



LAW REFORM COMMISSION

Brief on the Work of the Law Reform Commission

[March 2019]

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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.



LAW REFORM COMMISSION

Chairperson : Mr. Gunness RAMDEWAR, OSK, SA [Attorney]

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

Members : Representative of Judiciary
[Hon. Judge Mr. Patrick Michel Tat KON KAM SING]

Solicitor-General or his Representative
[Mr. Dinay REETOO]

Director of Public Prosecutions or his Representative
[Mr. Satyajit BOOLELL, SC]

Mr. Bernard MARIE [Member of Civil society]

Secretary : Mrs. Saroj BUNDHUN

Staff & Human Resources

Chief Executive Officer : Mr. Pierre Rosario DOMINGUE

Law Reform Cadre

Senior Law Reform Officer : Mr. Sabir M. KADEL

Law Reform Officer : Dr. Goran GEORGIJEVIC

Law Reform Interns

Service to Mauritius (STM) : Ms. Tusha Luxmi JHUGEROO

: Mr. Heekesh RAMSURUN

Administrative Support Staff

Secretary : Mrs. Saroj BUNDHUN

Office Superintendent : Mrs. Marie Roseliette SOOBRAMANIA

Office Management Assistant : Mrs. Neelamani BANSRAM

: Mrs. Kajal RAMDUT

Senior Office Attendant/Technical Assistant : Mr. Subhas CHUMMUN

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

Mr. Naraindranathsingh JANKEE

Introductory Note: Background to the Mission of the Law Reform Commission

1. The Law Reform Commission is an independent statutory body, established by an Act of Parliament in 2005. It is operational since 2006.

As far back as 1993, a law reform commission existed in Mauritius. In 2006, a new Commission was established¹ - in accordance with best practices that have evolved in the Commonwealth² – as it was felt that new institutional arrangements were needed in order for the Commission to meet its statutory functions.³

2. During the past decades, a major legal innovation in the world – and in particular in the Commonwealth – has been the establishment and development of law reform agencies.

The setting-up of Law Reform Agencies is anchored in the principle of constitutionalism, which requires the establishment of independent centres of public decision-making.⁴

3. Key features of Law Reform Agencies are their independence, their expertise, their commitment to consultation and public participation, and their ability to handle new and complex problems.

¹ The Law Reform Commission Act No. 33 of 1992, which came into force on 01 December 1992 [Proclamation No. 2 of 1993], was repealed by Law Reform Commission Act No. 26 of 2005, which came into force on 10 January 2006 [Proclamation No. 2 of 2006].

² Vide Commonwealth Secretariat Paper on “Law Reform Agencies: Their Role and Effectiveness” [LMM (05)4] presented at Meeting of Commonwealth Law Ministers and Senior Officials [Accra, Ghana, 17-20 October 2005]. In particular, Law Ministers were invited to take note of the benefits brought by independent Law Reform Agencies, and the need for differences between Law Reform Agencies and between law reform processes in different jurisdictions, according to local circumstances.

³ The then Attorney-General, in his speech in the National Assembly during the 2nd Reading of the Law Reform Commission Bill No. XXIX of 2005, had this to say:

“One of the challenges faced by Government today is how to develop a meaningful strategy of law reform to ensure that laws on our statute books are not cocooned in a past which is divorced from the current social and economic realities. The law, Mr. Speaker Sir is not an end in itself, it is an instrument of social progress, a means of achieving a just and equitable society and for that to happen it must adapt to the changing needs of society ...

Mr. Speaker Sir, when we compare our Law Reform Commission Act to similar legislation in other parts of the Commonwealth, we cannot help being surprised at the brevity of our law and the inadequacy of its provisions to meet the statutory functions of the Commission as it exists to-day ...

The experience of many commonwealth jurisdictions has taught us that it is important to put in place institutional arrangements for tackling law reform in the interests of the people. Admittedly the primary responsibility of law reform rests with Government, but taken up as it is with current political matters, this role can only be fulfilled by a Law Commission adequately structured and staffed to fulfill its mandate.

The Law Reform Commission Bill provides for a newly structured Commission and addresses the defects of the present legislation.”

⁴ Lord Steyn, Keynote Address on ‘The Role of Law Reform Agencies’ at ALRAESA Law Reform Conference [Cape Town, March 2005].

The usefulness of Law Reform Agencies for the development of the law has time and again been asserted at Commonwealth Law Ministers Meetings and Meetings of Senior Officials of Law Ministries.⁵

Functions and Powers of the Law Reform Commission

4. The functions of the Law Reform Commission are to review in a systematic way the law of Mauritius, to make recommendations for its reform and development, and to ensure the law is understandable and accessible as is practicable.⁶
5. The Commission has the power *inter alia* to:
 - 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;
 - Conduct public hearings, seek comments from the public on its proposals, and consult any person or class of persons;
 - 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;
 - Publicize such parts of its work in such manner as it thinks expedient.⁷
6. 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.⁸
7. By virtue of section 6(1) of the Act, 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.
8. According to section 4(3) of the Act, the Commission is required to prepare and submit to the Attorney-General, at least once a year, a program for the review of specified aspects of the law of Mauritius with a view to their reform or development.⁹

⁵ *Vide* Commonwealth Secretariat Paper on “Law Reform Agencies: Their Role and Effectiveness” [LMM (05)4] presented at Meeting of Commonwealth Law Ministers and Senior Officials [Accra, Ghana, 17-20 October 2005]; Commonwealth Secretariat Paper on “Small States and Law Reform” [LMSCJ(07)11] presented at Meeting of Law Ministers and Attorneys General of Small Commonwealth Jurisdictions [Marlborough House, London, 4-5 October 2007]; Commonwealth Secretariat Paper on “Justice, Human Rights and Law Reform” [SOLM(10)(12)] presented at Meeting of Senior Officials of Commonwealth Law Ministries [Marlborough House, London, 18-20 October 2010].

⁶ Section 4(1) of the Law Reform Commission Act.

⁷ Section 5(2) of the Law Reform Commission Act.

⁸ Section 8(1) Law Reform Commission Act.

⁹ Since 2007, the Commission has submitted, at the beginning of every calendar year, its *Annual Program of Review, Reform and Development of the Law* to the Attorney-General. As from 2015, the Commission issues its annual Program in July.

9. Under section 17(1) of the Act, the Commission is required to make to the Attorney-General an annual report on its activities, which is tabled in the National Assembly.¹⁰
10. When making its recommendations, the Commission is expected to attach, where applicable and as far as practicable, a draft bill to the recommendations.¹¹

Structure of the Law Reform Commission and its Resources

Membership of Commission

11. The board of the Commission is made up as follows:
 - (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;
 - (ca) the Director of Public Prosecutions or his representative;¹²
 - (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.
12. The Members, including the Chairperson, are part-timers.
13. In accordance with section 9(2)(b) of the Law Reform Commission Act, the Chairperson convenes meetings of the Commission (generally once a month).

¹⁰ The Commission has each year submitted to the Attorney-General *Annual Reports on its Activities*: the annual reports cover work done during the previous financial year.

¹¹ Section 4(3) of the Law Reform Commission Act.

¹² Section 7 (1) of the Law Reform Commission Act, which provides for the membership of the Commission was amended by Finance (Miscellaneous provisions) Act No. 14 of 2009 by inserting, after paragraph(c), the following paragraph "(ca) the Director of Public Prosecutions or his representative".

Human Resources of the Commission

14. The Law Reform Commission Act provides that there shall be a Chief Executive Officer, who is appointed by the Commission. Under section 11(2) of the Law Reform Commission Act, 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.
15. The Law Reform Commission Act also provides for the post of Secretary to the Commission. The Secretary is responsible for the taking of minutes of the proceedings of the Commission and is also responsible, under the supervision of the Chief Executive Officer, for the administration of the Commission.
16. Pursuant to section 13 of the Act, the Commission has also appointed other research and administrative support staff on its permanent and pensionable establishment. Some of them were public officers who were permanently transferred to the Commission. Others were recruited following public advertisement.
17. The Commission has the power to recruit Consultants for its projects.¹³

Office Premises and Facilities of the Commission

18. The Office of the Commission is located on the 13th Floor of New SICOM Building House and occupies an office space of about 450 square meters. The Commission has a conference room and a documentation centre.

Funding of the Commission

19. The operating expenses of the Commission are met from grants provided by the National Assembly.

¹³ Section 14 of the Law Reform Commission Act.

Professor Robert Louis Garron, *Professeur Honoraire à l'Université Paul Cézanne (Aix-Marseille III)*, has been working for the Commission on an *ad hoc* basis as Law Reform Consultant for the reform of the Code Civil Mauricien, the Code de Commerce and the Code de Procédure Civile. Professor Romain Ollard, formerly at the Faculty of Law of the University of Réunion and now based at the Faculty of Law and Social Science of the University of Poitiers, has also worked on an *ad hoc* basis as Consultant for the reform of the Criminal Code. Professor Stephanie Dijoux, of the Faculty of Law of Paris-Nanterre, has also shared her views on aspects of Code Civil Mauricien and Code de Commerce.

Operation of the Law Reform Commission: Its Vision, Strategic Objectives and Working Methodology

20. The Commission considers that its primary function is of ensuring our laws are in conformity with constitutional and human rights standards, as well as with our international obligations.

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.

Our laws, in the opinion of the Commission, should reflect best international practices. 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.

The Commission's vision is that of just, fair and efficient laws. Laws must reflect and advance the Nation's social and economic interests, in the light of the exigencies of globalization.

21. Consultations with all the relevant stakeholders have been 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 for those called upon to apply the law. The Commission regards it as imperative that it participates in workshops, conferences and seminars, and has done so as far as possible in order to develop greater awareness of legal issues.¹⁴

¹⁴ For instance,

- (1) "Criminal Process: Pre-Trial Procedures" [P.R. Domingue, Human Rights Centre, 7 May 2008];
- (2) "New legal and Regulatory Framework for the NGO Sector in Mauritius" [P.R. Domingue, Ministry of Social Security & National Solidarity, 26 March 2008];
- (3) "Consumer Law Review: Findings and Recommendations for Reform" (Mr. PR Domingue, CEO, 12 January 2011) [Ministry of Business, Enterprise, Cooperatives and Consumer Protection, Newton Tower 16th Floor, Port Louis];
- (4) « Perspectives de Réforme du Code Pénal » (Mr. MS Kadel, Law Reform Officer, 27 January 2011) [ODPP's Conference on Prosecutorial Standards, Seat of Bar Council, Port Louis];
- (5) "Implementation of LRC's Recommendations on Reform of Consumer Laws" (Mr. P.R. Domingue, CEO, 11 October 2011) [Ministry of Industry, Commerce and Consumer Protection, Air Mauritius Building, 6th Floor, Port Louis];
- (6) "Contribution of the Law Reform Commission to the Strengthening of Constitutionalism, Rule of Law and Democratic Governance in Mauritius" (Mr. PR Domingue, CEO, 9 November 2011) [ALRAESA (Association of Law Reform Agencies of Eastern and Southern Africa) Conference, Lilongwe, Malawi, 7-10 November 2011];

22. The Commission may, pursuant to section 8 (1) (b) of the Law Reform Commission Act, set up Advisory Panels and it has done so in respect of Jury System, Establishment of Law firms, Family Law, Financial Services and Prescriptive Acquisition.
23. The Commission considers it as part of its mission that it should encourage critical thinking about the laws of Mauritius and legal practice.

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- (7) « Le crédit-bail & la location financière » [Prof. RL. Garron, Ad hoc Consultant] [Conférence à l'Institute for Judicial and Legal Studies pour les Juges de la Cour Suprême (10 février 2012) ; Conférence au siège du Bar Council pour les membres de la profession légale et les magistrats (24 février 2012) ; Conférence au siège du Temple Law Professionals pour les banquiers (9 mars 2012)] ;
 - (8) « Projet de Réforme du Droit Mauricien des Sûretés » (PR Domingue, CEO, 11 October 2013) [*ART (Africa Round Table) 2013*, Lusaka] ;
 - (9) "The Law Reform Commission and its Contribution to the Development of the Mauritian Legal System" [P.R. Domingue, Institute for Judicial and Legal Studies, 7 April 2014];
 - (10) « La Law Reform Commission et les droits humains » (S. Kadel, Séminaire avec l'ONG DIS-MOI, 13 mai 2014) ;
 - (11) « La réforme du cautionnement en droit mauricien » [G.Georgijevic, Colloque Capitant « Droit des Obligations/Sûretés » (April 2015)] ;
 - (12) « L'émancipation de la femme à l'aune du droit mauricien » [S. Kadel, *Colloque OSOI (Observatoire des Sociétés de l'océan Indien) de l'Université de la Réunion - "Dire l'océan indien"* (5 & 6 novembre 2015)] ;
 - (13) « Le Droit Mauricien de la Consommation : ses lacunes et les projets de réforme de la LRC » [S.Kadel, *Colloque Capitant sur le Droit de la Consommation* (1 septembre 2016)] ;
 - (14) « Propositions de la LRC pour renforcer le régime juridique de la protection du consommateur acheteur » [S.Kadel, *Colloque Capitant sur le Droit de la Consommation* (1 septembre 2016)] ;
 - (15) « Propositions de la LRC pour la réforme de l'encadrement des opérations de crédit » [G. Georgijevic, *Colloque Capitant sur le Droit de la Consommation* (2 septembre 2016)] ;
 - (16) « Propositions de réforme de la LRC pour mieux protéger le consommateur des atteintes à ses droits » [G. Georgijevic, *Colloque Capitant sur le Droit de la Consommation* (2 septembre 2016)] ;
 - (17) « The Protection from Domestic Violence (Amendment) Act : Implications » [P.R.Domingue, *Working Session on Domestic Violence and on the Protection from Domestic Violence (Amendment) Act 2016*, organized by Australian High Commission and Ministry of Gender Equality, Child Development & Family Welfare, NWDC, Phoenix, 2 September 2016];
 - (18) « Le Droit de la Consommation à l'ère numérique - Perspectives de Réforme » [S.Kadel, APEC (Association for the Protection of the Environment & Consumers), International Consumer Day, 15 March 2017] ;
 - (19) « Aspects Juridiques de la Coopération Union Européenne – Maurice » [P.R.Domingue, *Colloque Union Européenne dans l'Océan Indien, modèle de puissance ou puissance modèle ? Faculté de Droit et d'Économie, Université de la Réunion*, 14 April 2017] ;
 - (20) « Le faux et l'usage du faux en droit mauricien et les perspectives de réforme » [S.Kadel, Institute for Judicial and Legal Studies, 29 May 2017] ;
 - (21) « Perspectives de réforme/développements constitutionnels » [P.R.Domingue, Colloque trinational (France / Allemagne / Ile Maurice) sur le « Le développement constitutionnel de Maurice en l'honneur du cinquantenaire de l'indépendance », Campus du Réduit, Université de Maurice, 14-16 Mars 2018] ;
 - (22) « Recognition of Right to Die with Dignity & Comparative Approaches to Adoption of Laws on End-of-Life » [P.R.Domingue, International Colloquium « Droit et Culture : Regards croisés pluridisciplinaires sur la fin de vie », Florence, 25-27 June 2018] ;
 - (23) « Judicial Independence as a constitutional and human rights imperative » [P.R.Domingue, Colloquium on Judicial Independence, Middle Temple Association (Mauritius), City Council Port Louis, 22 march 2019].

To that end, the Law Reform Commission has recently established the “Guy Ollivry Law Reform Prize”, in honour of the first Chairperson of the Law Reform Commission, late Mr. Marie Joseph Emmanuel Guy Ollivry, QC, GOSK, a skillful barrister with insights, who remains a source of inspiration for current and future generations of lawyers. The Prize would be awarded following a “Law Reform Essay Competition”, open to undergraduate law students and postgraduate law students registered at an approved tertiary education institution in Mauritius, as well as young law practitioners, who would be invited to submit, on a theme of their choice, an essay of about 5000 words on an aspect of the law they consider is in need of reform. The “Prize” is meant to encourage critical legal writing, while generating new ideas for law reform, and would be awarded to students/young law practitioners with best insights as to an aspect of the law that is inadequate or incomplete.

An Internship Program has been established for young law graduates/postgraduates to offer them the opportunity to enhance their knowledge, skills, attitudes and ability, whilst contributing to the work of the Commission.

24. The Commission co-operates 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].
25. The CEO of LRC Mauritius is an Ex Co Member of CALRAs. CALRAs launched, together with the Commonwealth Secretariat in October 2016 at the Commonwealth Law Ministers’ Meeting in Bahamas, a Manual on best practices regarding law reform: “Changing the Law – A Practical Guide to Law Reform”, in which the CEO of LRC Mauritius was the contributor to the chapter on “Law Reform in Small States”.
26. On 29th and 30th June 2017, the Commission hosted ALRAESA’s Conference on “Role of Law Reform in Development.”

The Conference Sessions were on:

- (1) Value & Usefulness of Law Reform Agencies to Legal Policy Development;
- (2) Challenges of Law Reform in Small States;
- (3) Constitutional Reform;
- (4) Business and Consumer Law Reform;
- (5) Reform related to Gender-based Violence; and
- (6) Reform of Law of Evidence.

The Conference was attended by 21 foreign delegates from 10 countries: 20 representatives from law reform agencies (2 from Kenya, 2 from Lesotho, 2 from Malawi, 2 from Namibia, 2 from Uganda, 2 from South Africa, 3 from Swaziland, 2 from Zanzibar {Tanzania}, 2 from Zimbabwe, and 1 from Botswana); and 1 representative from Commonwealth Secretariat (Law and Development Section).

