, Code de Commerce & Code de Procédure Civile)” [October 2010];
- (23) Report on “Review of Aspects of Consumer Protection Law and Proposals for Reform” [October 2010];
- (24) Report on “Prevention of Vexatious Litigation” [October 2010];
- (25) Issue Paper on “Constitutional Protection of Human Rights” [October 2010];
- (26) Issue Paper “Law as to Publicity for Appointment and Revocation of Agent and Proxy” [November 2010];
- (27) Report on “Mediation and Conciliation in Commercial Matters” [November 2010];
- (28) Opinion Paper on “Liberalization of Usher Services” [January 2011];
- (29) Opinion Paper on “Legal Aid Reform” [February 2011];
- (30) Opinion Paper on “Appeal by Vexatious Litigant” [April 2011];

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- (31) Opinion Paper on “Costs in Criminal Cases” [April 2011];
- (32) Opinion Paper on “Attorney’s Commission” [April 2011];
- (33) Issue Paper on “Timeshare (Droits de Séjour à Temps Partagé)” [July 2011];
- (34) Opinion Paper on “Establishment Court of Appeal and Composition of JLSC (Judicial and Legal Service Commission)” [August 2011];
- (35) Issue Paper on “Reform of Criminal Code” [November 2011] ;
- (36) Issue Paper on “Establishment of Family Court and Conduct of Family Proceedings” [November 2011];
- (37) Discussion Paper on “Crédit-Bail (Leasing)” [November 2011];
- (38) Report on “Crédit-Bail & Location Financière” [November 2011];
- (39) Issue Paper on “Crédit-Bail (Leasing)” [December 2011];
- (40) Issue Paper on “Road Traffic Legislation and Penalty Points System” [December 2011];
- (41) Issue Paper on “Offences against Persons (Atteintes à la vie & à l’intégrité physique - homicides, menaces, violences)” [December 2011];
- (42) Opinion Paper “Draft Police and Criminal Evidence Bill” [March 2012];
- (43) Opinion Paper “Offences against Persons [Re Draft Criminal Code (Amendment) Bill]” [April 2012];
- (44) Discussion Paper on “the New Code de Procédure Civile” [May 2012];
- (45) Report on “Code de Procédure Civile” [May 2012];
- (46) Report on “Code de Commerce (Livre Premier) [Fonds de commerce, garanties autonomes, crédit documentaire, franchise, concession exclusive & timeshare]” [May 2012];
- (47) Report on “Code de Commerce (Livre Deuxième) [Navigation & commerce maritimes]” [June 2012];

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- (48) Report on “Code de Commerce (Livre Troisième) [Navigation & commerce aériens]” [June 2012];
- (49) Issue Paper on “Party and Witness Anonymity in Civil Proceedings” [August 2012];
- (50) Issue Paper on “Offences against Persons (Autres atteintes à la personne humaine – atteintes à la vie, à l’intégrité sexuelle, à la liberté de la personne, à la dignité humaine et la personnalité, et atteintes aux mineurs et à la famille)” [August 2012];
- (51) Report on “Copropriété des immeubles sociaux” [August 2012];
- (52) Report on “Droit des Sûretés” [August 2012];
- (53) Report on “Incorporation of Provisions relating to Effets de Commerce (Lettre de Change & Billet à Ordre) in the Livre Premier of Code de Commerce” [Nov 2012];
- (54) Report on “New Regime for Copropriété” [Nov 2012];
- (55) Report on “Mechanisms for Review of Alleged Wrongful Convictions or Acquittals” [Nov 2012];
- (56) Issue Paper “General Principles of Criminal Law” [Feb 2013];
- (57) Issue Paper “Law of Contracts and Obligations under Code Civil Mauricien” [Mar 2013];
- (58) Issue Paper “Law of Prescription under Code Civil Mauricien” [Mar 2013];
- (59) Issue Paper on “Personnalité Juridique & Protection de la Personne Humaine” [July 2013];
- (60) Review Paper on “Law on Surrogacy [Maternité pour autrui]” [July 2013];
- (61) Issue Paper on “Nom de famille” [July 2013];
- (62) Issue Paper on “Secured Transactions Reform” [Oct 2013];
- (63) Issue Paper on “Filiation” [Oct 2013];
- (64) Issue Paper on “Autorité Parentale” [Oct 2013];

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- (65) Issue Paper on “Majeurs Protégés” [Oct 2013];
- (66) Issue Paper on “Offences against Property (1) (‘Des appropriations frauduleuses’)” [December 2013];
- (67) Issue Paper on “Offences against Property (2) (‘Autres Atteintes aux Biens’)” [December 2013];
- (68) Issue Paper on “Offences against the Nation, the State and Public Peace” [December 2013];
- (69) Issue Paper on “Contraventions in the Criminal Code” [December 2013].