

INSTITUTIONAL LAW REFORM IN SMALL COMMONWEALTH JURISDICTIONS

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In this paper the CEO of the Mauritius Law Reform Commission considers the role of law reform agencies in the Commonwealth with specific reference to the circumstances of small states. He addresses their structures, their role, and the challenges they face.

Dans cet article, le Président de la Commission de réforme du droit de Maurice s'interroge sur le rôle des organismes chargés de proposer les réformes des règles de droit dans les pays du Commonwealth et plus particulièrement dans les petits Etats.

I INTRODUCTORY REMARKS

One of the challenges faced by Governments is how to develop a meaningful strategy of law reform to ensure that laws on the statute books are not cocooned in a past which is divorced from the current social and economic realities. The law 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. 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 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 fulfil its mandate.¹ The usefulness of law

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1 M Kirby "Law Reform in the Commonwealth of Nations" (6th Commonwealth Law Conference, Nigeria, August 1980); WH Hurlburt QC *Law Reform Commissions in the UK, Australia and Canada* (Edmonton, Juriliber, 1986); Nova Scotia Law Reform Commission *A Continuing Need for Law Reform: The Case for the Law Reform Commission of Nova Scotia* (2001); D Murphy

reform agencies for the development of the law has time and again been asserted at Commonwealth Law Ministers/Senior Officials Meetings.² The Commonwealth Secretariat, together with CALRAs (Commonwealth Association of Law Reform Agencies) have prepared a "Guide to Law Reform".³ 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 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.⁵

A few small states and jurisdictions have engaged in the path of establishing an independent law reform agency.⁶ Independent law reform agencies have been established by statute in some of the Commonwealth small states⁷ with varying

Law Reform Agencies (Canada Department of Justice, 2004); S Petersson "Law Reform Agencies – The Essential Elements" ALRAC Conference, 2004; N Rees "The Birth and Rebirth of Law Reform Agencies" Australasian Law Reform Agencies Conference (ALRAC) Conference, 2008; M Lavelle "The Role of Institutional Law Reform in an Open Government Model" ALRAC Conference, 2010; Sir G Hammond "Institutional Law Reform – So where is it all going?" ALRAC Conference, Melbourne, March 2016.

- 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); 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 Ministers (Marlborough House, London, 18-20 October 2010).
- 3 CALRAs and COMSEC *Changing the Law - A Practical Guide to Law Reform* (Oct 2017).
- 4 Lord Steyn, Keynote Address on "The Role of Law Reform Agencies" at ALRAESA Law Reform Conference (Cape Town, March 2005).
- 5 *Vide* D Weisbrot "Value of a Full Time Standing Law Reform Commission" (ALRAC, 2002); M Sayers "Best Practices in Law Reform" ALRAESA Conference on "Law Reform: Reviewing the Past ... Reforming the Present ... Anticipating the Future" (Cape Town, 15-17 March 2005); HS Line "Best Practices in Law Reform" ALRAESA Conference on "Good Governance and the Rule of Law" (Maseru, 11-14 October 2010).
- 6 In the 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), at para 5, it is mentioned that "National Law Reform Agencies exist in about half of all Commonwealth countries, and only in about a quarter of the Commonwealth's small states".
- 7 The following are the Commonwealth small states: Botswana; Lesotho; Namibia; Mauritius; Swaziland; Seychelles; Brunei Darussalam; Singapore; Antigua and Barbuda; The Bahamas; Barbados; Belize; Dominica; Grenada; Guyana; Jamaica; St Kitts and Nevis; St Lucia; St Vincent and the Grenadines; Trinidad and Tobago; Cyprus; Malta, Fiji; Kiribati; Nauru; Papua New Guinea; Samoa; Solomon Islands; Tonga; Tuvalu; and Vanuatu.

success:⁸ Bahamas,⁹ Dominica,¹⁰ Fiji,¹¹ Lesotho,¹² Mauritius,¹³ Namibia,¹⁴ Papua New Guinea,¹⁵ Samoa,¹⁶ Solomon Islands,¹⁷ Tonga,¹⁸ Trinidad and Tobago,¹⁹ and Vanuatu.²⁰ Yet, the need for effective law reform processes is as necessary in small states as in large states.²¹ Other small jurisdictions within the Commonwealth have