27. At the Annual General Meeting of ALRAESA in Nairobi on 28th November 2017, LRC Mauritius was elected on the Executive Committee, as Vice-Chairperson, for a period of two years.
28. In discharging its mandate, the Commission puts a particular emphasis on the following values:
- (a) Independence: The complete independence afforded to the Commission in reviewing the law and in formulating proposals for necessary reform is rooted in constitutionalism and is the most important factor in ensuring that it fully meets its obligations under its mandate.
 - (b) Impartiality: The Commission recognizes the crucial importance of carrying out its mandate in an impartial and objective way and fully adheres to these principles in all aspects of its work.
 - (c) High quality research: Research is at the core of the Commission's work. The Commission recognizes the paramount need to have recourse to high quality and committed researchers (inter alia through collaborative arrangements with other law reform agencies), as well as undertaking extensive public consultation. Access to high quality information and technology infrastructure and research resources is essential to the Commission's ability to provide high quality advice.
 - (d) Effective relationships and communication: The Commission strives to make considerable use of external legal and other experts, which may play an important role in assisting it in examining particular areas of the law. It has ongoing relationships with the Office of the Attorney-General, the Office of Director of Public Prosecutions, other Government Departments and Non-Governmental Departments having an interest in the law reform enterprise. The Commission regards the development of effective relationships in areas within its mandate as being of key importance to its work. All the reports and papers, and useful information about its work, are posted on its website.
 - (e) Performance culture: The Commission firmly believes that a performance culture (accompanied by clear responsibilities and accountabilities), which sets standards of excellence and which constantly seeks to improve the way things are done, should apply to all activities undertaken in pursuance of its mandate.
 - (f) Good governance: The Commission adheres to best practices in corporate governance.
 - (g) Building and maintaining our people capability: The Commission recognizes the essential contribution of all staff and other human resources, both administrative support and legal research cadre, to effective performance. It fully accepts the need to involve all staff on a partnership basis in ongoing activities and to have effective communication arrangements throughout the organization. No effort is spared for continuous training of staff and other human resources.
29. The Commission has pledged, as part of its Strategic Planning, to address the concerns of people and organizations about the law, legal process and legal institutions by focusing its research activities and recommendations on the following objectives:
- (a) Creativity: The Commission will identify new concepts of and new approaches to law. Commission's studies will explore why principles of law, legal procedures and

- legal institutions may have become inadequate or outmoded. They will focus on uncovering, elaborating and recommending creative solutions such as the identification and promotion of best practices.
- (b) **Balance:** The Commission will address questions of law through the lens of justice. It will research equal access to and treatment by the law and legal system to see where they do not produce in practice the equality that they proclaim in principle. In seeking to understand the causes of injustice, the Commission will consider the role of disparities in information, in resources and in power. It will advance proposals intended to ensure that the law serves the interests of all Mauritians and strives to meet their aspirations for achieving justice.
 - (c) **Responsiveness:** The Commission will examine how to enhance the engagement of Mauritians with the law and public institutions. Studies will investigate measures to make legal institutions more open and accessible, to reduce the cost of justice and improve the responsiveness of administrative agencies and courts. A focus on where the law succeeds in contributing to individual and social well-being will indicate where a lack of responsiveness undermines social trust and citizen involvement. The Commission will make recommendations about governance intended to renew the faith of Mauritians in the law and public institutions.
30. The Commission's priorities and strategic objectives reflect our operating environment and our commitment to work with our stakeholders and other sector agencies to achieve, in particular:
- (a) More accessible and user-friendly legislation that enhances public awareness, confidence and understanding of the law;
 - (b) Higher quality legislation that facilitates underlying policy objectives, that meets society's contemporary needs and reflects its diverse values;
 - (c) Constitutionally appropriate and consistent law that acknowledges the international human rights instruments and other treaties to which Mauritius is a party; and
 - (d) The development of a legal environment that reflects the increasingly global nature of law and co-operation between legal systems.
31. 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.

32. The Law Reform Commission, as an independent and specialist law reform agency, is able to take an inclusive, objective and professional approach to reform of the laws that govern society. It is particularly suited to topics where independent, non-partisan investigation would assist in establishing the credibility of law reform proposals, or where collaboration or consultation with a wide range of stakeholders is needed.

Projects undertaken by the Commission are usually substantial, possibly involving new concepts or fundamental review, which government agencies are sometimes unable to undertake because of time constraints and the electoral cycle.

33. Following the necessary research, discussion and consultation on any project, the Commission normally produces one of the following publications:
- (a) Discussion Paper or Review Paper or Working Paper: a thorough paper on an area of the law regarded as unsatisfactory, which contains the findings of research (analytical or empirical) and which may include proposals for reform;
 - (b) Consultation Paper: this is a paper highlighting matters regarded as problematic and outlining reform options;
 - (c) Issue Paper or Paper on Changes: this is a paper identifying aspects of the law in need of reform, on which interested parties are invited to make submissions;
 - (d) Opinion Paper: a paper setting out succinctly the views of the Commission on an aspect of the law requiring change;
 - (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.
34. Our Reports/Papers on aspects of law reviewed are invariably uploaded on our website and brought to attention of the public to generate reflection on laws and their underlying policies.
35. The Commission does not lobby for implementation of its proposals because we do not have a political agenda to serve. It does not allow itself to be dragged in the political arena. Its duty is to enlighten policy makers and the public through opinions based on high-quality research. The contribution of independent law reform agencies to the development of the law has time and again been recognized at Commonwealth Law Conferences and at meetings of Commonwealth Law Ministers.
36. The strength of the institution lies in its membership [drawn from professionals with experience who value their independence] and its methodology [its observations/views about laws/policies are driven by research: benchmarking of best international practices on any aspect of the law; empirical research (through consultation or surveys) as to the actual practice of the law and its impact on the lives of interested parties].
37. Just as courts its opinions are based on an expertise which the lay person (or even a lawyer) does not necessarily possess and which society stands to benefit from for the orderly conduct of human affairs and socio-economic progress.

As courts it does not allow its process to be abused of by busy cranks and their cronies: there are selection criteria for deciding whether or not to embark on a review of an aspect of the law when requested to do so by a person, other than the Hon. Attorney-General.¹⁵

The Commission has, however, an advantage over courts when it expresses itself on an issue. Courts deliver their opinion based on the law “as it is”; the Commission bases its opinion on “the law as it ought to be” [having regard to best international practices and empirical impact assessments on the behaviour of those likely to be affected by the rule].

Courts give their opinions in relation to cases brought before them. The Commission does express views on matters when requested to do so by the Hon. Attorney-General or any other person but it can also, of its own initiative, convey its views on any legal issue.

Current Work

38. The Commission is currently reviewing the following aspects of the law:

Aspects of Law under Review
<i>Constitution & Judicial System and Settlement of Disputes</i> [Compulsory Land Acquisition] [Constitution/Public Law Framework and Human Rights Compliance] [Court of Rodrigues]
<i>Criminal Justice System (Offences)</i> [Offences in Criminal Code and other legislation]
<i>Criminal Justice System (Procedural and Evidential Rules)</i> [Criminal Evidential Rules]

¹⁵ Regarding criteria for selection of projects, *vide* para. 31.

Code Civil Mauricien & other related legislation

[Droit des Contrats Spéciaux; Droit des Biens; Droit des Sûretés; Droit International Privé]

Legal Framework for Business & Law relating to Financial Services

[Environmental Law]

[Cyber Law]

[Intellectual Property Law]

[Domestication of the 2001 Cape Town Convention on International Interests in Mobile Equipment, and its Additional Protocols (the Protocol on Aircraft Equipment, 2001; the Luxembourg Protocol on Railway Rolling Stock, 2007; and the Protocol on Space Assets, 2012)]

Contribution of the Law Reform Commission to Legal Policy Development

39. Since its establishment in 2006, the Commission had submitted to the Attorney-General 130 Reports and Papers on aspects of law reviewed, with recommendations for change (where appropriate): *vide* Appendices 1 and 2.

40. The recommendations were aimed at:

(A) Strengthening the rule of law, good governance, and the human rights protection system:

(1) Strengthening the rule of law;¹⁶

¹⁶ In the *Discussion Paper on "Access to Justice and Limitations of Actions against Public Officers and the State"* [June 2007], the Commission considered, as the Presidential Commission chaired by Lord Mackay, that the privileged position of public officers and the State as litigants, compared with other persons, may undermine the very foundation on which rests the rule of law. In the Paper, the Commission highlighted some of the reform options, and indicated that it would report after considering views of stakeholders and after reviewing evolution of the law in the Commonwealth and after analyzing the constitutional principles at stake. In the *Report on "Access to Justice and Limitations of Actions against Public Officers and the State"* [May 2008], the Commission recommended that:

(2) Consolidating good governance and democracy;¹⁷

- (1) No special protection should be given to public officers or public authorities, by way of a shorter limitation period for actions brought against them as such provisions would be inimical to our democratic state constitutionally based on the rule of law;
- (2) Section 4 of the Public Officers' Protection Act should be repealed so that actions fall to be governed within the time limit prescribed by the *droit commun* of the Civil Code;
- (3) There is no need for a provision requiring written notice of suit before commencing litigation, nor is there any justification for derogating from the principle of "réparation intégrale du prejudice".

In March 2009, the Commission released an *Issue Paper on "The Office of Director of Public Prosecutions (DPP) and the Constitutional Requirement for its Operational Autonomy"* in which it asserted that:

- (a) The operational autonomy of the Office of Director of Public Prosecutions is a constitutional imperative and the Office of the DPP must operate independently of the Office of the Attorney-General;
- (b) The practice since independence of law officers working at Attorney-General's Office appearing for or advising DPP falls foul of the principles underlying the setting-up in the Constitution of distinct offices of Attorney-General and DPP. This arrangement is unconstitutional and should be brought to an end;
- (c) Civil Establishment Orders, adopted in accordance with section 74 of the Constitution and the Civil Establishment Act, must give effect to this constitutional imperative of the independence of the Office of the DPP: posts for law officers involved in criminal prosecutions must be established under the Office of the DPP;
- (d) Since independence, the salary and other allowances of the DPP appear in Appropriation Acts as a vote item under the Attorney-General's Office. This practice also is unconstitutional and must cease. Henceforth in Appropriation Acts the budget of the Office of the DPP should appear as a vote item for an independent body, as is that of the Judiciary.

In the *Discussion Paper on "Judicial Review"* [November 2009], the Commission examined the nature of judicial review, which stems from the supervisory jurisdiction of the Supreme Court, as well as the relationship between the constitutional jurisdiction of the Supreme Court and judicial review. The relevance of English principles in matters of judicial review was also analyzed. This was followed by an examination of the procedure for judicial review, its availability and scope. The grounds for review, the remedies available, as well the validity of unlawful administrative action, were then considered. The Commission has been of the view that, to enhance judicial review as an effective means for controlling governmental action, reform is necessary; reforms that have been either instituted or recommended elsewhere can provide useful alternatives upon which we can base our proposed options for change to the law on judicial review of administrative decisions.

¹⁷ In the *Working Paper on "Reform of Local Government Legislative Framework"* [December 2008], the Commission, after reviewing the Local Government Acts of 1989 and 2003 from a comparative perspective in the light of experience in other jurisdictions [Commonwealth jurisdictions, such as South Africa, India, Australia, Canada, and UK, and other jurisdictions, such as USA and France] and after paying heed to best international practices, considered the provisions of the 1989 and the 2003 Local Government Acts do not sufficiently provide the legal framework for addressing the challenges of globalization and that our Local Government law is certainly in need of reform.

In the *Report on "Local Government Reform"* [June 2009], the Commission was of the view that Inclusiveness and Accountability of Local Democratic Institutions are the Two Pillars for Local Community Empowerment and it recommended a new framework for an effective, efficient, inclusive and accountable local government, which would empower local communities so that they can face the challenges of globalization. A draft Bill was attached to the Report.

In the *Report on "Law relating to NGOs"* [November 2008], the Commission made proposals for the reform of the Legal and Regulatory Framework affecting not-for-profit, non-governmental organizations (NGOs).

The Commission considered there is a need to:

- (a) Affirm the right of informal (non-registered) associations to exist and carry out activities, in accordance with human rights guaranteed by the Constitution and international law;
- (b) Improve the registration process, in compliance with best international regulatory practices;
- (c) Ensure the register of associations is genuinely and speedily accessible;
- (d) Clarify the rights and duties incurred by an association prior to incorporation;

(3) Reinforcing the human rights protection system;¹⁸

- (e) Ease the operation of associations;
- (f) Improve the process for the transformation of associations;
- (g) Improve the process for the winding up of associations;
- (h) Improve the legal requirements for internal governance, in accordance with best international regulatory practices, by clarifying the duties and liabilities of officers and expressly prohibiting the distribution of profits and benefits, and self-dealing;
- (i) Clarify the duties of officers and committee members;
- (j) Streamline the procedures for reporting and auditing, inspection and monitoring;
- (k) Clarify the concept of 'charitable'/'public benefit' status, the fiscal benefits it gives rise to, the procedure and requirements for obtaining such a status, as well as the accountability standards.

In the *Issue Paper on "Social Partnership Framework"* [November 2009], the Commission recommended the establishment of an institutionalized platform for partnership and dialogue between Government/international donors, the private sector and NGOs, which would help achieve economic progress in a spirit of social inclusiveness.

In the *Opinion Paper "Aspects of Electoral Reform"* [May 2014], the Commission expressed its views on the Government's Consultation Paper on Electoral Reform (released in March 2014). The Commission has been of the opinion that the objectives of the reform should be:

- (1) The elimination of Communal Representation (as per system of allocation of additional seats under First Schedule to the Constitution, commonly known as "Best Loser System") whilst ensuring representation of diversity of electorate;
- (2) Fair Gender Representation through greater participation of women in National Assembly elections and their enhanced presence in Parliament;
- (3) Fairness to Political Parties and to the Electors through increased correspondence between share of votes and share of seats in National Assembly whilst ensuring stable, effective and responsive Government and discouraging emergence of communal parties.

These objectives could be attained *inter alia* through introduction of some form of proportional representation [PR] in the electoral system as the first-past-the-post-system [FPTP] may not ensure a fair representation of all interests, and by providing that a Political Party shall be under the obligation to ensure gender representation on its list of candidates.

¹⁸ In the *Issue Paper on "Constitutional Protection of Human Rights"* [October 2010], the Commission has expressed the view that there is a need to better safeguard existing rights, to afford constitutional protection to economic, social and cultural rights, and also to guarantee the rights of vulnerable persons:

- (A) Strengthening Recognized Rights:- The Commission has considered that:
- (1) The protection afforded to the Right to Equality by sections 3 and 16 of the Constitution is insufficient. Sections 3 and 16 are self-contained provisions; they prohibit discrimination on specific grounds and are not in line with best international practices in the field. Our international obligation under articles 2 and 26 CCPR [International Covenant on Civil and Political Rights] requires of us that we enact open-ended provisions [whereby discrimination is prohibited on the basis of an indeterminate number of grounds, the grounds mentioned being merely instances of discrimination].
 - (2) Section 9 of the Constitution affords protection merely to privacy of home and premises. Its ambit should be expanded so as to include respect for private and family life.
 - (3) The system of freedom of expression, as currently guaranteed by section 12, should be strengthened by also recognizing the right of access to information.
 - (4) Protection of the Law (section 10) should be better secured by protecting rights to just administrative action and by prescribing as a constitutional norm that slavery (and other related practices) is a crime against humanity.
- (B) Affording Constitutional Protection to Economic, Social and Cultural Rights:- In the light of the South African and Indian constitutional experience, and bearing in mind the provisions in the Draft 2006 Constitution of Trinidad & Tobago, it has been considered that the following socio-economic rights can be afforded constitutional protection:
- (1) Right to education;

(B) Improving the judicial system;¹⁹

- (2) Right to language and culture;
 - (3) Right to housing;
 - (4) Right to basic amenities;
 - (5) Right to a healthy and sustainable environment; and
 - (6) Right to freedom of trade, occupation and profession.
- (C) Guaranteeing the Rights of Vulnerable Persons:- The Commission has considered that the rights of the following vulnerable persons should be afforded constitutional protection:
- (1) The Child;
 - (2) The Elderly Person;
 - (3) The Person with Disabilities; and
 - (4) The Witness in Court Proceedings.

And that consideration can also be given as to whether the rights of the consumer should be guaranteed in the Constitution.

In the *Issue Paper on "Equality/Anti-Discrimination Legislative Framework (Re Equal Opportunities Bill No. XXXVI of 2008)"* [November 2008], the Commission reflected on the Structural Dimension of the Equality/Anti-Discrimination provision, the need for Positive Action Measures to foster Equality and for a Public Sector Equality Duty.

¹⁹ In the *Opinion Paper on "Establishment of Court of Appeal and Composition of JLSC (Judicial and Legal Service Commission)"* [August 2011], the Commission, after examining the Revised Draft Constitution (Amendment) Bill as well as the observations made by the Sachs Commission and the structure of the Supreme Court in other Commonwealth jurisdictions, took the view 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;
- (e) There is a need for a change in the Membership of the Judicial and Legal Service Commission [JLSC]. 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 membership. The Chairperson of the Public Service Commission need not be a Member of the JLSC. Membership of JLSC should include Solicitor-General and the Director of Public Prosecutions.

In February 2012, the Commission examined anew the proposals for the 'Establishment of Court of Appeal and Change in Membership of JLSC' and added the following to what has already been said in the Opinion Paper:

- (1) The Commission is in agreement with the view of the Presidential Commission, chaired by Lord Mackay of Clashfern, that the Supreme Court should consist of a Court of Appeal Section and a High Court Section;
- (2) Although the Commission has considered (contrarily to what has been recommended by the Presidential Commission, chaired by Lord Mackay of Clashfern) that it is desirable that appeals from subordinate courts be heard by the High Court section rather than by the Court of Appeal section, it is of opinion that there is nothing objectionable in the recommendation of the Presidential Commission;
- (3) The Commission is of the view that there is no constitutional impediment to the implementation of the recommendation of the Presidential Commission, chaired by Lord Mackay of Clashfern, that the Court of Appeal section hears appeals both from the High Court section of the Supreme Court and the subordinate courts (indeed the Mauritius Bar Association has approved, at a special meeting held on 16 December 2010, the recommendations of the Mackay Commission);
- (4) The Commission is of the view that divergence of views, if any, as to what would be the appellate jurisdiction of the Court of Appeal section should not be allowed to hinder the restructuring of the Supreme Court, which is urgently needed in order to enhance the efficiency of the administration of justice;
- (5) The Commission welcomes the change in Membership of JLSC - as proposed in the 2011 Revised Draft Constitution (Amendment) Bill - even if this entails that the JLSC shall be constituted of far

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more members (nine) than is the case for the other service commissions: five for DFSC and LGSC, seven for PSC.

In the *Issue Paper on “Establishment of Family Court and Conduct of Family Proceedings”* [November 2011], the Commission has been of the opinion that a Family Court with all the required support services must be established. The Court should have exclusive original civil and criminal jurisdiction in respect of family affairs. Provision must be made for Conciliation for the settlement of disputes relating to family affairs. Counseling services should be made available to parties in proceedings before the Family Court. The Family Court should be empowered to secure the services of a medical expert or such other person, including a person professionally engaged in promoting the welfare of the family, as it may think fit.

In the *Opinion Paper on “Liberalization of Usher Services”* [January 2011], the Commission, after examining the profession of ushers in other jurisdictions [the ‘huissier’ in France, and the ‘court usher’ and the ‘bailiff’ in England], expressed its support for the liberalization of the profession of usher as proposed by the Presidential Commission chaired by Lord Mackay.

In the *Opinion Paper on “Legal Aid Reform”* [February 2011], the Commission expressed its views on the ‘Green Paper on Equal Access to Justice: Reform on the Legal Aid in Mauritius.’ The Commission has been of the opinion inter alia 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;
- (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 24 hours per day and 7 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.

In the *Opinion Paper on “Reform of the Judicial System and other Related Matters”* [LRC_R&P 125, June 2018], the Commission reviewed its proposals on the structure of the Supreme Court, the composition of the Judicial and Legal Service Commission, and other related matters relating to the operation of the Judicial System, and expressed its views on the way forward. A Table on the Status of Implementation of Mackay Report 1998 (as updated in 2006), coupled with relevant parts of the Sachs Report 2002, was annexed to the Paper.

