**ALRAESA CONFERENCE ROUND-UP**

**30 June 2017**

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1. Aristotle once said: “Even when laws have been written down, they ought not always to remain unaltered.”

Ever the Since the time of Code of Hammurabi in the second millennium BCE up to the Napoleon Code, laws have evolved. They have evolved because the moors have evolved. They have evolved because some civilizations are born and others die. They have evolved because, as Heraclitus said, the only thing that is constant is change.

And all the presentations we have had the opportunity to hear during those two days have confirmed this, that law is not engraved in stone… that Law Reform Agencies have a vital role to play in bringing these changes of which society is in dire need… because as Mr. DOMINGUE pointed out yesterday, law reform is, essentially, about what ought to be!

1. But before fighting for what ought to be, it is necessary to fight for what already exists and is important, and this is what Mr. GULBUL throughout his career did, as Mr. DOMINGUE reminded us yesterday morning, with all the legal battles he led to defend what are fundamental rights of the citizen under the Constitution, the Constitution being, as hammered by Mr. GULBUL, the supreme law of the land and it must stay this way.
2. And the Law Reform Commission of Mauritius has produced many papers related to protection afforded under Constitution, as Mr. GULBUL reminded us. But it has also worked on many different subjects, as has highlighted yesterday the Attorney-General of Mauritius, Hon. Mr. Ravi YERRIGADOO. Laws, said the Attorney-General, should reflect values of society and we should make sure that our laws are not cut off from reality. Moreover, he said, law reform is an ongoing process and one needs to always keep an open mind.

He finally emphasized the need for greater cooperation between different Law Reform Agencies, and the need for greater involvement in regional law reform initiatives, when there is great potential for such development in its region.

Which is the very reason we are united today.

His presentation has highlighted the intrinsic relationship which exists between **law reform and development**, postulating that the rule of law is necessarily tied to the success of development of any country. This is demonstrated in the addition of the word “development” to Law Reform Agencies of some countries like Namibia or Zimbabwe, which thus emphasises the paramount role that legal reform plays in a country’s development.

1. And this is moreover so in **Small States** **Jurisdiction**, as rightly pointed out by Mr. Rosario DOMINGUE, CEO of the Law Reform Commission of Mauritius.

Small States, he said, are often defined by their limited human and financial resources.

He also underlined the fact that one of the problems faced in small States is the lack of local expertise. Furthermore, in small States in particular, we should pay extreme attention to the nature of social relationship, while in large jurisdictions, you can live your life anonymously, in small States, this is not the case… and indeed, every Mauritian will be able to tell you that his neighbor or work colleague spies on him day and night.

Mr. DOMINGUE also remarked that it is of paramount importance to sense when it is right to make a recommendation. Thus, the Law Reformer must have a kind of sixth sense for him to know when the time is ripe to produce a paper on such subject, in such manner and using such words, because, as he says, if you get one thing wrong, it could put into jeopardy the very existence of the Commission

Mr. DOMINGUE also pointed out that there must be an environment conducive to law reform, and you should make sure that the people concerned are involved and take ownership of the reform.

Another example of law reform in small States was given to us by Judge ALI BAKARI from Zanzibar.

He first of all did something quite naughty… he reminded us of our ignorance. Indeed, I think, as he said, few of us could locate exactly Zanzibar on a map… but thanks to him this is no more the case. He talked about the Laws which the LRC Zanzibar reviewed, 17 in total. He pointed out that due to the social, political, economic and cultural changes that took place in Zanzibar, since 1964, the Revolutionary Government of Zanzibar observed the need of a constant nourishment of their laws. Therefore, the Commission as an independent body was established under Section 3 of the Law Review Commission of Zanzibar Act.

He also shared his experience as a lawyer before the High Court and how the law of evidence was giving him a head ache.

Therefore, the first thing he did when he came to the Law Reform Commission, was to try to find a cure to his headache problem and thus started to work on the reform of the law of evidence.

A Law Reformer is a soldier who must defend his territory… this is the image which popped up in my head when listening to Mr. ALI BAKARI, when he was telling us how sometimes he was summoned to cabinet to defend his report. Which he did, time and again, because, as he beautifully puts it: “*Don’t run away from challenges, face it. That is life*”!