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- 8 As mentioned by M Sayers in the paper presented at Seminar on Constitutional and Administrative Law Issues in the Caribbean, which was organised by the Legal and Constitutional Affairs Division (LCAD) of the Commonwealth Secretariat and held at the Pegasus Hotel, Kingston, Jamaica, on 28 May 2008 on "Law Reform: In the Commonwealth, In Small States and in the Caribbean", at para 17: "It has occasionally happened that an LRA is established but that in due course it becomes less effective (perhaps because Government does not resource it adequately); it may even be abolished, but it is often resurrected in due course."
- 9 Bahamas Law Reform and Revision Act 1975.
- 10 Dominica Law Reform Commission Act 1992.
- 11 Fiji Law Reform Commission Act 1979, amended in 1985.
- 12 Lesotho Law Reform Commission Act 1993.
- 13 The Law Reform Commission was initially established by the Law Reform Commission Act No 33 of 1992, which came into force on 1 December 1992 (Proclamation No 2 of 1993). In 2006, a new Commission was established. The 1992 Act was repealed by the Law Reform Commission Act No 26 of 2005, which came into force on 10 January 2006 (Proclamation No 2 of 2006), as it was felt that new institutional arrangements were needed in order for the Commission to meet its statutory functions.
- 14 Namibia Law Reform and Development Commission Act 1991.
- 15 The Papua New Guinea Law Reform Commission was initially established by the Papua New Guinea Law Reform Commission Act 1975. The Commission was later replaced by a Constitutional and Law Reform Commission; the Papua New Guinea Constitutional and Law Reform Commission Act 2004, which repealed the Constitutional Development Commission Act 1997 and the Law Reform Commission Act 1975.
- 16 The Samoa Law Reform Commission was initially established by the Samoa Law Reform Commission Act 2002. The 2002 Act was later repealed and a 2008 Law Reform Commission Act was enacted, with a new Commission established with improvements to its structure and operational requirements.
- 17 Solomon Islands Law Reform Commission Act 1994.
- 18 Tonga Law Commission Act 2007.
- 19 Trinidad and Tobago Law Reform Act 1969, subsequently amended in 2000. A Law Reform (Amendment) Bill 2006 was introduced into the Senate; it aimed at bringing changes to the membership of the Commission.
- 20 Vanuatu Law Commission Act 1980.
- 21 See 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); see also M Sayers "Law Reform: In the Commonwealth, In Small States and in the Caribbean" (Paper presented at Seminar on Constitutional and Administrative Law Issues in the Caribbean, which was organised by the Legal and Constitutional Affairs Division (LCAD) of the Commonwealth Secretariat and held at the Pegasus Hotel, Kingston, Jamaica, on 28 May 2008).

also set up independent law reform agencies, such as British Virgin Islands,²² Cayman²³ and Jersey.²⁴ Establishing a Law Reform Commission in a small state or jurisdiction may appear as a low priority activity when weighed against competing pressures to establish and support other justice agencies, initiatives and programmes that build capacity in the public sector. However, there are multiple long-term benefits in investing scarce resources in a Law Reform Commission that extend beyond the justice sector. A well-designed programme can build much needed legal policy skills that can become a resource for the use of other public sector Ministries and the Government.²⁵

In this paper, the following aspects of law reform in small States are addressed: the challenges faced by law reform agencies; the manner in which they have been designed, and, at times, redesigned so as to be better equipped to address these challenges: their structure, operation; the need for them to co-operate with other agencies and to be involved in regional law reform initiatives. The contribution of law reform agencies, when designed in an effective and efficient manner, to the development of the law is finally highlighted.

II CHALLENGES OF LAW REFORM IN SMALL STATES

Despite their heterogeneity, small states share the constraint of "smallness" - that is, a small population, limited human capital, lack of economies of scale, a constrained domestic market, and increasing exposure to climate change and market shocks. Small states often have small land areas, and their population is generally under 1.5 million.²⁶

Many of the challenges which are faced by law reform agencies are very similar, whether the institution serves a large or small country. Limited financial

22 The BVI Law Reform Commission was established in 2002.

23 The Law Reform Commission Law 6 of 2005.

24 Jersey Law Commission was set up by a Proposition laid before the States of Jersey and approved by the States Assembly on 30 July 1996.