In the *Opinion Paper about “Mechanisms for Settlement of Land Disputes”* [LRC_R&P 127, Sep 2018], the Commission reviewed, at the request of the Attorney General’s Office, the mechanisms by which land disputes are dealt with under our law, as well as the law in other jurisdictions regarding “Land Tribunals” and ‘land courts’. The Commission also considered cases of dispossession of land as highlighted in the Report of the Truth and Justice Commission (vol. 2). The Commission recommended the establishment of a Land Court in Mauritius, and considered a Special Fund could be set-up for research and legal assistance to persons who deposed before the Truth and Justice Commission regarding alleged cases of dispossession of land.

In the *Opinion Paper about “Reform of Judicial System of Sale by Levy”* [LRC_R&P 129, Dec 2018], the Commission examined, at the request of the Office of the Attorney-General, the recommendations of the Report of the Commission of Inquiry on “Processes/Practices for Granting of Loans Secured on Immovable Property and Sale by Levy” [Aug 2014] and the Bank of Mauritius (BoM) Consultation Document about “Setting up of an Asset Management Company in Mauritius (AMC)” [8 January 2016]. The Commission shared the view of the Commission of Inquiry that the current law on “*saisie-vente immobilière*” is outdated and presents serious lacunas, and that a new regime for “*saisie immobilière*”, inspired mainly by the rules laid down by “*l’Acte Uniforme de l’OHADA du 10 avril 1998*” as well as some of the rules of the French “*décret du 27 Juillet 2006 relatif aux procédures de saisie immobilière et de distribution*” should be laid down. Regarding the Consultation Document of BoM, the Commission considered, given the fact that the BOM is reconsidering its decision to set up the AMC, the setting-up of an AMC should not, for the time being, be pursued. The Commission was thus of the opinion that the recommendations of the August 2014 Report of the Commission of Inquiry should be given effect, but with some amendments, such as the *mise à prix* not to be less than 90% of the value of the immovable property when it constitutes the « *logement familial* » of the debtor, provision to be made that any debtor may request that the sale be postponed for a period of 2 years from the date of reading of the memorandum of charges where the mortgaged

Also the operation of the legal profession and the provision of legal services;²⁰

(C) Modernizing the civil justice system;²¹

property is the sole residence of the debtor or the said debtor has been made redundant on economic grounds, and provision to be made for the bidding process to be made on-line.

²⁰ In the *Report on "Opening Mauritius to International Law Firms and Formation of Law Firms/Corporations"* [May 2007], the Commission recommended that Law practitioners, who so wish, should be allowed to provide legal services within the legal framework of a corporate entity, be it as an employee or an associate or partner/director/shareholder of the corporate entity [which is to be called law firm/corporation or legal practice corporation]. The Commission also recommended that foreign law firms and foreign lawyers should be permitted to team up with local law firms or law practitioners with a view to establishing a Joint Law Venture.

The Commission was also of the opinion that: (i) Our country and our law professionals must be fully equipped to meet the challenges of globalization; (ii) The legal education provided to our lawyers must, as a matter of urgency, be revisited with a view to imparting to them the knowledge, skills and attitude required of the new breed of transnational lawyers/global lawyers; (iii) Seminars on law practice management and on the globalization of legal services should be organized for local law practitioners; (iv) The Code of Ethics of the branches of the legal profession should be revisited.

²¹ In the *Discussion Paper on "The New Code de Procédure Civile"* [May 2012], the Commission first examined the shortcomings of the Code de Procédure Civile [the Code promulgated in 1808 is inadequate to contemporary circumstances: it was designed for the imperial legal set-up in France in the early 19th century; the language used is old French and the meaning is not always clear] and the aims of the reform were then considered. This was followed by a study of the material sources of the new Code. The structure of the new Code and its provisions were then discussed.

In the *Report on "Code de Procédure Civile"* [May 2012], a new Code has been formulated, which takes into account developments which have occurred in other jurisdictions, in particular France, and at international level, in particular OHADA [L'Organisation pour l'Harmonisation en Afrique du Droit des Affaires], whilst paying regard to the specific procedural rules laid down by our Legislature.

In the *Issue Paper on "Law as to Publicity for Appointment and Revocation of Agent and Proxy"* [November 2010], the Commission recommended that section 2(1) of Deposit of Powers of Attorney Act be amended to include publicity in respect of revocation of power of attorney so that notaries' practice in the matter becomes a legal requirement.

In the *Report on "Prevention of Vexatious Litigation"* [October 2010], the Commission, after reviewing, from a comparative perspective, the law as to restraint on vexatious litigation, recommended that the Courts Act be amended to enable the Supreme Court, where it is satisfied that a person has persistently started vexatious proceedings or made similar applications in any court, to make an appropriate order so as to restrain the start of such proceedings or the making of such applications. The amendment should take into account the practice in other jurisdictions as well as the analysis made by various law reform agencies in the Commonwealth.

In the *Opinion Paper on "Appeal by Vexatious Litigant"* [April 2011], the Commission examined whether the denial of the right of appeal against an order declaring a person as a vexatious litigant and directing him not to initiate/continue proceedings without leave – as provided in the new section 197F of the Courts Act by the Courts (Amendment) Bill No. I of 2011 - conform with the Constitution and its human rights provisions and reflect best international practices. The Commission has been of the view that the proposed subsection (5) to the new section 197F is permitted by the Constitution and is comparable to what obtains in many other jurisdictions.

In the *Issue Paper "Party and Witness Anonymity in Civil Proceedings"* [August 2012], the Commission examined - in the context of the reform of civil procedural rules - the concept of "party and witness anonymity", as it obtains in UK under Rule 39.2 (4) of Civil Procedure Rules 1998, and was favourable to its incorporation in our law. A court should be given the power to order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness.

In the *Opinion Paper on "Attorney's Commission"* [April 2011], the Commission has been of the view that such a contractual obligation is in conformity with section 8(1) of the Constitution as the commission payable to the attorney as an 'accessoire du dit prêt' appears as an incident of a charge foreseen [by subsection (4)(a)(iii)] which is authorized by law. The Commission nonetheless considered that, as recommended by the Commission of Inquiry on Sale by Levy chaired by Sir Victor Glover at para. 81 and 86 of its Report, the law should be amended to prohibit this unfair practice.

(D) Modernizing the criminal justice system:

- (1) Criminal investigation procedures;²²
- (2) Law on bail;²³

²² In the *Discussion Paper on "Law and Practice relating to Criminal Investigation, Arrest and Bail"* [April 2008], the Commission reviewed the law and practice relating to criminal investigation, arrest and bail, and highlighted some of the issues, which stakeholders and interested parties, may wish to discuss: Legal and Ethical Background to Criminal Investigation; Police Powers of Arrest – Cases and Conditions for Permissible Deprivation of Liberty; Rights of Arrested or Detained Persons – Treatment of Detainees; Right to Liberty and Release on Bail; Prohibition against Departure of a Defendant or Detainee as a Permissible Restriction on the Right to Freedom of Movement; Search and Seizure in the Course of an Investigation as Permissible Restrictions on the Right to Privacy and Right to Enjoyment of Possessions; Rights of Special Groups in relation to Criminal Investigation.

The Commission has in its *Discussion Paper on "Forensic Use of DNA"* [April 2009] examined Human Rights Requirements in relation to DNA Sampling/Profiling and the Operation of a DNA Database, and Specific Policy Issues relating to DNA Sampling/Profiling, its Forensic Use and the Operation of a DNA Database. The Commission reckoned that DNA evidence is a powerful tool for criminal investigation but it is not a substitute for proper police investigation. DNA must be used in conjunction with good police intelligence and investigation, including traditional ways of gathering evidence as well as new tools (such as CCTV systems). The Commission has also expressed the view that it is imperative for those involved with the presentation and evaluation of DNA evidence to understand it. Legal education on presentation of DNA evidence ought to be organized for forensic expert witnesses, legal practitioners, as well as judicial officers.

In the *Issue Paper on "Criminal Investigation: Reform of Police Procedures and Practices"* [July 2010], the Commission considered the background to UK PACE and its evolution. It also examined police powers and procedures under PACE and their relevance to Reform of the Law of Mauritius: Police Powers to Stop and Search Persons and Vehicles & Search Premises; Arrest and Detention; and Access to Legal Advice & Police Interviewing. The Commission has been of the opinion that the adoption of legislation and Codes of Practice for police and other law enforcement officers, on same line as the 1984 UK PACE [Police and Criminal Evidence Act] or Jersey Police Procedures and Criminal Evidence Law 2003, is the way forward for greater professionalism and transparency in the conduct of criminal investigations. Before the adoption of any new legislative scheme, training needs would however have to be assessed so as to minimize resistance, due to unfamiliarity with the new legislation, on the part of the police and other stakeholders. The view has also been taken that empirical research should be carried out to assess the current situation and later on evaluate the impact of the new legislation and Codes of practice in relation to practices at the different stages of the criminal investigation process.

In the *Opinion Paper on "Draft PACE Bill"* [March 2012], the Commission – after examining the draft Police and Criminal Evidence Bill – has been of the opinion that further consultation and reflection may be needed on issues such as "police powers to stop and search vehicles". Getting issues such as stop and search right is vital. This is regarded as an important factor in police/community relations.

²³ In the *Report on "Bail and other Related Issues"* [August 2009], following consultations with stakeholders after the release of the Discussion Paper on the "Law and Practice relating to Criminal Investigation, Arrest and Bail" [April 2008], the Commission considered there was a need to strike a proper balance, in accordance with human rights principles, between the right to liberty of the individual and the protection of society. It recommended that:

- (1) Grounds for refusing bail should be clearly distinguished from factors/considerations to be taken into account when determining whether or not a defendant or detainee is to be released;
- (2) It be laid down in greater detail the factors to be taken into account by a Court when assessing the risks involved in deciding whether or not to release a defendant or detainee (as these would assist bail decision-makers);
- (3) It should be laid down in what circumstances bail would exceptionally be granted;
- (4) Some of the conditions, including curfew and electronic monitoring mechanism, that should or could be imposed by a Court for release on bail be expressly laid down;
- (5) That a person released on bail is liable to be arrested for breach, or anticipated breach, of a bail condition;

- (3) Criminal Trial by Jury;²⁴
- (4) Rules as to disclosure;²⁵
- (5) Rules as to costs;²⁶
- (6) Criminal evidential rules;²⁷

(6) Harsher penalty be imposed for breach of conditions of bail; and

(7) The time spent in custody prior to sentence, by a person to whom bail has been refused, be fully taken into account when assessing the length of the sentence that is to be served from the date of sentencing.

²⁴ In the *Opinion Paper about «Jury System»* [LRC_R&P 128, December 2018], the Commission reviewed, at the request of the Office of the Attorney-General after having set-up an Advisory Panel, from a comparative perspective, laws in different jurisdictions pertaining to the Jury system and explored reform proposals on that subject. The Commission was of the view that the Jury System should be kept in Mauritius but that it could be enhanced. Thus, the Commission considered a formula should be worked out to compensate the jurors for the time they are serving. The Commission was also of the opinion that there should be two spare jurors, in case one or more of the jurors chosen is no longer able to fulfill his duties. It was also proposed that a rapid test could be included to assess the understanding of the English language by the juror. Moreover, the Commission believed that at the time of empanelling, jurors should be given preliminary directions. Finally, the Commission was of the view that the Electoral list could be used for the preselection of jurors together with a software which could sort out the Electoral List with regard to the age and professions excused from serving as jurors.

²⁵ In the *Issue Paper on «Disclosure in Criminal Proceedings»* [December 2007], the Commission examined the law, in the light of developments in UK [Criminal Procedure and Investigations Act 1996, the 1997 Code of Practice and the 2000 Guidelines issued by the Attorney General on disclosure of information in criminal proceedings], and was of opinion that a statutory regime which sets out a staged approach to disclosure is highly desirable. In the *Report on «Disclosure in Criminal Proceedings»* [December 2008], the Commission – after considering views from stakeholders and after reflecting further on the issues at stake, in the light of developments in other parts of the Commonwealth - recommended that a statutory regime which sets out a staged approach to disclosure must be adopted.

In the *Opinion Paper on «Draft PACE Bill»* [March 2012], the Commission, bearing in mind the Commonwealth Model Disclosure Legislation and Model Disclosure Guidelines, which have been approved at the 2011 Meeting of Law Ministers and Senior Officials (Sydney, Australia, 11-14 July 2011) [para. 31 of Final Communiqué], has been of the view that the statutory regime for 'Disclosure by Person charged' could be made less constraining than what is currently proposed.

²⁶ In the *Opinion Paper on «Costs in Criminal Cases»* [April 2011], the Commission recommended, after considering observations made by the Supreme Court in *Sookun v State (2010) SCJ 349* at p 4 that "... no specific provision exists for costs to be granted in favour of an accused in the case of a charge being dismissed [and that] the legislator may wish to have this disparity amended in due course", that the following amendments be made to the law:

- (a) That the Supreme Court be conferred the power to order costs against the prosecution upon dismissal of the information where the Court is satisfied that on the facts of the case no prosecution should have been brought against the party charged;
- (b) That the Court of Criminal Appeal be empowered to make an order for costs against an unsuccessful appellant or respondent, including the prosecution on a dismissal of a charge where the facts show that no prosecution should have been brought against the accused party on an objective assessment of the case;
- (c) That Costs should be ordered against the prosecution only where it appears it has acted in bad faith.

²⁷ In the *Issue Paper on «Evidence of Reluctant/Intimidated Witness in Criminal Proceedings: Proposal for Reform of the Law»* [May 2010], the Commission has been of the view that in some areas of criminality, such as organized crime, there is an increasing risk that witnesses will be subjected to intimidation and it is unacceptable that the criminal justice system might fail to bring defendants to trial and obtain a judgment because witnesses are

- (7) Effective handling of criminal cases;²⁸ and
- (8) Mechanism for review of miscarriages of justice and for the correction of errors;²⁹

effectively discouraged from testifying freely and truthfully. The Commission has considered, after reviewing the issue of the admissibility of the previous statement of a witness in criminal proceedings, that there is no constitutional impediment to the previous statement of a witness, given on oath or affirmation, being used in certain circumstances and with the leave of the court as evidence of any fact mentioned in it.

It recommended - in accordance with constitutional safeguards laid down by the Supreme Court of Canada - that section 173 of the Courts Act be amended by adding the following new subsections (3) to (5)-

- (3) *Notwithstanding subsection (2), in any criminal proceeding, a previous statement made by a witness may, with the leave of the court, be admitted in accordance with subsections (4) and (5) as evidence of any fact mentioned in it if the witness, although available for cross-examination---*
 - (a) *refuses to give evidence,*
 - (b) *denies making the statement, or*
 - (c) *gives evidence which is materially inconsistent with it.*
- (4) *The statement may be so admitted under subsection (3) if---*
 - (a) *the witness confirms, or it is proved, that he made it,*
 - (b) *the court is satisfied---*
 - (i) *that direct oral evidence of the fact concerned would be admissible in the proceedings,*
 - (ii) *that it was made voluntarily, and*
 - (iii) *that it is reliable, and*
 - (c) *the statement was given on oath or affirmation and was video-recorded.*
- (5) *The statement shall not be admitted in evidence under subsection (3) if the court is of opinion---*
 - (a) *having had regard to all the circumstances, including any risk that its admission would be unfair to the accused or, if there are more than one accused, to any of them, that in the interests of justice it ought not to be so admitted, or*
 - (b) *that its admission is unnecessary, having regard to other evidence given in the proceedings.*

In the *Opinion Paper on "Draft PACE Bill"* [March 2012], the Commission considered that it is desirable to examine whether the evidential rule laid down by section 188C of the Courts Act [added by section 11(1)(d) of the Piracy and Maritime Violence Act No. 39 of 2011], to the effect that an out of court statement would be admissible when the maker of a statement is unavailable, should not be made applicable to other criminal proceedings. The Commission was also of opinion that further reflection is needed as to the circumstances when video-recording of statements would be required by law, the elaboration of a PACE Bill offers the opportunity to review our evidential rules, which are mainly based on the common law, in the light of developments in other Commonwealth jurisdictions and observations/recommendations made by other law reform agencies.

²⁸ In the *Opinion Paper on "Effective Handling of Criminal Cases"* [February 2014], the Commission has recommended that, with a view to ensuring prompt adjudication of criminal cases, consideration be given to the incorporation in our law of some of the provisions of the UK Criminal Procedure Rules 2005. The Commission has been of the view that the court and the parties must actively participate in case management with a view to improving the efficiency of the criminal justice system.

²⁹ In the *Review Paper on "The Criminal Justice System and The Rights of an Accused Person"* [September 2008], the Commission reviewed the constitutional rights of an accused person and expressed the view that the right to compensation for miscarriage of justice should be expressly provided for in the Constitution. The Commission was also of opinion that the rights of witnesses and victims, as well as the rights of the child in the administration of justice, are not sufficiently safeguarded, and there is also no specific constitutional standard regarding need for availability of non-custodial measures.

(E) Renovating the criminal law in accordance with human rights norms and best international practices:

(1) The Criminal Code:³⁰

In the Report on *“Mechanisms for Review of Alleged Wrongful Convictions or Acquittals”* [Nov 2012], the Commission considered, at the request of Hon. Attorney-General, the desirability of having in Mauritius a Criminal Cases Review Commission, such as the one in UK, which could be an independent public body mandated to review possible miscarriage of justice and which could refer appropriate cases to the proper forum for review. The Commission after reviewing mechanisms for review of alleged wrongful convictions, from a human rights and comparative perspective, recommended that a Criminal Cases Review Commission could be established by statute. The Commission also examined in the Report, of its own initiative, the issue of wrongful acquittals (including the re-opening of jury acquittals). The Commission, after considering the rule against double jeopardy [enshrined in section 10(5) of the Constitution] and reviewing developments in other jurisdictions where statutory exceptions to the rule have been established, recommended that legislation could be adopted creating an exception to the rule against double jeopardy by providing for the re-trial – upon the order of a superior court - of a person previously acquitted when there is compelling evidence of a "tainted acquittal" or "fresh and compelling evidence" as to guilt. The Commission, however, was of the view that there should be sufficient safeguards to ensure that the power to quash an acquittal will not be abused.

³⁰ In the *Issue Paper on «Reform of Criminal Codes»* [November 2011], the Commission, after examining the evolution of the Criminal Code and the criminal law over the past two centuries and after having done a survey of developments in other jurisdictions, considered what the guiding principles for the Criminal Law Reform process would be. The review of our Criminal Code shall be carried out from an international and comparative perspective. Standards evolved by UN and other international bodies would have to be considered. The provisions of the Criminal Code would be compared with equivalent provisions in the French Penal Code, the Indian Penal Code, the Canadian Criminal Code and criminal codes/legislation in other jurisdictions, but careful consideration would have to be given to local conditions and culture before making any legal transplant. The characterization of criminal offences would have to be rethought and the impact of human rights on the design of the Criminal Code considered. The consultation process would need to be as broad as possible. It should involve a wide range of criminal justice actors: police officers, judicial officers, lawyers, and civil society organizations.