1. Small or Big States, as has been reminded by Mrs. MOTHIBATSELA, from the Commonwealth Secretariat, and MRS. CHAVULA, from the Malawi Law Commission, Law Reform Agencies are a *sine qua non condition* for **legal policy development**.

Indeed, law is constantly in need of considerable review and updating, and never more so than when changes in life are so fast and so many as they are nowadays throughout the world. LRAs are normally intended to undertake work in many areas of law. Their ability and willingness to embark on such work also has the advantage of providing a standing body ready to undertake work in a great variety of law, as has been demonstrated in the different sessions. And this is what the Commonwealth Secretariat encourages, moreover so, as Mrs. MOTHIBATSELA said, that the majority of the 52 countries in the Commonwealth are small. She also talked about an important document which they published, the Law Reform Guide, and that there could be exchange programmes between countries like Botswana or Swaziland who are in process of setting up Law Reform Agencies, and other countries.

Mrs. CHAVULA, for her part, talked about the contribution of the Malawi Commission to Legal Policy development and how about thirty-five law reform programs have been carried out, and that law reform in Malawi has influenced legal policy development in areas such as criminal justice system, gender related laws, children related laws, and land related laws. She concluded by saying that law reform undertaken by law reform agencies as far as legal policy development is concerned is closely linked to access to justice in the country.

1. And one of the most important way to guarantee access to justice, without a doubt, is **Constitutional Reform**, which has been the leitmotiv of this conference… and the exposé by Ms. MUTHAURA, Vice-Chairperson of the Kenya Law Reform Commission, has been very enriching in that sense, concerning the 2010 Kenyan Constitution which replaced the 1963 independence edition. Indeed, the KLRC was identified as one of the agencies to prepare legislation to implement the Constitution.

The latter introduced 47 County governments, each having their own cabinet and own legislative assemblies.

Moreover, they now have an independent DPP and an Attorney General who is not a member of parliament, as well a very elaborate and liberal Bill of Rights.

She also insisted on the question of “inclusivity” and the need for all the communities to feel included.

Ms. MUTHAURA also stressed the fact that policy and measures must not only comply with the letter of the Constitution but also with its spirit.

1. **Business and consumer laws** are crucial for the vitality of any country’s economy. The examples given by Mrs. ROSSENKHAN from the Attorney-General’s Office in Botswana and Mr. REETOO from the Attorney-General’s Office in Mauritius are enlightening in many regards.

Mrs. ROSSENKHAN spoke how in Botswana, Government started efforts towards improving the Doing Business environment since 2011 and that the objectives are the Promotion of investor-friendly climate, Standardisation of Government processes and procedures for ease of doing business, and to Promote efficiency and effectiveness of Government processes and procedures. The Doing Business Reform Action Plan and Roadmap provides for both legal and administrative reforms. She also enumerated some challenges to be faced, namely, Small and developing country Slow pace of reforms, Ministries slow to generate instructions, Lack of expertise, Lack of resources, Ministries operating with Silo mentality and Legislative Drafting Division inundated with numerous instructions.

As to Mr. REETOO, he informed us of Reforms connected to and enhancing business environment in Mauritius and highlighted the Key contribution of LRC Mauritius in context of Business Law Reform. He also spoke about the different amendments which were made*, inter alia*, to the Business Registration Act, the Financial Services Act and the Investment Promotion Act, to set up a board of investment and create new duties for investment projects fast-track committee, and the Companies Act to allow for electronic issue of certificate of incorporation.

He also announced that there would be amendments to the Code Civil Mauricien based on the work of the LRC on Secured Transaction Reform.

1. But Law Reform can also have a more profound as well as a more concrete impact on society. Our country has witnessed those past years many dramatic cases of **gender-based violence** resulting very often in the death of the victim.

No country is insulated against the scourge of domestic violence. Ms. GAWACHAB, of the Namibian LRDC gave a very good presentation of the reform of the law on domestic violence in her country, where the reform process began in 1996, when at the time, domestic violence was restrictively defined. She also spoke about the paradoxical notion of “passion killing”.