25 F Kabui and A Guthleben "The Establishment of a Commission in Solomon Islands" (ALRAC Conference, 2004).

26 World Bank Group, *Engagement with Small States: Taking Stock* (Operations Policy and Country Services September 8, 2016) at p 1. See also Report of the Commonwealth Secretariat/World Bank Joint Task Force on Small States, *Small States: Meeting Challenges in the Global Economy* (April 2000).

and human resources, with lack of required local expertise in all sectors to enable specialised and effective law reform in all arenas, are some of the major challenges for law reform in small states.²⁷ In order to undertake the many obligations imposed on a law reform agency, high quality personnel are required. It may be difficult for an agency to attract and retain suitable persons, and to commit resources for the continuous capacity building of the institution.²⁸

27 AI Kalsakau "The establishment of Vanuatu's Law Reform Commission" (CALRAs Conference, 2004). Also, J Permanand "Law Reform Challenges & Opportunities for Smaller Law Reform Agencies" [2005] 31(3) CLB 29; JL Banda "Smaller Law Reform Agencies: Prospects and Challenges" [2006] 32(4) CLB 595.

It is apposite to quote G Powles "Challenge of Law Reform in Pacific Island States" in B Opeskin and D Weisbrodt (eds) *The Promise of Law Reform* (Federation Press, Sydney, 2005) says at p 414:

There appears to be a lack of appreciation on the part of finance ministers and treasury officials that law reform requires more than a lawyer and a computer ... in the absence of adequate funding and personnel, it is difficult for full consideration to be given to law reform techniques and processes.

28 In the 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) these challenges were highlighted at para 34 to 37:

34. First and foremost, in order to undertake the many obligations imposed on an LRA, high quality personnel are required, both commissioners and staff. Even the very small numbers needed for small LRAs may not be available. Senior, trained staff too often leave the LRA, perhaps for more lucrative appointment elsewhere. LRAs tend to find it difficult to attract more staff with the expertise required, due to the inadequate pay it can offer.

35. In order to pursue its functions with the kind of professionalism required for law reform, an LRA must have available to it the resource materials required, access to electronic data, and occasional attendance at relevant international conferences. There should also be continuous training for its staff and attendance at training programmes.

36. It is understandable that, without outside funding, the establishment and support of even a very small LRA can impose a difficult financial burden on a government. In terms of governmental priorities, an LRA is probably ranked at the lower end of the scale.

37. Smaller LRAs often rely heavily on donor funding, commitment and support since they are perceived as vehicles for democratic change. If an LRA is seen as independent and competent, and commands the respect of civil society, donors may be willing to fund its activities. However, this may be a short-term arrangement and an LRA may therefore be faced with the challenge of devising ways of sustaining the current levels of funding in the event of donor fatigue.

Law reform agencies in small states also face the challenge of developing appropriate and effective law reform processes to ensure maximum input from stakeholders, thereby ensuring responsiveness to the developing needs of society.²⁹

Another major challenge for a law reform agency in a small state is 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. There is need to cultivate political will in support of its activities,³⁰ the more so given the "particularism" of relationships in small jurisdictions.³¹

There is also the challenge of living up to expectations. This requires keeping up with demand by avoiding to take on too many projects for their limited capacity. There is also the additional challenge of the timeframes for law reform

29 Ibid, at para 38.

This aspect was also highlighted by MC Leung Wai, Attorney-General of Samoa, in his presentation at the ALRAC Conference in 2008 about "Samoa's Experience with the Establishment of a Law Reform Commission", at para. 21:

21. The process of law reform that the Law Reform Commission would adopt involved the Commission attracting ideas from the community and Government agencies. Where the Commission considered that law change was needed and that law change could be readily developed by another Government agency, then it would inform the responsible Minister of its view. The Commission would also assist a Government agency in developing law change ideas by:

- (a) providing a forum for discussion of those ideas; and
- (b) if necessary, providing research assistance.

AI Kalsakau in his Paper on "The establishment of Vanuatu's Law Reform Commission" (CALRAs Conference, 2004), also emphasised that the Steering Committee, set up to look at appropriate support structures for the functioning of the Commission, discussed the need for wide community consultation to ensure the melding of legal tradition with cultural norms and to this end recommended close involvement by Vanuatu Council of Chiefs, including through membership of the Commission.