In the *Interim Report on «Reform of Criminal Code »* [May 2016], the Commission has highlighted aspects of the Criminal Code, which could be reformed:

- (a) Books I and II: “Territorial applicability of Criminal law”, “Recidivism”, “Sentences applicable to concurrent offences”, the offence of “Receiving property obtained unlawfully”, “Psychological Disorder and Duress” as a defence, the defence of “State of necessity”, “Criminal Liability of Minors”, and “Criminal liability of a corporate body”;
- (b) Book III, Title I, about “Offences against the State”: “Attack on the institutions of the Republic or the integrity of national territory”, “Sabotage”, “Abuse of authority directed against the administration”, “Violating the confidentiality of correspondence by public officer”, “Discrimination by public officer”, “Improper demands in relation to taxes or duties by public officer”, “Counterfeit money”, “Aggravating circumstances of forgery in writing”, “Public officer exercising functions without lawful authority”, “Inciting Rebellion”, “Outrage against depository of public authority”, “Obstructing the intervention of justice”, “Obstructing the course of justice”, “Usurpation of insignia reserved to a public authority”, “Exploitation of begging”, and “Publishing matter conducive to crime”;
- (c) Book III, Title II, Chapter I, relating to “Offences against Persons”: “Penalty for manslaughter”, “Torture and acts of barbarity”, “Threats”, “Acts of violence”, “Administering noxious substances”, “Offer to commit homicide”, “Involuntary homicide”, “Involuntary wounds and blows”, “Exposure to risk of death or injury”, “Incitation to commit suicide”, “Manslaughter in case of adultery”, “Castration under provocation”, “Order of the Law or Commandment of Lawful Authority”, “Self defence”, “Indecent sexual exposure”, “Sexual Assault”, “Rape”, “Incest on Minor”, “Sexual act without violence on Minor”, “Pornographic Exploitation of the Image of a Minor”, “Promoting the corruption of a minor”, “Sexual proposals by way of an electronic means of communication to a minor under 16 years of age”, “Procuring prostitute”, “Recourse to prostitution”, “Sexual harassment”, “Moral harassment”, “Endangering minors”,

- General Principles;³¹
 - Offences against the Nation, the State and the Public Peace;³²
 - Offences against Persons;³³
-

“Failure by person under an obligation to pay alimony to notify change of domicile”, “Failure by legal guardian to notify change of domicile”, “Abandonment of a person unable to protect himself”, “Violation of respect due to the dead”, “Subornation of perjury”, “Abstaining to exonerate an accused”, “Public incitement to discrimination, hatred or violence”, “Non-public incitement to discrimination, hatred or violence”, “Sedition”, “Insult”, “Malicious denunciation”, “False alarm about disaster”, “Infringement of privacy”, “Violation of the representation of a person”, and “Breach of the secrecy of correspondence”;

- (d) Book III, Title II, Chapter II, relating to “Offences against Property”: “Larceny”, “Extortion”, “Blackmail”, “Falsely obtaining credit”, “Swindling”, “Fraudulently making available immovable property belonging to someone else”, “Fraudulently abusing the state of ignorance or situation of weakness of a vulnerable person”, “Embezzlement”, “Fraudulent organization or aggravation of insolvency”, “Unlawful interference with bidding”, “Deceiving contractor”, “Destruction, degradation and deterioration of property”, “Poisoning animal” and “Failing to notify of infected animal”;

- (e) Book IV about “Contraventions”: repeal of obsolete provisions and addition of new ones.

The Interim Report is meant to facilitate further consultations and discussions with stakeholders, and generate further analysis on aspects reviewed. It shall be followed by Working Papers on specific aspects before final recommendations for change are made to Hon. Attorney-General.

³¹ 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. In the *Paper on “Changes to Books I & II of Criminal Code (General Provisions)”* [December 2014], the Commission is making recommendations for change to the Preliminary Title and Books I & II of the Code with regard, *inter alia*, to legal requirements of an offence, the application of the criminal law, modes of involvement in criminal activity (accomplice, “recel” and “infractions liées au recel”, harbouring offenders, and culpable omission), causes of non-liability (duress, insanity, state of necessity, and infancy), and the impact of multiple offences on the determination of the penal sanction applicable to an offender (recidivism, and “concoure ou cumul d’infractions”).

³² In the *Issue Paper on «Offences against the Nation, the State and Public Peace»* [December 2013], the Commission has compared 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.

In the *Paper on “Changes to Book III of Criminal Code (Offences against Nation, State & Public Peace)”* [December 2014], the Commission is making recommendations for changes to be made to Sections 50 to 214, with regard to offences of a public nature, offences committed by Public Officers and offences against the public peace. These relate, *inter alia*, to provisions regarding “Stirring up war against the State”, “Sabotage”, “Insurrectional movement”, “Abuse of authority by a person holding public office”, “Forgery” and “Rebellion”.

In the *Working Paper about «Reform of Law on Forgery in the Criminal Code»* [March 2017], the Commission, after reviewing further the provisions of our law on forgery (as provided by Sections 105A to 121 of the Criminal Code, which are based on Articles 145 to 162 of the French Penal Code of 1810), in the light of the provisions of the current French Penal Code (Articles 441-1 seq. of the 1994 Penal Code), recommended a more comprehensive Reform of the Law than what was proposed in the May 2016 *Interim Report on Reform of the Criminal Code* (where it was merely suggested that a new Section 112A about “Aggravating circumstances of forgery in writing” be added, based on Article 441-2 of the 1994 French Penal Code): Sections 105A to 120 of the Criminal Code to be repealed and replaced by new Sections 106 to 113, which are inspired by Articles 441-1 to 441-8 of the 1994 French Penal Code.

³³ In the *Issue Paper on “Offences against Persons (Atteintes à la vie & à l’intégrité physique - homicide, menaces, violences)”* [December 2011], the Commission has compared the provisions of the Criminal Code (sections 215 seq.) relating to “Offences against the Person” in respect of “atteintes à la vie & à l’intégrité physique”

- homicide, threats, violence - with equivalent provisions in the French Penal Code and the Canadian Criminal Code so as to identify those aspects of the law in need of reform. A number of issues have been raised for discussion with criminal justice actors.

In the *Issue Paper "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], the Commission compared the provisions of the Criminal Code relating to "Offences against the Person" - in respect of "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" - with equivalent provisions in the French Penal Code and other penal legislation so as to identify those aspects of the law in need of reform, which need to be discussed with criminal justice actors.

In the *Opinion Paper "Offences against Persons [Re Draft Criminal Code (Amendment) Bill]"* [April 2012], the Commission considered the Draft Criminal Code (Amendment) Bill, which sought to amend the Criminal Code to authorize the termination of pregnancy in specified circumstances. The Bill extended the circumstances when it may be necessary to have recourse to abortion, and the termination of pregnancy would not be regarded as an offence but rather as a health issue: cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus. In these circumstances medical abortion would be authorized. The Commission was of the view that the proposed amendment to the Criminal Code would make our law compliant with our international human rights obligations.

In the *Issue Paper "Commentary on some of the Human Rights dimensions of the Sexual Offences Bill No. VI of 2007"* [June 2007], the Commission considered that – in accordance with human rights standards- consensual acts of sodomy committed in private by adults should be decriminalized and that it should be expressly mentioned in the law that rape includes marital rape.

In the *Paper on "Changes to Book III of Criminal Code (Offences against Persons)"* [March 2015], the Commission highlighted the type of changes which could be made, *inter alia*, with regard to "manslaughter, administering noxious substances, threats, torture and acts of barbarity, involuntary offences against life, sexual offences, offences against privacy and endangering minors".

In the Interim Report on "Reform of Criminal Code" [May 2016], the Commission recommended, *inter alia*, concerning offences against the person (Book III, Title II, Chapter 1), the following changes: To provide that manslaughter when committed, *inter alia*, against a minor, a teacher or any other person working in an education institution, or against a person whose particular vulnerability, due to age, sickness, infirmity, physical or psychological disability or to pregnancy, is apparent or known to the author, by the spouse or partner of the victim, or because of the victim's true or supposed membership or non-membership of a given ethnic group, nation, race or religion, shall constitute an aggravating circumstance (amend Section 223); To reformulate the offence of "Administering noxious substance" (repeal and replace Section 236); To make it an offence "to offer or promise or propose to another person donations, gifts or benefits of any kind to induce him to commit a murder or poisoning" (to add a new Section 236A about "Offer to commit homicide"). In the *Discussion Paper « Reform of Law on Willful Killing in the Criminal Code »* [LRC_R&P 117, Dec 2017], the current law on "Willful Killing" is reviewed and the proposed reforms examined.

In the Interim Report on "Reform of Criminal Code" [May 2016], the Commission recommended, *inter alia*, concerning offences against the person (Book III, Title II, Chapter 1), the following changes: To provide for acts of violence (both physical or psychological) and provide also for new aggravating circumstances to acts of violence, such as acts committed against a minor under the age of sixteen years or against a person whose particular vulnerability, due to age, sickness, disability, a physical or psychological disability or to pregnancy, is apparent or known to the author, acts committed on a teacher or member of staff working in an educational institution or within a school or educational establishment, or, when students are entering or leaving, outside such an institution (repeal Sections 228, 229, 230 and 231 and replace with new Sections 228 and 229 about "Acts of violence"); and To reformulate the offence of "Administering noxious substance" (repeal and replace Section 236). The proposed Section 228 is based on Articles 222-7 to 222-16-3 of the 1992 French Penal Code; the proposed new section 236 (2) is based on Article 222-15 of the 1992 French Penal Code. In the *Discussion Paper « Reform of Law on Violence in the Criminal Code »* [LRC_R&P 118, Dec 2017], the current law on "Violence" is examined, and the proposed reforms analyzed.

In the Interim Report on "Reform of Criminal Code" [May 2016], the Commission recommended, *inter alia*, concerning offences against the person (Book III, Title II, Chapter 1), to repeal and replace Sections 224 to 226 dealing with "Threats" with provisions inspired by Articles 222-17, 222-18, 222-18-1and 222-18-3 of the French

- Offences against Property,³⁴ and

Penal Code of 1992 [new Section 224 about “*Threat not accompanied by order or condition*”; new Section 225 regarding “*Threat accompanied by order or condition*”; and new Section 226 on “*Threat with aggravating circumstances*”]. In the *Discussion Paper « Reform of law on Threats in the Criminal Code »* [LRC_R&P 119, Dec 2017], the current law on “Threats” was examined and the significance of the proposed reforms analyzed.

In the Interim Report on “Reform of Criminal Code” [May 2016], the Commission recommended that a new Section 223A be enacted in the Criminal Code, based on Articles 222-1 to 222-3 of the 1994 French Penal Code, to provide as an offence the subjection of a person to torture or to acts of barbarity. Provision was also made for various aggravating circumstances to the offence of torture or acts of barbarity. The Commission has also suggested to establish “torture or acts of barbarity” as an aggravating circumstance to several other offences, namely: rape (amended S. 250), procuring prostitute (amended S. 253), larceny (amended S. 303) and extortion (new S. 307C). It has moreover been proposed to amend the current Section 78 of the Criminal Code to increase the penalty for the offence of “Torture by public official”. In the *Discussion Paper about “Reform of Law on Torture and Acts of Barbarity in the Criminal Code”* [LRC_R&P 120, February 2018], the current law on “torture” is reviewed and the proposed reforms examined. Reference is also made to the provisions of the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [CAT], which Mauritius acceded to on 9 December 1992, and the Concluding Observations of the UN Committee against Torture on 22 December 2017 after examining the Fourth Periodic Report of Mauritius [CAT/C/MUS/CO/4].

In the *Discussion Paper about “Reform of Law on Involuntary Offences against the Life and Physical Integrity of Persons in the Criminal Code”* [LRC_R&P 122, April 2018], the current law on “*Involuntary Offences against the Life and Physical Integrity of Persons*” [based on Articles 319 and 320 of the 1810 French Penal Code] is examined and the significance of the proposed reforms [based on Articles 221-6, 221-6-1, 221-6-2, 222-19 to 222-21, and 223-1 of the 1994 French Penal Code] was analyzed.

In the *Discussion Paper about “Reform of Law on Endangering Persons in the Criminal Code”* [LRC_R&P 123, April 2018], the current law was examined and the significance of the proposed reforms [based on Articles 223-3, 223-4, 223-5, 223-7, 223-13 and 223-14 of the 1994 French Penal Code] considered.

In the *Discussion Paper about “Reform of Law on Violations of Dignity and Liberty of Persons in the Criminal Code”* [LRC_R&P 124, June 2018], the current law was considered and the significance of the proposed reforms analyzed.

In the *Discussion Paper “Incorporation of Offence of Moral Harassment in the Criminal Code”* [LRC_R&P 130, December 2018], the Commission reviewed, from a comparative perspective, laws in different jurisdictions pertaining to Moral Harassment and explored reform prospects. Moral harassment is not incriminated in our Criminal Code. It is only when the moral harassment is committed within work relations that it constitutes an offence, as per the Employment Rights Act. The Law Reform Commission was of the view, so as to remedy this lacuna of the law, that it would be wise to insert, in our Criminal Code, a new Section 255 which would make it an offence to morally harass another person. This new Section would contain three limbs. The first subsection would target repeated conduct which is designed to lead to or which leads to a deterioration of another person’s work conditions likely to violate his rights and his dignity, to damage his physical or mental health or compromise his career prospects. The second subsection would make it an offence to harass a person by repeated words or conduct which have as object or as effect the degradation of the living conditions resulting in impaired physical or mental health. The third and last subsection would incriminate harassment of one’s spouse or partner, present or past, by repeated words or conduct which are destined to lead to or have as effect the degradation of living conditions resulting in impaired physical or mental health.

³⁴ The Commission compared, in the *Issue Paper on “Offences against Property (1) (“Des appropriations frauduleuses”)* [December 2013], the provisions in our Criminal Code on “*vol, extorsion, chantage, abus de confiance, escroquerie, filouterie, etc*” with equivalent provisions in the French Penal Code.

In the *Issue Paper on “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. In the *Paper on “Changes to Book III of Criminal Code (Offences against Property)”* [Mar 2015], the Commission considered changes which could be made, *inter alia*, regarding “*vol, extorsion, chantage, abus de*

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confiance, escroquerie, filouterie, entraves à la liberté des enchères et tromperie contractuelle, destruction, dégradation et détérioration des biens d'autrui, défaut de déclaration d'un animal contaminé”.

In the *Paper on “Changes to Book III of Criminal Code (Incorporation of Provisions on Cybercrime)”* [June 2015], the Commission explored the desirability of incorporating in our Criminal Code provisions, inspired by French Penal Code, about « Des atteintes aux systèmes de traitement automatisé de données ». After further reflection, it is considered changes to reinforce the fight against cybercrime should, if the need is felt, be made through amendments in the Computer Misuse and Cybercrime Act.

In the May 2016 *Interim Report on “Reform of Criminal Code”*, the Commission recommended changes to Section 301 (Larceny), Sections 301A and 302 regarding “Penalty applicable to Larcenies”, Section 303 (Larceny with wounding), Section 304 (Larceny with violence by night breaking), Section 305 (Larceny with other aggravating circumstance), Section 309 (Larceny with breaking), Sections 312 and 314 (in relation to “dwelling house”) of the Criminal Code. The Commission also proposed the addition of a new Section 302A (Larceny of cultural property), a new Section 310A (Larceny by organized band) and a new Section 310B (Interpretation of larceny followed by violence). In the *Discussion Paper about “Reform of Law on larceny & Aggravated Larceny in the Criminal Code”* [May 2017], the current law in Mauritius (based on Articles 379 seq. of the 1810 French Penal Code) is examined; the proposed changes aimed at remedying lacunas in our law and which are modelled on current law in France [Articles 311-1, 311-2, 311-4, 311-4-1, 311-4-2, 311-5, 311-6, 311-7, 311-9, 311-10 & 311-11 of the 1994 Penal Code] are also discussed.

In the May 2016 *Interim Report on “Reform of Criminal Code”*, the Commission recommended that the offence of embezzlement in the Criminal Code be simplified; the current section 333, based on article 408 of the French Penal Code of 1810, be repealed and replaced by provisions inspired by Articles 314-1 & 314-2 of the 1994 French Penal Code. In the *Discussion Paper about « Reform of Law on Embezzlement in the Criminal Code »* [March 2017], the Commission examined the current law and its lacunas (which had been recognized by the Supreme Court); the manner in which the provisions of the 1994 French Penal Code have simplified the law and remedied the shortcomings in the 1810 statutory definition of the offence.

In the May 2016 *Interim Report on “Reform of Criminal Code”*, the Commission recommended that section 330 of the Criminal Code be repealed and replaced by a new section, inspired by Articles 313-1 and 313-2 of the 1994 French Penal Code, so as to simplify the offence of swindling by providing, *inter alia*, as a fraudulent means “abuse of a true character”; and also by providing for aggravating circumstances to the offence, such as when committed by a person making a public appeal with a view to issuing securities or raising funds for humanitarian or social assistance, or to the prejudice of a person whose particular vulnerability, due to age, sickness, infirmity, physical or psychological disability or to pregnancy, is apparent or known to the author. In the *Discussion Paper about “Reform of Law on Swindling in the Criminal Code”* [May 2017], the current law in Mauritius (based on Article 405 of the 1810 French Penal Code) has been examined; the proposed changes aimed at remedying lacunas in our law and which are based on current law in France have also been highlighted.

In the May 2016 *Interim Report on “Reform of Criminal Code”*, the Commission recommended changes to provisions relating to arson or damage to property: Sections 346 to 349, 351 to 357, 362 to 365 and 369 of the Criminal Code to be repealed and replaced with provisions on “Destruction, degradation and deterioration of property not endangering persons” (new Section 346), “Destruction, degradation and deterioration of property dangerous to persons” (new Section 347), and “Threat of destruction, degradation or deterioration of property and false alarm” (new Section 348). In the *Discussion Paper about « Reform of Law on Destruction, Degradation and Deterioration of Property in the Criminal Code »* [June 2017], the current law in Mauritius [based on Articles 434 to 459 of the 1810 French Penal Code] is examined and the proposed changes, aimed at remedying lacunas in our law and which are modelled on current law in France [Articles 322-1 to 322-14 of the 1994 Penal Code], are highlighted.

In the *Interim Report on “Reform of Criminal Code”* [May 2016], the Commission recommended that “Receiving Property Obtained Unlawfully” should be made a distinct offence in lieu of being assimilated to a case of complicity (new Sections 40 and 40A). In the *Discussion Paper about “Reform of Law on Receiving Property Obtained Unlawfully in the Criminal Code”* [LRC_R&P 114, September 2017], the current law in Mauritius and the proposed changes aimed at remedying lacunas in our law and which are modelled on current law in France [Articles 321-1, 321-2 and 321-6, of the 1994 Penal Code] are examined. The Discussion Paper is meant to help better grasp the need for reform of those aspects of the law in need of reform.