In 2016, a new study was conducted in Namibia which review the definition of “domestic relationship” and they are in the process of finalizing amendments to the Domestic Violence Act.

1. As to Mr. MATIBE, from the South African Law Reform Commission, he gratified us with a thorough presentation on the reform of the law on **stalking** in the context of the Protection from Harassment Act. Internationally, he said, the legal understanding of stalking has evolved to take on an artificial meaning with harassment of another person as its form. Sometimes used interchangeably but harassment is the umbrella term under which stalking is but one of the behaviours, another being bullying. For this reason, the SALRC opted for the use of the broader term harassment.

Mr. MATIBE also talked about cyberstalking, which causes 475 000 online victims per annum. Moreover, online stalking can lead to real-life stalking, for example paedophiles/online sexual predators.

1. One of the problems which can be faced by victims of stalking is to prove the acts they are complaining about. And this is where the **Law of Evidence** comes into play. The Director of Public Prosecutions of Mauritius, Mr. BOOLELL, has elegantly raised some of the issues involved when thinking the reform of the law of Evidence.

Law of evidence, he said, is at heart of the justice system and it is important to keep challenging the law of evidence. There must be a chemistry between evidence and the administration of justice.

The tradition was to exclude relevant evidence such as hearsay, evidence of character, opinion evidence of non-experts. But with time, he added, many jurisdictions came with statutory reform, and this under the influence of human rights. And the main question which then arose, was how to rationalize and clarify the law, so as to enhance the discretionary powers of the judge.

He highlighted the fact that one of the areas which was most subject to debate is the rule against hearsay. And the trend was then to allow the judge discretion to admit hearsay based on relevance and admissibility, as is witnessed in the UK Criminal Justice Act or the Australian Evidence Act.

The DPP also insisted on the importance of the notion of fair hearing which must prevail at all costs.

He also warned against the risk linked to DNA evidence as experts could be usurping the role of the jury.

1. Mrs. NSANZE, Chairperson of the Uganda Law Reform Commission, has enlightened us on the Ugandan Experience in relation to the reform of the Law of Evidence, more particularly concerning the gaps and anomalies in the Ugandan Evidence Act and related laws and how to bring the law in conformity with the changing technological circumstances and further address other emerging issues.

She recommended that the Evidence Act should expressly provide for electronic evidence. The law should also provide comprehensive and flexible definition of terms like document, data, electronic records and electronic record system, among others, to cover the present and any future advances in technology. There is moreover need for guidelines that highlight key principles for determining the reliability of electronic evidence. Furthermore, there is also need for detailed provisions relating to security, functionality of the computer from which electronic evidence is generated, and generally setting rules governing the admissibility of electronic records.

1. We said that the use of technology has its side effects, with cyberstalking. But it has also its advantages. Indeed, Mrs. MASUKU, from the Zimbabwe Law and Development Commission, spoke about how new emerging technologies could further the quest for justice, with the examples of the use of electronic evidence and DNA. She regretted the fact that the Criminal Procedure and Evidence Act is silent on DNA Evidence, while the Civil Evidence Act only provides for the admissibility of medical reports. These Act have no express provisions on the acquisition of DNA samples, their management and subsequent admissibility as evidence in the courts. Moreover, she deplored the fact that in Zimbabwe Courts, DNA has not been used in cases where sexual offences would have been solved due to lack of suitable legislative framework to make DNA Evidence admissible.

Thus, with proposed law reform in Zimbabwe, the use of DNA Evidence would be admissible in courts based on guidelines that would be provided by Statutes and as a result, one’s innocence or guilt could be easily established.

1. We have seen, helped to this very ecumenical conference, that the subjects tackled by the different Law Reform Agencies which are present here are of some concerns to each and every one and that there are lessons to be learned from the experience of other Law Commissions, and as Mr. GULBUL, chairperson of the Mauritius Law Reform Commission had rightly put it in his opening remarks, we hope this Conference will help advance regional co-operation in the reform and development of the law, and nurture co-operation among the different protagonists which have been involved in these two days’ conference.
2. Thank You.