30 In the 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), it is recognised at para 39 that:

A major challenge for smaller LRAs is to cultivate political will. On occasion a government may suspect that an LRA is inclined to advance either a donor agenda or the opposition agenda, due to the LRA's independence from mainstream government and its unusual funding arrangements. On the other hand, others may on occasion suspect that a government uses its LRA mainly as an indication of its democratic credibility and as a means of securing donor aid rather than recognising the LRA for what it is.

31 As pointed out by B Benedict on "Social Aspects of Smallness" in B Benedict (ed) *Problems of Smaller Territories* (Athlone Press, University of London, 1967) at pp 45 et seq, society in a small jurisdiction is characterised by particularistic role-relationships: "The same individuals are brought into contact over and over again in various activities ... In small-scale societies, where alternatives are few and personal relationships are multiplex and highly charged affectively, people often blame failure on the evil intention of others."

programmes. Criticisms are often levelled against LRAs' time frames which are seen to be unduly long. The LRAs can be faced with the challenge of convincing government, stakeholders and donors that adequate timeframes are necessary to allow for proper research and consultations and that these processes are indispensable in law reform.³²

III STRUCTURE OF LAW REFORM AGENCIES IN SMALL STATES AND THEIR RESOURCES

The effectiveness and usefulness of a law reform agency is very much dependent on the manner in which it is designed to carry out its mission, and the resources and support facilities put at its disposal.

A Membership of Law Commissions

In a small state, it is crucial to ensure that the various stakeholders in the legal field are represented through membership of the Law Commission.

A common feature of law commissions is to have a representative of the Judiciary as member:³³ a person holding, or has held, judicial office.³⁴ In some instances, provision is made for the Chairperson to be a person qualified to hold or

32 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) at para 40.

33 Some statutes establishing law reform agencies do not specifically require that membership include a representative of the Judiciary: Section 3 of the Lesotho Law Reform Commission Act 1993; s 4 of Tonga Law Commission Act 2007; s 3 of Vanuatu Law Commission Act 1980.

34 Section 3(3) Dominica Law Reform Commission Act 1992; s 3(2) Trinidad and Tobago Law Reform Act 1969 (as amended in 2000); s 3(2) of the Bahamas Law Reform and Revision Act 1975.

Section 7(1)(b) of the Mauritius Law Reform Commission Act 2005 provides that a member of the Commission shall be a representative of the Judiciary appointed by the Chief Justice.

According to s 14(1) of the Samoa Law Reform Commission Act 2008, a judicial officer may, with the approval of the Chief Justice, be appointed as a Commissioner for any law reform project undertaken by the Commission. Section 14(2) is to the effect that, in the event that a judicial officer is appointed as a Commissioner, that appointment shall not affect the Judge's tenure of the judicial office or the Judge's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as a Judge (including those in relation to superannuation) and, for all purposes, the Judge's services as Commissioner shall be taken to be service as a Judge.

holding or having held high judicial office.³⁵ When the Law Reform Commission of Mauritius was restructured in 2005, the view was taken that there should be a representative of the Judiciary as member.³⁶

Some commissions also provide for a law officer to be member.³⁷ Experience and expertise developed as a judicial officer or a law officer, with a reflection on the law "as it is", certainly helps appreciate shortcomings in the law and the soundness of reform proposals to address aspects where the law may have become inadequate or may be incomplete.

35 Section 3(1)(a) of the Namibia Law Reform and Development Commission Act 1991 is to the effect that a judge of the Supreme Court or the High Court of Namibia shall be appointed by the President as chairperson.

Section 8(2)(b) of the Papua New Guinea Constitutional and Law Reform Commission Act 2004 provides that a retired judge of the National and Supreme Courts or a person who is eligible for appointment as a Judge of the National and Supreme Courts may be appointed as Chairperson.

Section of the Fiji Law Reform Commission Act 1979 (as amended in 1985) provides that the Chairman of the Commission shall be a person qualified to be appointed as a Judge of the Supreme Court.

36 The Report of the then Law Reform Commission on the "Reform of the law Reform Commission" had this to say:

The Commission notes that it is a common feature of law reform commissions abroad that at least one of its members is from the judiciary. Often this member is the chairman. There is a feeling that the Commission may be missing on an important dimension with the absence of a judge among its midst. The Commission feels that this anomaly should be corrected. The other members of the Commission would be appointed by the Attorney-General. Given security of tenure with regard to a judicial appointment, the Commission, however, feels that this method of appointment may not be appropriate in this case. The Commission, consequently, recommends that one of its members be a representative of the judiciary appointed by the Chief Justice.