In the *Interim Report on “Reform of Criminal Code”* [May 2016], the Commission recommended that the various acts of “Extortion” should be better sanctioned (by repealing and replacing Section 307, and adding new Sections

- Contraventions;³⁵

(2) The Criminal Code (Supplementary) Act;³⁶

(3) Other Aspects of Criminal Law;³⁷

307A to 307E), and that provision be made for “Blackmail” as an offence (new Section 307F). In the *Discussion Paper about “Reform of Law on Extortion and Blackmail in the Criminal Code”* [LRC_R&P 115, September 2017], the current law in Mauritius and the proposed changes aimed at remedying lacunas in our law and which are modelled on current law in France [Articles 312-1 to 312-11 of the 1994 Penal Code] are examined. The Discussion Paper is meant to help better grasp the need for reform of those aspects of the law in need of reform.

In the Interim Report on “Reform of Criminal Code” [May 2016], the Commission recommended that the offence of “falsely obtaining credit” be reformulated (repeal and replace Section 323A); that the offence of “Fraudulently making available immovable property belonging to someone else” (new Section 330C) be established as a new offence; that “Fraudulently abusing the state of ignorance or situation of weakness of a vulnerable person” be established as an offence (repeal and replace Section 331); and that various other acts amounting to “atteintes patrimoniales” be sanctioned: “Fraudulent organisation or aggravation of insolvency” (new Section 333B) and “Deceiving contractor” (amendment to Section 343).

In the *Discussion Paper about “Reform of Law relating to Fraudulent Appropriations of Property in the Criminal Code – Miscellaneous Other Offences”* [LRC_R&P 116, September 2017], the current law and the proposed changes [based on Articles 223-15-2, 313-6-1, 313-5 and 314-7 of the 1994 French Penal Code, and on Article L. 213-1 of the French *Code de la Consommation*] are examined. The Discussion Paper is meant to help better grasp the need for reform of those aspects of the law in need of reform.

³⁵ The Commission compared, in the *Issue Paper on «Contraventions in the Criminal Code»* [December 2013], provisions of the first Title of Book Four of our Criminal Code (sections 378 to 387) 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.

In the *Paper on “Changes to Book IV of Criminal Code (Contraventions)”* [December 2014], the Commission is making recommendations for changes to be made to Sections 378 to 387, with regard to first class, second class and third class contraventions. The emphasis has been laid on getting rid of provisions which are anachronistic or drafted in nebulous terms, and incorporating new ones.

³⁶ In the *Review Paper on « Criminal Code (Supplementary) Act »* [March 2017], the Commission analyzed the offences contained in the Act, which are mainly of British inspiration and date back to 1870, such as coinage offences, fictitious stamps, vagrancy, disclosure of official secrets, obscene publications, disorderly houses. Many of these provisions are outdated and need to be either amended or, in some cases, repealed. The Commission has suggested changes which could be brought to them.

³⁷ In the *Opinion Paper about “Law on Social Media (Fake Profiles, Fake News and other Harmful Digital Communications)”* [LRC_R&P 126, September 2018], the Commission undertook, at the request of the Office of the Attorney-General, a comparative study of the law on fake profiles, fake news, and other harmful practices on social media. The Commission thus examined the current framework in our law, laws and practices in other jurisdictions [on matters, such as fake social media profiles and impersonation, fake news and misinformation, online harassment, stalking, grooming and sharing of intimate images].

In the light thereof, the Commission recommended changes for reform of our law.

In the *Review Paper on « Criminal Protection of Children’s Rights »* [May 2016], the Commission reviewed from a comparative perspective the criminal protection of children’s rights in various jurisdictions – such as UK, Australia, New Zealand, Canada, France, and South Africa – in relation to sexual offences, abduction, endangering child’s life and criminal responsibility.

In the *Review Paper « Law on Fraud »* [May 2016], the Commission reviewed from a comparative perspective - by examining the law in the various Commonwealth and/or Common Law jurisdictions, such as UK, Australia, New Zealand, Canada, South Africa, Jersey, Singapore and Hong Kong - the substantive offence of “Fraud” (from the

(F) Modernizing the Code Civil Mauricien:³⁸

(1) Law on Persons;³⁹

point of view of its different constitutive elements: Fraud by false representation, by failing to disclose information, by abuse of position, and by deception) and the offence of conspiracy to defraud.

In the *Issue Paper on “Road Traffic Legislation and Penalty Points System”* [December 2011], the Commission, after reviewing the law on road traffic legislation and the “penalty point system” from a comparative perspective with a view to ascertaining whether it is in line with best international practices and after considering whether the legislative scheme devised for the “penalty point system” complies with the requirements of the Constitution and its human rights guarantees, has been of the opinion that the provisions in the Road Traffic Act which purport to confer on the Licensing Officer the power to suspend a driving licence fall foul of the Constitution and should be redrafted. The Commission also expressed its support for the operation of a “penalty point system.” In most jurisdictions, the introduction of a “penalty point system” has led to a significant reduction in road accidents casualties and fatalities, when there is an effective traffic monitoring system.

³⁸ In the *Background Paper to the Reform of the Codes* [October 2010], the Commission, on being requested by the Hon. Attorney-General to review the Codes, examined the context in which the Codes have evolved over more than two centuries. The Commission has been of the opinion that the review would have to be carried out from a historical and comparative perspective. Our Codes would be compared with those in France, and in mixed legal systems, such as that of Quebec, Louisiana, and Seychelles. Approaches taken in other jurisdictions on issues covered by our Codes may also be examined the more so as comparative lawyers no longer put emphasis on the differences between the civil law and common law systems, but rather on their commonality and how they are complementary. The historical context in which the Codes in this country have evolved since their promulgation more than two centuries ago, which have led to the development of the Mauritian legal system as a mixed or hybrid legal system, would also have to be borne in mind. The reform options to meet the contemporary challenges would have to be examined in the light of the socio-economic exigencies of our society in the context of globalization. We should always bear in mind that our legislature, even though borrowing rules from a variety of material sources, has always pursued ‘une finalité mauricienne’ thereby developing a distinct corpus of Mauritian law.

³⁹ 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.

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.

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.

In the *Issue Paper «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”

(2) “Droit extra-patrimonial de la famille”;⁴⁰

and “mandat de protection future”. The views of stakeholders are being sought on those aspects of the Code in need of reform.

In the *Interim Report « Reform of Code Civil Mauricien (Droit des personnes) »* [April 2016], the Commission consolidated reform proposals on aspects of the law relating to « *Droit des personnes* », which could be reformed: « *Personnalité Juridique & Protection de la Personne Humaine* », « *Nom de famille* », and « *Majeurs Protégés* ».

The Interim Report, which consolidates the reform proposals contained in LRC’s Papers, is meant to facilitate further consultations and discussions with stakeholders, and generate further analysis on aspects reviewed, before final recommendations for change are submitted to Hon. Attorney-General.

⁴⁰ In the Report on “*Relationship of Children with Grand Parents and Other persons under the Code Civil Mauricien*” [June 2007], the Commission recommended that the law be amended so that it be expressly provided that “l’enfant a le droit d’entretenir des relations personnelles avec ses ascendants. Seul l’intérêt de l’enfant peut faire obstacle à l’exercice de ce droit» and that «l’enfant ne doit pas être séparé de ses frères et sœurs, sauf si cela n’est pas possible ou si son intérêt commande une autre solution. S’il y a lieu, le juge statue sur les relations personnelles entre les frères et sœurs».

In the *Report on “Law on Divorce”* [December 2008], it was recommended that the law on divorce must be adapted to the realities of conjugal life: The concept of ‘divorce by mutual consent’, which had existed in our civil code from 1808 to 1884, should be reintroduced.

In the *Issue Paper «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.

In the *Issue Paper on «Filiation Adoptive»* [April 2014], the Commission compared the provisions on “Filiation Adoptive” [Articles 343 to 369] with the provisions in the French Civil Code [Articles 343 to 370-2]. This Issue Paper highlights some of the changes which can be made to our Code regarding the status of the “adoptants”, the notion “d’abandon d’enfant”, the concept of “droit de rétractation”, and the need for intervention of the Ministère public. The views of stakeholders are being sought on those aspects of the Code in need of reform.

In the *Issue Paper «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.

In the *Issue Paper on «Aspects of Family Law»* [April 2014], the Commission has compared various provisions of our Code on aspects of family law (nullité du mariage pour violence et contrainte, divorce par consentement mutuel, divorce pour faute, procédure de divorce, conséquences du divorce pour les époux et notamment la prestation compensatoire, protection du logement familial, courtage matrimonial) with equivalent provisions in the French Civil Code. This Issue Paper highlights some of the changes which can be made to our Code, and whether there is a need to regulate “courtage matrimonial”. A number of issues were raised for discussion with stakeholders as to changes which can be brought to those provisions in our Code.

In the *Review Paper on « Statut des Personnes non-mariées vivant en couple »* [October 2015], the Commission examined the status in other jurisdictions of people living together without being married. The Commission has focused on how the following countries: France, Canada (Quebec), Australia (South Australia) and the USA (California), deal with, on the one hand “*Partenariats de vie informels*” and on the other hand “*Unions de vie enregistrées*”. The former include: *concubinage*, *union de fait* and domestic partnership, while the latter comprise of *Pacs (pacte civil de solidarité)*, *union civile*, and registered domestic partnership.

In the *Interim Report « Reform of Code Civil Mauricien (Droit extrapatrimonial de la famille) »* [April 2016], the Commission has highlighted aspects of the law relating to « *Droit extrapatrimonial de la famille* », which could be reformed: « *filiation* » [« *établissement de la filiation maternelle* » and « *action en recherche de paternité* »]; « *adoption* » [the status of the « *adoptants* », the concepts « *d’abandon d’enfant* » and « *droit de rétractation* »]; « *autorité parentale* »; other aspects of family law [« *nullité du mariage pour violence et contrainte* » ; « *divorce par consentement mutuel* » ; « *divorce pour faute* » ; « *procédure de divorce* » ; « *conséquences du divorce pour les époux et notamment la prestation compensatoire* » ; and « *protection du logement familial* »].

(3) Law on Succession and Matrimonial Regimes (« Droit patrimonial de la famille »);⁴¹

(4) Law on Obligations;⁴²

The Interim Report, which consolidates the reform proposals contained in LRC's Papers, is meant to facilitate further consultations and discussions with stakeholders, and generate further analysis on aspects reviewed, before final recommendations for change are submitted to Hon. Attorney-General.

⁴¹ In the *Issue Paper on « Successions et libéralités »* [February 2014], the Commission compared the provisions of the Mauritian Civil Code (articles 718 seq.) relating to “*Successions et libéralités*” with equivalent provisions in the French Civil Code so as to identify those aspects of the law in need of reform. A number of issues are raised for discussion with stakeholders as to changes which can be brought to those provisions in our Code. In this Issue Paper, the Commission suggests, *inter alia*, to replace the unanimity rule in the administration of “*indivision*” (art. 813-1 of our Civil Code) by a majority rule (2/3) so that the bad faith or lack of diligence of a joint heir (“*cohéritier*”) does not jeopardize the subsistence of the family patrimony before the estate is finally settled. Moreover, the Commission proposes to reform the rule in respect of “*libéralités-partages*” so as to include the grand-children of the author of the “*libéralité*.” The LRC also explores the avenue of incorporating in our Code the “*mandat posthume*” and “*libéralités graduelles*”.

In the *Issue Paper on « Other Aspects Law of ‘Successions & Libéralités’ »* [June 2014], the Commission, after further reflection on our law, considered there are other issues which need to be discussed with stakeholders, such as “*comourants*”, “*indignité successorale*”, “*preuve de la qualité d’héritier par l’acte de notoriété*”, “*représentation*”, “*étendue des droits des collatéraux privilégiés*”, “*réserve des parents*”, “*conjoint survivant*”, “*le droit de retour légal au profit des frères et sœurs du défunt*”, “*obligations des héritiers aux dettes du défunt*”, “*séparation des patrimoines*”, “*droit du légataire particulier aux fruits*”, “*l’exécuteur testamentaire*”, “*survenance d’enfants au donateur et révocation des donations*”, and “*réserve du conjoint survivant*”.

In the *Issue Paper on “Régimes Matrimoniaux”* [December 2014], the Commission has reviewed provisions of the Code Civil Mauricien on “*Régimes Matrimoniaux*” with equivalent provisions in the French Civil Code and other legislation. A number of issues are raised for discussion with stakeholders : « la protection de l’époux collaborateur dans une exploitation agricole, commerciale, artisanale ou libérale » ; « la protection de l’époux du titulaire d’un bail rural » ; « le sort des dettes professionnelles des époux » ; « les pouvoirs du/des époux sur l’économie réalisée sur des gains et salaires » ; « les revenus des biens propres d’un époux et le gage des créanciers de l’autre » ; « le changement de régime matrimonial » ; « les conventions matrimoniales passées par des majeurs en tutelle ou curatelle » ; and « les communautés conventionnelles ».

In the *Interim Report «Reform of Code Civil Mauricien (Droit patrimonial de la famille) »* [April 2016], the Commission has highlighted aspects of the law relating to « *Droit patrimonial de la famille* », which could be reformed: « *administration de l’indivision* » ; « *libéralités-partages* » ; « *mandat posthume* » ; « *libéralités graduelles* » ; « *comourants* » « *indignité successorale* » ; « *preuve de la qualité d’héritier par l’acte de notoriété* » ; « *représentation* » ; « *étendue des droits des collatéraux privilégiés* » ; « *réserve des parents* » ; « *conjoint survivant* » ; « *le droit de retour légal au profit des frères et sœurs du défunt* » ; « *obligations des héritiers aux dettes du défunt* » ; « *séparation des patrimoines* » ; « *droit du légataire particulier aux fruits* » ; « *l’exécuteur testamentaire* » ; « *survenance d’enfants au donateur et révocation des donations* » ; « *la protection de l’époux collaborateur dans une exploitation agricole, commerciale, artisanale ou libérale* » ; « *la protection de l’époux du titulaire d’un bail rural* » ; « *le sort des dettes professionnelles des époux* » ; « *les pouvoirs du/des époux sur l’économie réalisée sur des gains et salaires* » ; « *les revenus des biens propres d’un époux et le gage des créanciers de l’autre* » ; « *le changement de régime matrimonial* » ; « *les conventions matrimoniales passées par des majeurs en tutelle ou curatelle* » ; and « *les communautés conventionnelles* ».

The Interim Report, which consolidates the reform proposals contained in LRC's Papers, is meant to facilitate further consultations and discussions with stakeholders, and generate further analysis on aspects reviewed, before final recommendations for change are submitted to Hon. Attorney-General.

⁴² In the *Issue Paper on «Law of Contracts and Obligations under Code Civil Mauricien»* [March 2013], the Commission 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 were raised for discussion with stakeholders as to changes which can be brought to those

(5) Law on Specific Contracts;⁴³

provisions in our Code.

In the *Discussion Paper about « Reform of Law of Contract & Regime and Proof of Obligations in the Code Civil Mauricien »* [June 2017], the Commission has examined the French « *Ordonnance n° 2016-131 du 10 février 2016 portant réforme du droit des contrats, du régime général et de la preuve des obligations* », which have come into force on 1 October 2016, in the light of other reform proposals, with a view to considering the implications of incorporating in the future such changes to our law. A “*Note Explicative*” is given on the new Provisions, which is followed by an analysis of possible “*Modifications, ajouts et suppressions envisageables du point de vue d’une future réforme du droit mauricien des contrats et obligations.*”

In the *Discussion Paper about « Reform of Law on Responsabilité Civile in the Code Civil Mauricien »* [May 2017], the Commission has examined the provisions of the March 2017 French « *Projet de Réforme de la Responsabilité Civile* », as well as the « *Avant-Projet de Loi* » of April 2016, in the light of the proposals of the *Avant-projet Catala* [considered in LRC’s *Issue Paper on « Law of Contracts and Obligations under Code Civil Mauricien »* (March 2013)], proposals of the « *Groupe de Travail de l’Académie des sciences morales et politiques* » chaired by Prof. Terré [« *Propositions de réforme du droit de la responsabilité civile* » of 18 October 2011], as well as the current provisions of the Code Civil Mauricien and our case-law on « *responsabilité civile* », with a view to determining changes which can be brought to this aspect of our law.

In the *Paper on “Changes to Sources and Regime of Law Obligations in Code Civil Mauricien”* [June 2017], the Commission has set out its reform proposals based on the suggestions made in the *Discussion Paper about « Reform of Law of Contract & Regime and Proof of Obligations in the Code Civil Mauricien »* [June 2017] and the *Discussion Paper about « Reform of Law on Responsabilité Civile in the Code Civil Mauricien »* [May 2017]. It is recommended that the “Titre troisième” of the “Livre troisième” of the Civil Code Mauricien (Articles 1101 to 1369) and “Titre quatrième” of the “Livre troisième” of the Civil Code Mauricien (Articles 1370 to 1386) be repealed and replaced by a new “Titre troisième” (new Articles 1100A to 1303), a new “Titre quatrième” (new Articles 1304 to 1352-9) and a new “Titre quatrième bis” (new Articles 1353 to 1386-1). This Paper is meant for consultation with stakeholders as to the way forward for the reform of this aspect of the law.

The Commission has also examined, in the *Issue Paper on « Indemnisation des victimes d’accidents de la circulation & Réforme du Droit des Assurances »* [June 2017], the protection afforded to victims of road traffic accidents [in particular sections 88 seq. of the Insurance Act 2015, which deal *inter alia* with the establishment and management of a “Compensation Fund”, as well as the Insurance (Industry Compensation Fund) Regulations 2015 (GN No. 249 of 2015)]. It is recommended that provisions on « *De l’indemnisation des victimes d’accidents de la circulation* » - based on provisions of the French *Loi n° 85-677 du 5 juillet 1985 tendant à l’amélioration de la situation des victimes d’accidents de la circulation et à l’accélération des procédures d’indemnisation* and *Loi n° 2003-706 du 1^{er} août 2003 de sécurité financière pour instaurer un Fonds de garantie des accidents de la circulation* - could be added to the Code Civil Mauricien [new Articles 1386-1 to 1386-26].

In this Issue Paper, the Commission has also reviewed the provisions on « *Contrat d’assurance* », Articles 1983-1 to 1983-92, as enacted by Act No. 7 of 1983, which are based on the « *Loi française du 13 juillet 1930* » and the « *Décrets No. 76-666 & 76-667 du 16 juillet 1976* », and has made proposals for change. The proposals contained are inspired from provisions in French *Code des Assurances*, and in particular the following laws: *Loi n° 2005-67 du 28 janvier 2005, dite loi Chatel, tendant à conforter la confiance et la protection du consommateur*; and *Loi n° 2007-1775 du 17 décembre 2007 permettant la recherche des bénéficiaires des contrats d’assurance sur la vie non-réclamés et garantissant les droits des assurés*.

⁴³ In the *Report on “Crédit-Bail (Leasing) & Location Financière”* [November 2011], the Commission recommended the incorporation in the Code Civil Mauricien, after Article 1831, of a “Titre Huitième Bis”, entitled “Du Crédit-Bail et de la Location Financière”. A clear distinction was drawn between the “crédit-bail” (which by essence includes an “option d’achat”) and the “location financière” (where such an option does not exist). Provisions on “crédit-bail” regulate the leasing of movable and immovable property. Leasing can be resorted to, in respect of immovable property, only for “des opérations de crédit-bail portant sur des biens à usage professionnel.” Provisions on “location financière” regulate the lease of movable property “destinés à un usage exclusivement professionnel”.

In the *Discussion Paper on “Crédit-Bail (Leasing) & Location Financière”* [November 2011], the main features of the proposed statutory regime regulating “l’opération de crédit-bail” were examined, and its peculiarity highlighted. The advantages and disadvantages of having recourse to this technique for the acquisition of a property were also considered.

(6) Property Law (including Law on “co-propriété”);⁴⁴

(7) Law on “Sûretés” and Credit Transactions⁴⁵;

In the *Issue Paper “Crédit-Bail (Leasing)”* [December 2011], the Commission examined matters that were raised during debates in the National Assembly on the Economic & Financial Measures (Miscellaneous Provisions) (No. 2) Bill No. XXXII of 2011, when the Code Civil Mauricien was amended by the Economic & Financial Measures (Miscellaneous Provisions) (No. 2) Act to add to the ‘Livre Troisième’ of the Code Civil Mauricien, after article 1831, a ‘Titre Huitième Bis’, entitled “Du Crédit-bail (Leasing) et de la Location Financière” [Articles 1831-1 à 1831-107], and the Commission argued that when drafting the provisions on leasing, it has been guided by best practices as they obtain in other jurisdictions.

In the *Issue Paper on “Specific Contracts”* [February 2014], the Commission has compared some of the provisions of the Code Civil and the Code de Commerce relating to Specific contracts (« Contrats spéciaux ») with equivalent provisions in French Legislation (Code civil, Code de la construction et de l’habitation, Code de commerce, Code de la consommation) so as to identify those aspects of the law in need of reform: « la vente », « la construction immobilière », « le crédit à la consommation » and « le crédit immobilier », as well as the « contrat de mandat des agents commerciaux ». A number of issues are raised for discussion with different stakeholders.

In the *Issue Paper on “Bail d’habitation”* [December 2014], the Commission has reviewed provisions of our law on “bail d’habitation” with equivalent provisions in the French legislation. A number of issues are raised for discussion with stakeholders: « l’obligation pour le copropriétaire-bailleur de communiquer au locataire les extraits du règlement de copropriété concernant la destination de l’immeuble, la jouissance et l’usage des parties privatives et communes, et précisant la quote-part afférente au lot loué dans chacune des catégories de charges » ; « les clauses réputées non écrites » ; « la sous-location » ; « la protection des familles nombreuses » ; « la durée du contrat de location » ; « le délai de préavis que le locataire doit respecter avant de donner congé au bailleur » ; « le dépôt de garantie » ; « le cautionnement » ; and « le bail meublé ».

In the *Paper on Changes to Provisions in Code Civil Mauricien about “Louage des choses, bail à loyer et bail d’habitation”* [March 2015], the Commission outlined changes that can be brought to the regime of « louage des choses, bail à loyer et bail d’habitation », as provided for by the Code Civil Mauricien.

⁴⁴ In the *Issue Paper “Droit des biens”* [June 2015], the Commission examined the provisions of the Livre Deuxième of the Code Civil Mauricien relating to “Des biens et des différentes modifications de la propriété” [Articles 516 to 710], in the light of the 2008-2009 Avant-Projet de réforme du Livre II du Code civil français relatif aux biens of the Association Henri Capitant des Amis de la Culture Juridique Française. In the Issue Paper, aspects of “droit des biens” in our Code Civil, which could be reformed, were discussed and an *Avant-Projet* is included.

In the *Report on “Copropriétés des immeubles sociaux”* [August 2012], the Commission recommended that the Minister responsible for Housing considers enacting, pursuant to Article 664-1 of the Code Civil Mauricien, a «Règlement concernant les copropriétés des immeubles sociaux», as the provisions of Articles 664-1 to 664-96 of the Code Civil Mauricien on “copropriété” are inappropriate in so far as they relate to “copropriétés des immeubles sociaux.”

In November 2012, the Commission in its *Report on “New Regime for Copropriété”* recommended a new simplified regime for copropriété [the current Articles 664 to 664-96 be repealed and replaced by new Articles 664 to 664-90] as the provisions, which had been incorporated in our law in 1978 - based on the «loi française du 10 juillet 1965 et son décret d’application du 17 mars 1967» - had been adopted without consultation with local practitioners, without paying regard to local realities, and had turned out in practice to be far too complex. These rules were also the subject-matter of criticism in France as well as in Quebec.

In the regime that was proposed, the «formalisme des textes qui régissent actuellement la copropriété [convocation des assemblées par lettres recommandées avec avis de réception, délais stricts, formalisme des délibérations de l’assemblée, du conseil syndical, etc]» has been limited to what is strictly necessary. Provision was made so that rules applicable to a copropriété take into account «la grandeur ou la nature de l’immeuble.» Special provision was made for «des copropriétés en difficulté» in order to avoid that they fall in «délabrement ou insalubrité».

⁴⁵ In the *Report on “Droit des Sûretés”* [August 2012], the Commission, after reviewing the provisions of the Code Civil Mauricien on “Sûretés”, recommended changes to the current framework, which takes into account the evolution of the practice in Mauritius [in particular regarding “sûretés fixes et flottantes”] and developments which have occurred in France [with new concepts introduced in 2006, such as “le gage sans déplacement”, “l’hypothèque

(8) Law on Prescription;⁴⁶ and

(9) Aspects of Private International Law;⁴⁷

sur des immeubles à venir” and “la pratique de la clause de réserve de propriété dans le droit des sûretés mobilières”].

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”].

In the *Report on “Encadrement des Opérations de Crédit”* [December 2014], the Commission has recommended the addition in the Code Civil Mauricien, after Article 1914, of a new “Titre Dixième Bis” entitled “Des Opérations de Crédit” [new Articles 1914-1 to 1914-96], aimed at affording “une protection juridique aux personnes qui doivent emprunter ou solliciter un crédit, en vue de financer, soit l’achat de biens mobiliers ou de services pour la satisfaction des désirs ou des besoins de la vie courante (crédit à la consommation), soit l’acquisition ou la construction d’immeubles à usage d’habitation (crédit immobilier)”. Provision is made, *inter alia*, for the creditor and credit intermediary to give explanations free of charge on the proposed credit agreement(s) to the consumer at the pre-contractual stage, determined by the level of the consumer’s knowledge and experience with credit, on matters such as the interest rate and the cost of the credit, and that, before concluding a credit agreement, the creditor makes a thorough assessment of the consumer’s creditworthiness and affords to the latter a “délai de rétractation”. It is laid down that advertising concerning credit agreements should be fair, clear and not misleading. Provision is also made for sound execution of credit-arrangements (early repayment by debtor or “défaillance” in the reimbursement of the credit facility). The “location-vente” and the “location assortie d’une promesse de vente” are also regulated.

⁴⁶ 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.

The Law Reform Commission has set up, pursuant to section 8 (1) of the Law Reform Commission Act, an Advisory Panel to examine the recommendations of the 2013 Report of the Commission of Inquiry on Acquisitive Prescription and the Opinion of the Ministry regarding these recommendations. In the *Opinion Paper about “Reform of law on Acquisitive Prescription”* [LRC_R&P 121, March 2018], the Commission sets out its views on the way forward for reform of the Law on Acquisitive Prescription.

⁴⁷ In the *Issue Paper on « Incorporation in the Code Civil Mauricien of Provisions relating to Aspects of Private International Law »* [April 2016], the Commission examined, in the context of the review of the Code Civil Mauricien, the current provisions of the Code civil Mauricien and the Supreme Court case-law on aspects of Private International Law from a comparative perspective (French and Québec law). The following matters were *inter alia* discussed: the “règles générales de droit international privé” [such as “qualification”, “rattachement”, “renvoi”,

(G) Improving the legal infrastructure for business:

(1) Reform of the Code de Commerce:⁴⁸

- « Livre Premier » (« Du commerce en général »);⁴⁹

“exception d'ordre public”], aspects of conflict of laws [“Statut personnel”, “Statut réel”, and “Statut des obligations”], and also aspects of conflict of jurisdictions [“Statut de la procédure et la compétence internationale des autorités judiciaires en droit international privé” and “Compétence des autorités étrangères et la reconnaissance et l'exécution des décisions étrangères”]. Aspects of the law on which the Mauritian Legislature could legislate were raised. An « *Avant-Projet de Réforme du Code Civil Mauricien pour l'inclusion de dispositions relatives au Droit International Privé* » [new Articles 2284 to 2376], inspired by the *Livre Dixième* of the Code Civil of Quebec (Articles 3071 to 3168), has been annexed to the Paper.

In the *Review Paper on « Hague Conventions on Private International Law and Mauritian Law »* [May 2016], the Commission, with a view to the inclusion of rules on aspects of private international law therein, examined The Hague Conventions on Private international Law to determine to what extent the provisions of the *Avant-Projet de Réforme du Code Civil Mauricien pour l'inclusion de règles relatives au Droit International Privé* [included in the Issue Paper on Incorporation in Code Civil Mauricien of Provisions relating to Aspects of Private International Law (April 2016)] are compatible with the Conventions, and the changes which would be required to further harmonize our law with these Conventions.

In the *Review Paper on “Comparative Approaches to Aspects of Private International Law”* [March 2017], the Commission, with a view to further enhancing understanding of aspects of Private International Law, has reviewed, *inter alia*, legislation and legislative proposals in other jurisdictions: Belgium (*Loi portant le Code de droit international privé du 16 juillet 2004*); Bulgaria (Private International Law Code of 4 May 2005); China (Law of the People's Republic of China on the Laws Applicable to Foreign-Related Civil Relations of 28 October 2010); Great Britain (Private International Law (Miscellaneous Provisions) Act 1995); Gibraltar (Trusts (Private International Law) Bill 2015); Japan (Act on the General Rules of Application of Laws [Hō no Tekiyō ni Kansuru Tsūsokuhō], Law No. 10 of 1898, as newly titled and amended 21 June 2006); New Zealand (Private International Law (Choice of Law in Tort) Bill 2013); Switzerland (*Loi fédérale sur le droit international privé du 18 décembre 1987*); and Tunisia (*Code de Droit International Privé Loi N° 98-97 du 27 novembre 1998*). The Commission is also considering aspects of Private International Law under OHADAC [*Organisation pour l'Harmonisation du droit des affaires dans la Caraïbe*] Model Law on Private International Law of April 2014 : *Loi Type OHADAC de Droit International Privé*.

⁴⁸ In the *Interim Report «Reform of Code de Commerce »* [May 2016], the Commission highlighted aspects which could be reformed or developed: « *l'incapacité du mineur émancipé par le mariage d'exercer le commerce* » ; « *le statut du conjoint d'un chef d'entreprise qui participe à l'exploitation commerciale ou artisanale de celle-ci* » ; « *la prescription des actions commerciales* » ; « *le vendeur à domicile indépendant* » ; « *le tutorat rémunéré en entreprise* » ; « *la réglementation des activités des principaux intermédiaires du commerce* » [« *les agents commerciaux, les agents d'affaires et les courtiers* », « *les commissionnaires pour les transports* »] ; « *le fonds de commerce* » ; « *les garanties autonomes* » ; « *le crédit documentaire* » ; « *la franchise* » ; « *la concession exclusive* » ; « *la jouissance à temps partagé et le timeshare* » ; « *les effets de commerce* » ; « *la navigation et le commerce maritimes* » [« *responsabilité des propriétaires de navire* », « *responsabilité de l'armateur du fait de ses préposés maritimes et terrestres* », « *connaissance* », « *responsabilité relativement aux marchandises* », « *transport des passagers* », « *assistance* »] ; « *la navigation et le commerce aériens* ».

The Interim Report, which consolidates the reform proposals contained in previous LRC's Reports, is meant to facilitate further consultations and discussions with stakeholders, and generate further analysis on aspects reviewed, before final recommendations for change are submitted to Hon. Attorney-General.

⁴⁹ In the *Issue Paper on “Timeshare (Droits de Séjour à Temps Partagé)”* [July 2011], the economic nature of timeshare (and its potential for the development of the tourism industry) was examined. This is followed by an analysis of the legal techniques that could be used: the “société d'attribution d'immeubles en jouissance à temps partagé” in France and the trust in the common law world.

In the *Report on «Code de Commerce (Livre Premier) [fonds de commerce, garanties autonomes, crédit*

documentaire, franchise, concession exclusive & timeshare) [May 2012], the Commission, after reviewing the provisions of the Code de Commerce, recommended the following changes to the Livre Premier:

- (a) The addition, after Article 103, of a new 'Titre Sixième Bis' entitled 'De la Franchise' [new Articles 104-1 to 104-99];
- (b) The addition of a new 'Titre Sixième Ter' entitled 'De la Concession Exclusive' [new Articles 105-1 to 105-65];
- (c) The addition, after Article 109, of a new 'Titre Septième Bis' entitled 'Du Fonds de Commerce' [new Articles 109-1 to 109-56];
- (d) The addition of a new 'Titre Huitième', entitled 'De la jouissance à temps partagé et du timeshare' [new Articles 110 to 176];
- (e) The addition of a new 'Titre Neuvième' entitled 'Des Garanties Autonomes' [new Articles 177-1 to 177-23];
- (f) The addition of a new 'Titre Dixième' entitled 'Du crédit documentaire' [new Articles 178-1 to 178-81].

The concept of "fonds de commerce", which exists as far back as 1909, in France, is unknown in our law. In the context of the reform of the Code de Commerce, the usefulness of such a concept was examined and it was considered it would be appropriate to incorporate this concept in our law, with some adaptation, as it would ease the doing of business by facilitating access to credit.

Since the release of the Issue Paper on "Timeshare (Droits de Séjour à Temps Partagé)", the Commission, after consultation with stakeholders, formed the opinion that, given the peculiar features of our mixed legal system and the need to provide choice to operators, both legal techniques ["société d'attribution d'immeubles en jouissance à temps partagé" in France and the trust] could be incorporated in our law. The Commission has considered the proposed legal framework for "timeshare" would provide the enabling environment for this new economic activity to develop in the tourism sector.

The Commission has been of opinion that ~ with a view to ensuring fair trade - the Code should provide the statutory regime for the contracts of "franchise" and "concession exclusive". The Commission has also considered that it would be useful to the business community and banks that the regime for "garanties autonomes" and "crédit documentaire" be regulated by statute.

In the *Report on « Bail commercial »* [March 2015], the Commission, after taking into account that « *la reconnaissance légale du fonds de commerce, qui consacre l'existence juridique de l'exploitation commerciale, doit nécessairement impliquer une réglementation spécifique du bail commercial, c'est-à-dire de la location, par un commerçant, de locaux immobiliers en vue de l'installation de son fonds* », suggested that a new « *Chapitre Sixième* » on « *Bail commercial* » [new Articles 109-57 to 109-106] could be added to the proposed « *Titre Septième Bis* » on « *Du Fonds de Commerce* » [recommended in the *avant-projet* of the 2012 Report on « *Code de Commerce (Livre Premier)* »].

In the *Report on "Intermédiaires du commerce"* [December 2014], the Commission has reviewed the provisions of the Livre Premier of the Code de Commerce on "*Intermédiaires du commerce*" and is of the opinion that changes can be effected. It is recommended that provision be made for the « *réglementation des activités des principaux intermédiaires du commerce* » (« *les agents commerciaux, les agents d'affaires et les courtiers* ») and for « *la protection de leurs clients qui ne sont pas des professionnels de ces activités* » : « *l'information du client* » and « *le conseil au client* ».

In the *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], the Commission considered the desirability of re-introducing in our law the concept of "effets de commerce." The Bills of Exchange Ordinance No. 32 of 1914, based on the UK Bills of Exchange Act of 1882, repealed the provisions of the *Code de Commerce* dealing with "*La lettre de Change, le Billet à Ordre*". Legal systems of the world can be divided between, on the one hand, those countries which have adopted legislation akin to that of the UK Bills of Exchange Act and, on the other hand, those jurisdictions which have ratified "Convention de Genève du 7 Juin 1930 portant loi uniforme sur les lettres de change et billets à ordre." The Commission was of the view that, given the exigencies of globalization and the need for Mauritius to open up to the world economy, and given also the mixed nature of our legal system, a "Titre Onzième", entitled "Des effets de commerce" be added to the "Livre Premier" of the Code de Commerce [new Articles 179-1 to 179-109] so that parties to un "titre negotiable" have the option as to the law which would be applicable thereto, viz. the provisions of the Bills of Exchange Act or the provisions of the Commerce regulating "effets de commerce".

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- « Livre Deuxième » (« De la navigation et du commerce maritimes »);⁵⁰
- « Livre Troisième » (« De la navigation et du commerce aériens »);⁵¹

(2) Reform of Regulatory Framework for the activities of Real estate agents;⁵²

(3) Reform of the Consumer Protection Regime;⁵³ and

In the *Report on “Miscellaneous Aspects of Code de Commerce”* [May 2015], the Commission recommended changes about:

- (a) The « *incapacité du mineur émancipé par le mariage d'exercer le commerce* »;
- (b) The « *statut du conjoint d'un chef d'entreprise qui participe à l'exploitation commerciale ou artisanale de celle-ci* » [repeal Articles 4 to 6, and replace by new Articles 4 to 6-5];
- (c) The « *prescription des actions commerciales* » [by adding to the « *Livre Premier un nouveau Titre Douzième* », entitled « *De la prescription des actions commerciales* » (new Articles 180 and 181)];
- (d) The « *vendeur à domicile indépendant* » [adding a « *section troisième au Chapitre Deuxième du titre premier du livre premier* » (new Articles 7A-1 to 7A-3)]; and
- (e) The « *tutorat rémunéré en entreprise* » [adding to the « *Chapitre Deuxième du Titre Premier du Livre Premier une section troisième* » entitled « *Du tutorat rémunéré en entreprise* » (new Articles 7-47 to 7-51)].

⁵⁰ In the *Report on «Code de Commerce (Livre Deuxième) [navigation & commerce maritimes]»* [June 2012], the Commission, after reviewing the Livre Deuxième of the Code de Commerce, recommended amendments thereto with a view to incorporating into our law the clauses of the 'Convention de Londres du 19 novembre 1976 sur la limitation de la responsabilité en matière de créances maritimes', the 'Convention de Londres du 28 avril 1989 sur l'assistance', the 'Convention d'Athènes du 13 décembre 1974 relative au transport par mer de passagers et de leurs bagages', and changes brought about by the 'Protocoles du 23 février 1968 et du 21 décembre 1979 à la Convention de Bruxelles pour l'unification de certaines règles en matière de connaissance du 25 août 1924'.

⁵¹ In the *Report «Code de Commerce (Livre Troisième) [navigation & commerce aériens]»* [June 2012], the Commission, after reviewing the Livre Troisième of the Code de Commerce enacted in 1985 and based on the clauses of the "Convention de Varsovie pour l'unification de certaines règles relatives au Transport aérien international du 12 octobre 1929", was of opinion that the Government of the Republic of Mauritius should ratify the "Convention de Montréal pour l'unification de certaines règles relatives au transport aérien international du 28 mai 1999" as many States are now parties to this treaty. The Commission therefore recommended amendments to the Livre Troisième of the Code de Commerce which would bring our law in conformity with the clauses of the "Convention de Montréal", thereby facilitating its ratification.