37 Section 7(1) of the Mauritius Law Reform Commission Act 2005 provides that the following office holders shall be members of the Commission: The Solicitor-General or his representative and the Director of Public Prosecutions or his representative.

Section 4(1)(a) of the Lesotho Law Reform Commission Act 1993, as well as s 3(1)(a) of the Namibia Law Reform and Development Commission Act 1991, makes provision for the Attorney-General to be a member of the Commission.

Another feature of law commissions is for membership to include legal professionals³⁸ and law academics.³⁹ Years of involvement in legal practice and/or legal education and research provide the ability to identify problematic aspects of the law and the type of changes that could be contemplated.

In many jurisdictions provision is also made for lay persons to be members.⁴⁰ This is premised on the understanding that lawyers do not have all the answers when it comes to legal reform and that, in some cases, non-legal responses may be just as effective in handling certain contemporary problems. Inclusion of lay persons without a legal background helps bring balance to the reform process.⁴¹

38 Section 3(2) Trinidad and Tobago Law Reform Act 1969 (as amended in 2000) is to the effect that a suitable person for appointment as Commissioner shall be a person with experience as Attorney-at-Law. Section 3(3) of the Vanuatu Law Commission Act 1980 provides that one member shall be a person entitled to practise as a legal practitioner. Also s 3(3) Dominica Law Reform Commission Act 1992 and s 3(2) of the Bahamas Law Reform and Revision Act 1975.

Section 7(1) of the Mauritius Law Reform Commission Act 2005 makes provision for a barrister-at-law, an attorney and notary to be appointed as members by the Attorney-General after consultation with the relevant professional body. Section 3(1)(d) and (e) of the Namibia Law Reform and Development Commission Act 1991 also provides that membership includes one practising advocate appointed by the President after consultation with the Council of the Bar of Namibia, and one practising attorney appointed by the President after consultation with the Law Society of Namibia.

39 Membership of the Mauritius Law Reform Commission includes 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 (Section 7 (1) (g) of the Law Reform Commission Act 2005).

Section 3(3) Dominica Law Reform Commission Act 1992, as well as s 3(2) of the Bahamas Law Reform and Revision Act 1975 and s 3(2) Trinidad and Tobago Law Reform Act 1969 (as amended in 2000), makes provision for a teacher of law in a University or other Institution of Higher Learning to be appointed as member.

Section 3(3)(e) of the Papua New Guinea Constitutional and Law Reform Commission Act 2004 is to the effect that the Dean of the Faculty of Law of the University of Papua New Guinea shall be an ex officio member.

40 Section 7(1)(h) of the Mauritius Law Reform Commission Act 2005 provides for the appointment of two members of civil society as members.

Section 3(3) of the Papua New Guinea Constitutional and Law Reform Commission Act 2004 provides for the appointment as members of a person having qualifications and experience in anthropology, sociology or political science; and one person nominated by the Papua New Guinea Council of Churches to represent the Churches.

Section 3(3) of the Solomon Islands Law Reform Commission Act 1994 provides for the appointment as Members of persons having knowledge and interest in the following—

- (a) social welfare and religious affairs;
- (b) criminal administration; or
- (c) sociology, anthropology or Solomon Islands culture.

41 G Murphy *Law Reform Agencies* (Canada Ministry of Justice, 2004) at p 35.

B Staffing

The viability and performance of a Law Commission is heavily dependent upon it having the core personnel, committed to comparative legal research and able to engage meaningfully with stakeholders. It is important therefore that the Act establishing a law commission deals with staff matters and confers power to recruit personnel.

In some small Commonwealth states, the Act establishing a law commission does not deal with staff matters.⁴² This is a serious impediment to a law commission realising its mission. It is difficult for the Chairperson, or any other member, of a Commission to wear two hats, being the Chairman/member and a research officer as well.⁴³

In other small Commonwealth states, provision is made in the Act for the Commission to be assisted by officers and employees in the public service made available to it.⁴⁴ This arrangement may be helpful but may turn out on occasion not to be satisfactory. Thus in Mauritius the Law Reform Commission, which was first established in 1992 and operated until 2006 when it was abolished and a new

42 There are no provisions in the Dominica Law Reform Commission Act 1992 regarding staff matters. It is the same regarding the Trinidad and Tobago Law Reform Act 1969 (as amended in 2000), as well as the Fiji Law Reform Commission Act 1979 (as amended in 1985).