⁵² In the *Review Paper on « Regulation of the Activities of Real Estate Agents »* [February 2016], the Commission reviewed from a comparative perspective the statutory regulation of real estate agents (UK, Ireland, Australia, New Zealand, Singapore, South Africa, New Brunswick, and France). Observations were made as to some of the best practices, which a new statutory regime in Mauritius could include.

In the *Paper on «Legislative Framework for the Regulation of the Activities of Real Estate Agents »* [February 2016], the Commission recommended that the regulation of the activities of estate agents could be done either by the adoption of a new statute [the Real Estates Agents Act] or through an amendment to the Code de Commerce. The Real Estate Agents Bill is modelled on the New Zealand Real Estate Agents Act of 2008, whereas the amendment to the Code de Commerce is inspired by the French "Loi no. 70-9 du 2 janvier 1970 réglementant les conditions d'exercice des activités relatives à certaines opérations portant sur les immeubles et les fonds de commerce".

⁵³ In the *Report on “Review of Aspects of Consumer Protection Law and Proposals for Reform”* [October 2010], the Commission after reviewing, from an international and comparative perspective, aspects of consumer law - the Consumer Protection Act; the Consumer Protection (Price and Supplies Control) Act; the Essential Commodities Act; the Fair Trading Act; the Hire Purchase and Credit Sale Act; and the Prices & Consumer Protection Advisory Committee Act – considered that the current framework is inadequate.

The provisions as to consumer guarantees in respect of supply of goods and services, as to unfair business practices, are insufficient. There is no provision as to unfair contract terms in consumer agreements. Safety requirements are

(4) Mediation and conciliation as mechanisms for settlement of disputes in commercial matters.⁵⁴

laid down only in respect of goods. Distance selling, doorstep selling and unsolicited consumer transactions are not regulated. The enforcement framework relating to consumer transactions and agreements needs to be strengthened. The Commission was of opinion that a new Consumer Protection Regime should be put in place. The overall objectives of the new legislation should be to promote and advance the social and economic welfare of consumers by establishing a legal framework for the achievement and maintenance of a consumer market that is accessible, fair, efficient, responsible and sustainable for the benefit of consumers generally, and which provides adequate safeguards to vulnerable consumers.

To that end, legislation needs to be introduced which should make provision for:

- (a) Consumer rights, including the freedom of consumers to associate and form groups to advocate and promote their common interests;
- (b) Standards of consumer information so as to ensure that consumers are sufficiently well informed to benefit from and stimulate effective competition;
- (c) Consumer guarantees in respect of the supply of goods and services;
- (d) The protection of consumers from hazards to their well-being and safety, and product liability;
- (e) The prohibition of unfair terms in consumer contracts;
- (f) The prohibition of unfair business practices;
- (g) The regulation of distance selling, doorstep selling and unsolicited consumer transactions;
- (h) The regulation of consumer credit;
- (i) The establishment and operation of a National Consumer Council, which would encourage consumer participation in decision-making processes concerning the marketplace and the interests of consumers;
- (j) An effective enforcement framework relating to consumer transactions and agreements; and
- (k) An accessible, effective and efficient system of redress for consumers, including a mechanism for consensual resolution of disputes arising from consumer transactions.

The consumer law should protect both natural persons and legal entities when goods and services are supplied to them, as well as (a) any user of such goods, or (b) any beneficiary of such services. However, goods acquired or the services availed of must not have been for a commercial purpose.

⁵⁴ In the *Report on "Mediation and Conciliation in Commercial Matters"* [November 2010], the Commission examined the concept of 'mediation and conciliation', which is used for the resolution of employment relations disputes, and has considered its application – in furtherance of Government Business Facilitation Strategy - for the resolution of commercial disputes. The Commission reviewed developments of this aspect of the law in other jurisdictions, research work carried out by other law reform agencies, as well as the norms evolved by the United Nations Commission on International Trade Law [UNCITRAL]. The main objectives and principles of Alternative dispute resolution [ADR] in connection with mediation and conciliation in commercial matters were also considered.

The Commission acknowledged that ADR has become increasingly topical in the international business community. There is a world-wide trend for parties to turn to one of the processes of ADR, such as mediation and conciliation, when they feel that resolution of their disputes should, for various reasons, be sought outside the constraints of proceedings before national courts, and in a procedure which is the most informal possible. ADR processes, such as mediation and conciliation, provide an opportunity for parties in a commercial dispute to consider and resolve all dimensions of the dispute in a private and confidential environment which also preserves good business relations.

The Commission has been of the view that parties involved in commercial disputes should be encouraged to explore whether their dispute can be resolved by agreement, whether directly or with the help of a third party mediator or conciliator, rather than by proceeding to a formal "winner v. loser" decision by a court. Parties should be encouraged to have recourse to Mediation Clauses in Contracts for the Settlement of Commercial Disputes. It has also been considered that it is in the interest of the nation that legislation be adopted, now that Mauritius has opened up to international law firms and the foundation has been laid for it to act as a jurisdiction of choice in the field of international arbitration, which would enable the country to emerge both as an 'International Arbitration and Mediation Centre' for international commercial disputes. The UNCITRAL Model Law on International Commercial Conciliation (2002) could be incorporated in our law. A system of training and accreditation of arbitrators and mediators/conciliators should be put in place, as well as ethical standards laid down.

Implementation of Law Reform Commission's Recommendations

41. Final Recommendations of the Mauritius Law Reform Commission which have been implemented include:
- (a) Recommendations contained in Report on “Opening Mauritius to International Law Firms and Formation of Law Firms” [May 2007];⁵⁵
 - (b) The recommendation contained in the Report on “Relationship of Children with Grand Parents and other Persons under the Code Civil Mauricien” [June 2007];⁵⁶
 - (c) The recommendations in the Report on “Law on Divorce” [December 2008];⁵⁷
 - (d) Recommendations of the Report on “Bail and Related Issues” [Aug 2009];⁵⁸
 - (e) Recommendations and Observations of the Commission in the Report on “Prevention of Vexatious Litigation” [October 2010] and in the Opinion Paper on “Appeal by Vexatious Litigant” [April 2011];⁵⁹
 - (f) The recommendations contained in the Report on “Crédit-Bail & Location Financière” [November 2011];⁶⁰
 - (g) The recommendations contained in Report about “Code de Commerce (Livre Troisième) [navigation & commerce aériens]” [June 2012]⁶¹ and the recommendations in Report on “Code de Commerce (Livre Premier) [about fonds de commerce & garanties autonomes]” [May 2012], subsequently reproduced in LRC’s Issue Paper on “Secured Transactions Reform” [October 2013];⁶²
 - (h) 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.⁶³
42. Observations contained in Reports/Papers submitted by the Commission have also been taken into account by the legislature.⁶⁴

⁵⁵ The Law Practitioners (Amendment) Act No. 8 of 2008. The Act came into force on 15 Dec 2008 [P 21/08].

⁵⁶ The Code Civil Mauricien (Amendment) Act No. 24 of 2007.

⁵⁷ The Divorce and Judicial Separation (Miscellaneous Provisions) Act No. 2 of 2011. The provisions of the Act came into operation on 15 May 2011 [P 2/11].

⁵⁸ Bail Amendment Act No. 34 of 2011 and Judicial and Legal Provisions Act No. 3 of 2018

⁵⁹ The Courts (Amendment) Act No. 6 of 2011.

⁶⁰ The Economic & Financial Measures (Miscellaneous Provisions) (No.2) Act No. 38 of 2011.

⁶¹ Code de Commerce (Amendment) Act No. 14 of 2017.

⁶² Code de Commerce (Amendment) Act No. 9 of 2018.

⁶³ The Criminal Appeal (Amendment) Act of 2013.

⁶⁴ These include:

- (a) Observations contained in the Discussion Paper on “Forensic Use of DNA” [April 2009], about appropriate legislative framework, was taken into account when DNA Identification Bill was debated in 2009 in the National Assembly;
- (b) Recommendations contained in the Report on “Local Government Reform” [June 2009] aimed at improving local democracy and good governance have been taken on board: Local Government Act No 36 of 2011;

43. The Recommendations and Observations of the Commission contained in other Reports and Papers are under consideration.
44. It is to be noted that, at the 62nd Meeting of the Commission, held on 6 March 2013, Members considered it would be desirable that the Attorney-General's Office provides a response to LRC's recommendations for changes to the law.⁶⁵

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- (c) Views expressed in Opinion Paper on "Liberalization of Usher Services" [January 2011] taken into account when the Court Ushers (Amendment) Bill 2011 was passed;
 - (d) Observations in Opinion Paper on "Legal Aid Reform" [February 2011] were retained when the Legal Aid (Amendment) Bill No. VII of 2012 was passed;
 - (e) Observations in Opinion Paper "Offences against Persons [Re Draft Criminal Code (Amendment) Bill]" [April 2012] retained when the Criminal Code (Amendment) Bill No VIII of 2012, which provided for termination of pregnancy in specified circumstances, was passed; the provisions of the Criminal Code (Amendment) Act No. 11 of 2012 are now in force.

⁶⁵ 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.

Members were thus of the view 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.

Concluding Remarks: Challenges the Law Reform Commission has to address

45. The globalization/internationalization of law has far-reaching implications for researchers, practitioners, policy-makers and reformers. As an institution, the Law Reform Commission must always identify new concepts and new approaches to law, and consider ways of enhancing the engagement of Mauritians with the law and public institutions. This requires of the Commission that it periodically re-designs its methodology so that it remains creative and responsive.
46. In Government Program 2015-1019, at para. 169, the Government pledged that:
“The Law Reform Commission will be empowered ...”
47. At **110th Meeting of the Commission, held on 25 April 2018**, Members considered changes, which can be made to the Law Reform Commission Act, so that LRC may perform its tasks more effectively and to foster trust and confidence among all its stakeholders in its usefulness and the necessity of its existence as an independent and politically neutral agency:
- (a) The Commission may be mandated to review the workings of the Constitution [*vide* Section 12 (1) of the Papua New Guinea Constitutional and Law Reform Commission Act of 2004];
 - (b) The Commission may also be empowered to submit comments on any Bill [*vide* Section 9 of the Vanuatu Law Commission Act 1980];
 - (c) The Commission may also be required to provide advice and information to Ministries and departments of the Government and other authorities or persons concerned with proposals for the amendment or reform of any branch of the law [*vide* Section 6 (c) of the Samoa Law Reform Commission Act 2008; Section 11 (b) of the Papua New Guinea Constitutional and Law Reform Commission Act 2004];
 - (d) The Commission may be empowered to summon witnesses and call for the production of document [*vide* Section 7 (5) of the Namibia Law Reform and Development Commission Act 1991]; and
 - (e) Provision can also be made for reporting by Attorney-General on implementation of the Commission’s proposals [*vide* Sections 3A and 3B of UK Law Commissions Act 1965].

As a result of amendments made in 2009 and 2014, respectively, both the United Kingdom Government, in the form of the Lord Chancellor, and the Welsh Government are now statutorily obliged to report to Parliament/National Assembly for Wales on the implementation of Law Commission proposals. The statute requires the Lord Chancellor to:

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'prepare a report on

1. the Law Commission proposals implemented (in whole or in part) during the year;
2. the Law Commission proposals that have not been implemented (in whole or in part) as at the end of the year, including-----
 - i. plans for dealing with any of those proposals;
 - ii. any decision not to implement any of those proposals (in whole or in part) taken during the year and the reasons for the decision.'

Similar provision is made for Wales.

In New Zealand, since 2009, there has been a binding administrative directive in place that requires the Government, if it rejects the Law Commission's recommendations, to respond formally stating this. The minister must present the government's response to parliament within 120 working days of the presentation of a Law Commission report to parliament. When the government accepts a Commission report it does not need to table a response, but instead begins the process of implementation, normally by having a bill introduced in Parliament.

Appendix 1: LRC's Reports/Papers on aspects of laws reviewed (chronological)

- (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];
- (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];

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- (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 on “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];
- (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];

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- (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 on “Draft Police and Criminal Evidence Bill” [March 2012];
- (43) Opinion Paper on “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];
- (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” [November 2012];
- (54) Report on “New Regime for Copropriété” [November 2012];
- (55) Report on “Mechanisms for Review of Alleged Wrongful Convictions or Acquittals” [November 2012];
- (56) Issue Paper on “General Principles of Criminal Law” [February 2013];
- (57) Issue Paper on “Law of Contracts and Obligations under Code Civil Mauricien” [March 2013];
- (58) Issue Paper on “Law of Prescription under Code Civil Mauricien” [March 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” [October 2013];
- (63) Issue Paper on “Filiation” [October 2013];
- (64) Issue Paper on “Autorité Parentale” [October 2013];
- (65) Issue Paper on “Majeurs Protégés” [October 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];

- (70) Issue Paper on “Specific Contracts” [February 2014];
- (71) Issue Paper on “Successions & Libéralités” [February 2014];
- (72) Opinion Paper on “Effective Handling of Criminal Cases” [February 2014];
- (73) Issue Paper on “Filiation Adoptive” [April 2014];
- (74) Issue Paper on “Aspects of Family Law” [April 2014];
- (75) Opinion Paper on “Electoral Reform” [May 2014];
- (76) Issue Paper on “Other Aspects of law relating to Successions & Libéralités” [June 2014];
- (77) Issue Paper on “Régimes Matrimoniaux” [December 2014];
- (78) Issue Paper on “Bail d’habitation” [December 2014];
- (79) Report on “Encadrement des Opérations de Crédit” [December 2014];
- (80) Report on “Intermédiaires du commerce” [December 2014];
- (81) Paper on “Changes to Books I & II of Criminal Code (General Provisions)” [December 2014];
- (82) Paper on “Changes to Book III of Criminal Code (Offences against Nation, State & Public Peace)” [December 2014];
- (83) Paper on “Changes to Book IV of Criminal Code (Contraventions)” [December 2014];
- (84) Paper on “Changes to Provisions in Code Civil Mauricien about Louage des choses, bail à loyer et bail d’habitation” [March 2015];
- (85) Report on “Bail commercial” [March 2015];
- (86) Paper on “Changes to Book III of Criminal Code (Offences against Persons)” [March 2015];
- (87) Paper on “Changes to Book III of Criminal Code (Offences against Property)” [March 2015];
- (88) Report on “Miscellaneous Aspects of Code de Commerce” [May 2015];

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- (89) Issue Paper on “Droit des biens” [June 2015];
- (90) Paper on “Changes to Book III of Criminal Code (Incorporation of Provisions on Cybercrime)” [June 2015];
- (91) Review Paper on “Statut des Personnes non-mariées vivant en couple” [October 2015];
- (92) Review Paper on “Regulation of the Activities of Real Estate Agents” [February 2016];
- (93) Paper on “Legislative Framework for the Regulation of the Activities of Real Estate Agents” [February 2016];
- (94) Interim Report on “Reform of Code Civil Mauricien (Droit des personnes)” [April 2016];
- (95) Interim Report on “Reform of Code Civil Mauricien (Droit extrapatrimonial de la famille)” [April 2016];
- (96) Interim Report on “Reform Code Civil Mauricien (Droit patrimonial de la famille)” [April 2016];
- (97) Issue Paper on “Incorporation in Code Civil Mauricien of Provisions relating to Aspects of Private International Law” [April 2016];
- (98) Review Paper on “Hague Conventions on Private International Law and Mauritian Law” [May 2016];
- (99) Interim Report on “Reform Code de Commerce” [May 2016];
- (100) Interim Report on “Reform of Criminal Code” [May 2016];
- (101) Review Paper on “Criminal Protection of Children's Rights” [May 2016];
- (102) Review Paper on “Law on Fraud” [May 2016];
- (103) Review Paper on “Comparative Approaches to Aspects of Private International Law” [March 2017];
- (104) Review Paper on “Criminal Code (Supplementary) Act” [March 2017];
- (105) Working Paper about “Reform of Law on Forgery in the Criminal Code” [March 2017];

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- (106) Discussion Paper about “Reform of Law on Embezzlement in the Criminal Code” [March 2017];
- (107) Discussion Paper about “Reform of Law on Swindling in the Criminal Code” [May 2017];
- (108) Discussion Paper about “Reform of Law on Larceny & Aggravated Larceny in the Criminal Code” [May 2017];
- (109) Discussion Paper about “Reform of Law on Responsabilité Civile in the Code Civil Mauricien” [May 2017];
- (110) Discussion Paper about “Reform of Law of Contract & Regime and Proof of Obligations in Code Civil Mauricien” [June 2017];
- (111) Paper on “Changes to Sources and Regime of Law Obligations in Code Civil Mauricien” [June 2017];
- (112) Issue Paper on “Indemnisation des victimes d’accidents de la circulation & Réforme du Droit des Assurances” [June 2017];
- (113) Discussion Paper about “Reform of Law on Destruction, Degradation and Deterioration of Property in the Criminal Code” [June 2017];
- (114) Discussion Paper about “Reform of Law on Receiving Property Obtained Unlawfully in the Criminal Code” [LRC_R&P 114, Sep 2017];
- (115) Discussion Paper about “Reform of Law on Extortion & Blackmail in the Criminal Code” [LRC_R&P 115, Sep 2017];
- (116) Discussion Paper about “Reform of Law relating to Fraudulent Appropriations of Property in the Criminal Code – Miscellaneous Other Offences” [LRC_R&P 116, Sep 2017];
- (117) Discussion Paper about “Reform of Law on Willful Killing in the Criminal Code” [LRC_R&P 117, Dec 2017];
- (118) Discussion Paper about “Reform of Law on Violence in the Criminal Code” [LRC_R&P 118, Dec 2017];
- (119) Discussion Paper about “Reform of Law on Threats in the Criminal Code” [LRC_R&P 119, Dec 2017];
- (120) Discussion Paper about “Reform of Law on Torture and Acts of Barbarity in the Criminal Code” [LRC_R&P 120, Feb 2018];

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- (121) Opinion Paper about “Reform of the Law on Acquisitive Prescription” [LRC_R&P 121, Mar 2018];
- (122) Discussion Paper about “Reform of Law on Involuntary Offences against Life & Physical Integrity of Persons in the Criminal Code” [LRC_R&P 122, April 2018];
- (123) Discussion Paper about “Reform of Law on Endangering Persons in the Criminal Code” [LRC_R&P 123, April 2018];
- (124) Discussion Paper about “Reform of Law on Violations of Dignity and Liberty of Persons in the Criminal Code” [LRC_R&P 124, June 2018];
- (125) Opinion Paper on “Reform of the Judicial System and other Related Matters” [LRC_R&P 125, June 2018];
- (126) Opinion Paper about “Law on Social Media (Fake Profiles, Fake News and other Harmful Digital Communications)” [LRC_R&P 126, Sep 2018];
- (127) Opinion Paper about “Mechanisms for Settlement of Land Disputes” [LRC_R&P 127, Sep 2018];
- (128) Opinion Paper about “Jury System” [LRC_R&P 128, Dec 2018];
- (129) Opinion Paper on “Reform of System of Judicial Sale by Levy” [LRC_R&P 129, Dec 2018];
- (130) Discussion Paper about “Incorporation of Offence of Moral Harassment in the Criminal Code” [LRC_R&P 130, Dec 2018].

Appendix 2: LRC's Reports/Papers on aspects of laws reviewed (thematic)

(A) Strengthening the Rule of Law, Good Governance and the Human Rights Protection System

(1) Strengthening the Rule of Law

- *Discussion Paper on "Access to Justice and Limitations of Actions against Public Officers and the State"* [June 2007] & *Report on "Access to Justice and Limitations of Actions against Public Officers and the State"* [May 2008]
- *Issue Paper on "The Office of Director of Public Prosecutions [DPP] and the Constitutional Requirement for its Operational Autonomy"* [March 2009]
- *Discussion Paper on "Judicial Review"* [November 2009]

(2) Consolidating Good Governance and Democracy

- *Working Paper on "Reform of Local Government Legislative Framework"* [December 2008] & *Report on "Local Government Reform"* [June 2009]
- *Report on "Law relating to NGOs"* [November 2008] & *Issue Paper on "Social Partnership Framework"* [November 2009]
- *Opinion Paper on "Aspects of Electoral Reform"* [May 2014]

(3) Reinforcing the Human Rights Protection System

- *Issue Paper on "Equality/Anti-Discrimination Legislative Framework (Re Equal Opportunities Bill No. XXXVI of 2008)"* [November 2008]
- *Issue Paper on "Constitutional Protection of Human Rights"* [October 2010]

(B) Improving the Judicial system, the Operation of the Legal Profession and the Provision of Legal Services

- *Report on "Opening Mauritius to International Law Firms and Formation of Law Firms/Corporations"* [May 2007]
- *Issue Paper on "Establishment of Family Court and Conduct of Family Proceedings"* [November 2011]
- *Opinion Paper on "Establishment of Court of Appeal and Composition of JLSC (Judicial and Legal Service Commission)"* [August 2011]
- *Opinion Paper on "Liberalization of Usher Services"* [January 2011]
- *Opinion Paper on "Legal Aid Reform"* [February 2011]
- *Opinion Paper on "Reform of the Judicial System and other Related Matters"* [LRC_R&P 125, June 2018]
- *Opinion Paper about "Mechanisms for Settlement of Land Disputes"* [LRC_R&P 127, Sep 2018]
- *Opinion Paper about "Reform of System of Judicial Sale by Levy"* [LRC_R&P 129, Dec 2018]

(C) Modernizing the Civil Justice System

- *Discussion Paper on "The New Code de Procédure Civile"* [May 2012] & *Report on "Code de Procédure Civile"* [May 2012]
- *Issue Paper on "Law as to Publicity for Appointment and Revocation of Agent and Proxy"* [November 2010]

- *Report on "Prevention of Vexatious Litigation"* [October 2010] & *Opinion Paper on "Appeal by Vexatious Litigant"* [April 2011]
- *Issue Paper "Party and Witness Anonymity in Civil Proceedings"* [August 2012]
- *Opinion Paper on «Attorney's Commission»* [April 2011]

(D) Modernizing the Criminal Justice System

(1) Criminal Investigation Procedures

- *Discussion Paper on "Law and Practice relating to Criminal Investigation, Arrest and Bail"* [April 2008]
- *Discussion Paper on "Forensic Use of DNA"* [April 2009]
- *Issue Paper on "Criminal Investigation: Reform of Police Procedures and Practices"* [July 2010], as well as *Opinion Paper on "Draft PACE Bill"* [March 2012]

(2) Law on Bail

- *Report on "Bail and other Related issues"* [August 2009]

(3) Criminal Trial by Jury

- *Opinion Paper about "Jury System"* [LRC_R&P 128, Dec 2018]

(4) Rules as to Disclosure

- *Issue Paper on "Disclosure in Criminal Proceedings"* [December 2007] & *Report on "Disclosure in Criminal Proceedings"* [December 2008], as well as *Opinion Paper on "Draft PACE Bill"* [March 2012]

(5) Rules as to Costs

- *Opinion Paper on "Costs in Criminal Cases"* [April 2011]

(6) Criminal Evidential Rules

- *Issue Paper on "Evidence of Reluctant/Intimidated Witness in Criminal Proceedings: Proposal for Reform of the Law"* [May 2010]; also *Opinion Paper on "Draft PACE Bill"* [March 2012]

(7) Fairness of Trial & Effective Handling of Criminal Cases

- *Review Paper on "The Criminal Justice System and The Rights of an Accused Person"* [September 2008]
- *Opinion Paper on "Effective Handling of Criminal Cases"* [February 2014]

(8) Mechanism for Review of Miscarriages of Justice and for the Correction of Errors

- *Report on "Mechanisms for Review of Alleged Wrongful Convictions or Acquittals"* [Nov 2012]

(E) Renovating the Criminal Law in accordance with Human Rights Norms and Best International Practices

- *Issue Paper on «Reform of Criminal Code»* [November 2011]
- *Issue Paper on «General Principles of Criminal Law»* [February 2013] & *Paper on "Changes to Books I & II of Criminal Code (General Provisions)"* [December 2014]
- *Issue Paper on «Offences against the Nation, the State and Public Peace»* [December 2013] & *Paper on "Changes to Book III of Criminal Code (Offences against Nation, State & Public Peace)"* [December 2014]
- *Issue Paper on "Offences against Persons (Atteintes à la vie & à l'intégrité physique - homicide, menaces, violences)"* [December 2011], *Issue Paper "Offences against Persons (Autres atteintes*

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- *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], as well as *Opinion Paper "Offences against Persons [Re Draft Criminal Code (Amendment) Bill]"* [April 2012] and *Issue Paper "Commentary on some of the Human Rights dimensions of the Sexual Offences Bill No. VI of 2007"* [June 2007], and *Paper on "Changes to Book III of Criminal Code (Offences against Persons)"* [Mar 2015]
- *Issue Paper on "Offences against Property (1) ("Des appropriations frauduleuses")* [December 2013] & *Issue Paper on "Offences against Property (2) ("Autres Atteintes aux Biens")* [December 2013], as well as *Paper on "Changes to Book III of Criminal Code (Offences against Property)"* [Mar 2015]
- *Paper on "Changes to Book III of Criminal Code (Incorporation of Provisions on Cybercrime)"* [June 2015]
- *Issue Paper on «Contraventions in the Criminal Code»* [December 2013] & *Paper on "Changes to Book IV of Criminal Code (Contraventions)"* [December 2014]
- *Issue Paper on "Road Traffic Legislation and Penalty Points System"* [December 2011]
- *Review Paper on "Criminal Protection of Children's Rights"* [May 2016]
- *Review Paper on "Law on Fraud"* [May 2016]
- *Interim Report on "Reform of Criminal Code"* [May 2016]
- *Review Paper on "Criminal Code (Supplementary) Act* [March 2017]
- *Working Paper about "Reform of Law on Forgery in the Criminal Code"* [March 2017]
- *Discussion Paper about "Reform of Law on Embezzlement in the Criminal Code"* [March 2017]
- *Discussion Paper about "Reform of law on Swindling in the criminal Code"* [May 2017]
- *Discussion Paper about "Reform of Law on Larceny & Aggravated Larceny in the Criminal Code"* [May 2017]
- *Discussion Paper about "Reform of Law on Destruction, Degradation and Deterioration of Property in the Criminal Code"* [June 2017]
- *Discussion Paper about "Reform of Law on Receiving Property Obtained Unlawfully in the Criminal Code"* [LRC_R&P 114, Sep 2017]
- *Discussion Paper about "Reform of Law on Extortion & Blackmail in the Criminal Code"* [LRC_R&P 115, Sep 2017]
- *Discussion Paper about "Reform of Law relating to Fraudulent Appropriations of Property in the Criminal Code – Miscellaneous Other Offences"* [LRC_R&P 116, Sep 2017]
- *Discussion Paper about "Reform of Law on Willful Killing in the Criminal Code"* [LRC_R&P 117, Dec 2017]
- *Discussion Paper about "Reform of Law on Violence in the Criminal Code"* [LRC_R&P 118, Dec 2017]
- *Discussion Paper about "Reform of Law on Threats in the Criminal Code"* [LRC_R&P 119, Dec 2017]
- *Discussion Paper about "Reform of Law on Torture and Acts of Barbarity in the Criminal Code"* [LRC_R&P 120, Feb 2018]
- *Discussion Paper about "Reform of Law on Involuntary Offences against Life & Physical Integrity of Persons in the Criminal Code"* [LRC_R&P 122, April 2018]
- *Discussion Paper about "Reform of Law on Endangering Persons in the Criminal Code"* [LRC_R&P 123, April 2018]
- *Discussion Paper about "Reform of Law on Violations of Dignity and Liberty of Persons in the Criminal Code"* [LRC_R&P 124, June 2018]
- *Opinion Paper about "Law on Social Media (Fake Profiles, Fake News and other Harmful Digital Communications)"* [LRC_R&P 126, Sep 2018]
- *Discussion Paper about "Incorporation of Offence of Moral Harassment in the Criminal Code"* [LRC_R&P 130, Dec 2018]

(F) Modernizing the Code Civil Mauricien

- *Background Paper to the Reform of the Codes* [October 2010]

- (1) Law on Persons and “Droit Extrapatrimonial de la Famille”
 - *Issue Paper on «Personnalité Juridique & Protection de la Personne Humaine»* [July 2013]
 - *Review Paper on «Law on Surrogacy» (“Maternité pour autrui”)* [July 2013]
 - *Issue Paper on «Nom de famille»* [July 2013]
 - *Report on “Law on Divorce”* [December 2008]
 - *Issue Paper «Filiation»* [October 2013]
 - *Issue Paper on «Filiation Adoptive»* [April 2014]
 - *Issue Paper «Autorité Parentale»* [October 2013]
 - *Report on “Relationship of Children with Grand Parents and Other persons under the Code Civil Mauricien”* [June 2007]
 - *Issue Paper «Majeurs Protégés»* [October 2013]
 - *Issue Paper on «Aspects of Family Law»* [April 2014]
 - *Review Paper on “Statut des Personnes non-mariées vivant en couple”* [October 2015]

 - *Interim Report on « Reform of Code Civil Mauricien (Droit des personnes) »* [April 2016]
 - *Interim Report on « Reform of Code Civil Mauricien (Droit extrapatrimonial de la famille) »* [April 2016]

- (2) Law on Succession and Matrimonial Regimes
 - *Issue Paper on “Régimes Matrimoniaux”* [December 2014]
 - *Issue Paper on « Successions et libéralités »* [February 2014]
 - *Issue Paper on « Other Aspects Law of ‘Successions & Libéralités’ »* [June 2014]

 - *Interim Report on « Reform Code Civil Mauricien (Droit patrimonial de la famille) »* [April 2016].

- (3) Law on Obligations and Specific Contracts
 - *Issue Paper on «Law of Contracts and Obligations under Code Civil Mauricien»* [March 2013]
 - *Discussion Paper about “Reform of Law on Responsabilité Civile in the Code Civil Mauricien”* [May 2017]
 - *Discussion Paper about “Reform of Law of Contract & Regime and Proof of Obligations in Code Civil Mauricien”* [June 2017]
 - *Paper on “Changes to Sources and Regime of Law Obligations in Code Civil Mauricien”* [June 2017]

 - *Issue Paper on “Indemnisation des victimes d’accidents de la circulation & Réforme du Droit des Assurances”* [June 2017]

 - *Report on “Crédit-Bail (Leasing) & Location Financière”* [November 2011], as well as *Discussion Paper on “Crédit-Bail (Leasing) & Location Financière”* [November 2011] and *Issue Paper “Crédit-Bail (Leasing)”* [December 2011]

 - *Issue Paper on «Specific Contracts»* [February 2014]

 - *Issue Paper on “Bail d’habitation”* [December 2014] & *Paper on “Changes to Provisions in Code Civil Mauricien about Louage des choses, bail à loyer et bail d’habitation”* [March 2015]

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- (4) Property Law (including law on “Co-Propriété”)
- *Issue Paper on “Droit des biens”* [June 2015]
 - *Report on “New Regime for Copropriété”* [November 2012] & *Report on « Copropriété des immeubles sociaux »* [August 2012]
- (5) Law on “Sûretés” and Credit Transactions
- *Issue Paper on «Secured Transactions Reform»* [October 2013], as well as *Report on «Droit des Sûretés»* [August 2012]
 - *Report on “ Encadrement des Opérations de Crédit ”* [December 2014]
- (6) Law on Prescription
- *Issue Paper on «Law of Prescription under Code Civil Mauricien»* [March 2013]
 - *Opinion Paper about “Reform of the Law on Acquisitive Prescription”* [LRC_R&P 121, Mar 2018]
- (7) Aspects of Private International Law
- *Issue Paper on “Incorporation in Code Civil Mauricien of Provisions relating to Aspects of Private International Law”* [April 2016]
 - *Review Paper on “Hague Conventions on Private International Law and Mauritian Law”* [May 2016]
 - *Review Paper on “Comparative Approaches to Aspects of Private International Law”* [March 2017]
- (G) Improving the Legal Infrastructure for Business**
- (1) Reform of the Code de Commerce
- *Report on « Code de Commerce (Livre Premier) [fonds de commerce, garanties autonomes, crédit documentaire, franchise, concession exclusive & timeshare] »* [May 2012], following *Issue Paper on “Timeshare (Droits de Séjour à Temps Partagé)”* [July 2011]
 - *Report on “Bail commercial”* [March 2015]
 - *Report on “Intermédiaires du commerce”* [December 2014]
 - *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]
 - *Report on “Miscellaneous Aspects of Code de Commerce”* [May 2015]
 - *Report on «Code de Commerce (Livre Deuxième) [navigation & commerce maritimes]»* [June 2012]
 - *Report «Code de Commerce (Livre Troisième) [navigation & commerce aériens]»* [June 2012]
 - *Interim Report on “Reform Code de Commerce”* [May 2016]
- (2) Regulatory Framework for the activities of Real Estate Agents
- *Review Paper on “Regulation of the Activities of Real Estate Agents”* [February 2016]
 - *Paper on “Legislative Framework for the Regulation of the Activities of Real Estate Agents”* [February 2016]
- (3) Reform of the Consumer Protection Regime
- *Report on “Review of Aspects of Consumer Protection Law and Proposals for Reform”* [October 2010]

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(4) Mediation and Conciliation as Mechanisms for Settlement of Disputes in Commercial Matters

- *Report on "Mediation and Conciliation in Commercial Matters"* [November 2010]

Appendix 3: List of Requests from Hon. Attorney-General under section 6(1) of Law Reform Commission Act (as from 2006 onwards)

Aspect of the Law to be reviewed	
1	To review Law Practitioners Act to allow the formation of law corporations and the opening of Mauritius to international law firms [Nov. 2006]
2	To review law on disclosure in criminal proceedings [prosecution and defence disclosure] in the light of UK Criminal Procedure and Investigations Act 1996, and the Code of Practice and Guidelines issued there under [Nov. 2006]
3	Review the proposal for the putting in place of a system of “Juge d’Instruction” in order to ensure greater transparency and professionalism in the conduct of criminal investigations [Nov. 2006]
4	To review the Law and Practice relating to Criminal Investigation, Arrest and Bail [March 2008]
5	To review the grounds for divorce [Oct. 2008]
6	To review the Law on Mediation and Conciliation in commercial matters [May 2009]
7	To review the Code Civil Mauricien, the Code de Commerce and the Code de Procédure Civile, recommend reforms thereto, and draft the Codes in both English and French languages [May 2010]
8	Views sought on draft Law Practitioners (Amendment) Bill and on Institute for Judicial and Legal Studies Bill. The Bills deal with access to the profession of barrister, the training to be afforded to law practitioners, judicial and legal officers [July 2010]
9	Views sought on policy aspects of draft Asset Recovery Bill [August 2010]
10	To review Procedure for Appointment and Revocation of Agent and Proxy [Sept 2010]
11	Request for a comparative review of the law as to vexatious litigation and for views on draft Courts (Amendment) Bill, which seeks to restrain vexatious litigation [Aug 2010]
12	To submit views on drafts of the Constitution (Amendment) Bill and the Judicial and Legal Provisions Bill [Aug 2010, July 2011]
13	Views sought on attorney’s commission (which as a matter of practice is inserted by banks and other financial institutions in loan agreements/notarial deeds), and its constitutionality [Dec 2010]
14	To submit views on the Green paper “Equal Access to Justice – Reform of Legal Aid in Mauritius” [Dec 2010]
15	To submit views on proposed amendment to Court Ushers Act [Dec 2010]

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16	Views sought as to observations made by Supreme Court in <i>Sookun v State</i> (2010) SCJ 349 regarding need for reform of law as to award of costs in criminal cases [Dec 2010]
17	Views sought on draft Family Court Bill, which establishes the Family Court [which would have exclusive original civil and criminal jurisdiction in respect of family affairs] and provides for the Conduct of Family Proceedings [resort to Conciliation for the settlement of family disputes, Counselling Services to be available to parties in proceedings before the Family Court and Family Court to be empowered to secure the services of a medical expert or such other person (including a person professionally engaged in promoting the welfare of the family) for the determination of disputes] [Feb 2011]
18	Request for comparative review of penalty point system and to examine how Road Traffic Act can be amended to accommodate this concept [April 2011]
19	To submit views on draft Police and Criminal Evidence Bill [Jan 2012]
20	To consider desirability of having in Mauritius a Criminal Cases Review Commission, such as the one in UK, which would be an independent public body mandated to review possible miscarriage of justice and which could refer appropriate cases to the proper forum for review [July 2012]
21	To examine law relating to surrogacy [May 2013]
22	To review jury system in Mauritius [May 2013]
23.	To examine the status of implementation of the Mackay Report 1998, coupled with relevant parts of the Sachs Report 2002, and report on the way forward towards full implementation of the recommendations made therein with respect to the Judiciary [September 2016]
24.	To examine the desirability of establishing a Land Tribunal dealing with land disputes (including cases of alleged dispossession of land referred to before the Truth and Justice Commission) and with cases of compulsory acquisition of land by Government [November 2017]
25.	To examine the law on Social Media and other electronic platforms (fake profiles, “ <i>usurpation d’identité numérique</i> ”, fake news and other harmful digital communications) [January 2018]
26.	To review the current system of Sale by Levy and replace by another one in line with best international practices, and to examine to what extent the Bank of Mauritius proposal to set up an Asset Management Company would contribute to improving the situation in so far as defaults on repayment of loans and the recovery of amounts due to creditors on said loans are concerned [April 2018]
27.	Domestication of the 2001 Cape Town Convention on International Interests in Mobile Equipment, and its Additional Protocols: the Protocol on Aircraft Equipment, 2001; the Luxembourg Protocol on Railway Rolling Stock, 2007; and the Protocol on Space Assets, 2012 [Dec 2018]