43 F Kabui and A Guthleben "The Establishment of a Commission in Solomon Islands" (ALRAC Conference, 2004) where they had this to say in their Presentation at pp 3 and 4:

It became apparent at home that the Chairman had to wear two hats, being the Chairman and the research officer as well. The Chairman began to think about what terms of reference there should be for the Law Reform Commission, thus creating work for the Law Reform Commission. The belief was that law reform was to be a long term program and its foundation had to be laid firmly at its inception bearing that in mind. The Chairman drew up ten references and put them up to the Minister for his approval. The Minister approved them and returned them to the Chairman

Of the ten references referred to above, there were a few short references, namely; the review of the timber rights acquisition procedure for the harvesting of timber on customary land; land below high water mark and the law of treason. Work on these references had not progressed to the final report stage. Some very preliminary work had been done on the review of the law of marriage. The other references remained untouched.

44 Section 11(2) of the Namibia Law Reform and Development Commission Act 1991 thus provides that, in the exercise of its powers and the performance of its duties and functions under this Act, the Commission and its secretary shall be assisted by officers and employees in the public service made available for such purpose by the Permanent Secretary for Justice.

Section 6(4) of the Mauritius Law Reform Commission Act 1992 (repealed by the 2005 Act) also provided that the Attorney-General may designate a public officer to act as Secretary to the Commission and such other officers to assist the Commission in the discharge of its functions.

Commission set up, could not operate effectively because of non-availability of staff:⁴⁵

The Commission at present does not have any staff. The Act envisaged that the Attorney-General's office would provide "officers to assist the Commission in the discharge of its functions". This has never materialised. The Commission understands that the Attorney-General's office is under heavy pressure as far as staffing is concerned and understands that it may not be in a position to delegate any officer to the Commission to assist it.

Yet not a single law reform commission abroad operates without a full team of professional staff of its own

The lack of staff seems to have been the major stumbling block to the proper operation of the Commission. Researching a theme, debating on it and writing up a report are all time consuming. It was not very realistic to have expected part-time members and a part-time Chairman to undertake the work in the absence of officers delegated by the Attorney-General's Office.

In a number of small Commonwealth states, although the staff are public servants recruited by a Public Service Commission or other equivalent body, provision is also made for the recruitment of personnel by the Law Commission.⁴⁶ It is crucial for a Commission to be entrusted the power to recruit personnel on such terms and conditions as it may think fit (having regard to pay grading in the public service and the need to recruit and retain competent personnel).⁴⁷ In order to enable a Commission to evolve into a strong institution, it is essential that it should have high level core personnel which can develop expertise in law reform and keep

45 Report of the then Mauritius Law Reform Commission on "The Reform of the Law Reform Commission" [2004] at pp 18-19.

46 According to s 14 of the Lesotho Law Reform Commission Act 1993, the staff of the Commission shall be persons appointed or employed under the Public Service Order 1970 or employed under terms and conditions determined by the Minister.

Section 21 of the Papua New Guinea Constitutional and Law Reform Commission Act 2004 is to the effect that the staff of the Commission shall be officers or employees of the Public Service, but this does not prevent any person from being employed by the Commission, on contract or otherwise, for the purposes of the Commission.

Section 8 of the Solomon Islands Law Reform Commission Act 1994 also provides that staff required for the purposes of the Act shall be officers or employees of the Public Service, but that does not prevent any person from being employed on contract or otherwise, under any other law to perform functions in relation to the Commission.

47 Section 13(3) of the Mauritius Law Reform Commission Act 2005 confers on the Commission the power to appoint, on such terms and conditions as it may determine, such persons as it thinks necessary for the efficient carrying out of its functions under the Act.

the impetus over time. Members, who more often than not are part-timers and will all, most likely, be at the Commission for a definite period of time, are unlikely to be able to provide that sort of momentum.⁴⁸

Staff must be managed, supervised and given a sense of direction. It is therefore not uncommon for an Act establishing a law commission to make provision for the appointment of a Chief Executive Officer or Executive Director or Secretary,⁴⁹ who is a high ranking officer on whose shoulder the proper functioning of the Commission will rest to ensure the work of the Commission is effectively carried out. There is also the need for staff to be trained properly and continuously.⁵⁰

48 Report of the then Mauritius Law Reform Commission on "The Reform of the Law Reform Commission" [2004] at pp 20-21.

49 Section 14(1) of the Namibia Law Reform and Development Commission Act 1991, as well as s 17(1) of the Papua New Guinea Constitutional and Law Reform Commission Act 2004, s 7(1) of the Solomon Law Reform Commission Act 1994 and s 5(1) of the Vanuatu Law Commission Act, provides for the post of Secretary to the Commission to oversee the work of staff.

Section 6(1)(a) of the Tonga Law Commission Act 2007 provides for the post of Director of the Commission, who shall be legally qualified.

Section 10 of the Samoa Law Reform Commission Act makes provision for the post of Executive Director, who is the administrative head of the Commission and has responsibility to supervise and direct the work of the Commission. The Executive Director shall be a person who holds a recognized law degree, has at least five years' experience as a barrister and/or solicitor, or in other legal work (including suitable academic positions).

Section 11 of the Mauritius Law Reform Commission Act 2005 provides that there shall be a Chief Executive Officer, a legally qualified person who 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.

50 F Kabui and A Guthleben, in their Presentation on "The Establishment of a Commission in Solomon Islands" (ALRAC Conference, 2004) at pp 3 and 4, made pertinent remarks about the training needs of research staff:

In terms of the policy skills that LRC lawyers should possess, we recognised that it was essential, in terms of sustainability and maximising the benefit to the lawyers and the country, that the recruitment, induction and education of our lawyers be as broad and inclusive as possible. Ideally over an extended period of time our lawyers will develop their essential skills in research, writing and legal policy formulation to a very high standard. In addition, they will need to be skilled in providing drafting instructions and working with parliamentary drafters to develop legislation. They will have to work closely with other Ministries and the judiciary as an integral part of the reform process to understand the capacity and limitations of the relevant agencies. The full range of legal policy skills will be developed and exercised to turn their research and intellectual work into practical, effective legislation.

C Recourse to Consultants and other Persons with Specialised Knowledge

A law reform agency in a small state may be called upon to review aspects of the law requiring specialised knowledge, and in respect of which members and staff may not have the required expertise. Most of the law commissions in small Commonwealth states have been conferred the power to recruit consultants for any of their projects.⁵¹

Law commissions have also been conferred the power to establish an advisory committee or panel, for advising and assisting it in any particular project, which

51 According to s 15(1) of the Lesotho Law Reform Commission Act 1993, the chairperson may, with the approval of the Minister, engage persons having suitable qualifications and experience as advisers or consultants to the Commission. Section 7(6) of the Namibia Law Reform and Development Commission Act is to the effect that the Commission may, with the approval of the Minister in consultation with the Minister of Finance, on a temporary basis or for a particular matter which is being examined by it, employ any person with special knowledge of any matter relating to the work of the Commission, or obtain the co-operation of any body, to advise or assist the Commission in the exercise of its powers and the performance of its duties and functions under the Act.

Section 5(1)(a) of the Trinidad and Tobago Law Reform Act 1969 (as amended in 2000) provides that the Commission may, in the performance of its functions consult any person who has specialised knowledge in any branch of the law or technical expertise in any particular field.

Section 13 of the Tonga Law Commission Act 2007 is to the effect that the Commission may, for the purpose of any aspect of its functions or for the examination by the Commission of any particular law, engage specialists on a temporary basis to advise the Commission or consider any matter which should, in the opinion of the Commission, be referred to such person and to report thereon to the Commission. Section 13(1) of the Samoa Law Reform Commission Act 2008, as well as s 3(6) of the Fiji Law Reform Commission Act 1979 (as amended in 1985), makes provision for the appointment of consultants.

According to s 14 of the Mauritius Law Reform Commission Act 2005, the Commission may engage, on such terms and conditions as it may determine, persons with suitable qualifications and experience as consultants to the Commission. Pursuant to s 14 of the Act, Robert Louis Garron, Professeur Honoraire at the Faculty of Law of the University of Aix-Marseille, has been working for the Commission 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, Vice-Doyen of the Faculty of Law of the University of Réunion, is currently providing assistance on an ad hoc basis as consultant for the reform of the Criminal Code.

may consist of persons having specialised knowledge in, or particularly affected by, the matter to be studied.⁵²

D Funding and Operational Capability

The operating expenses of law commissions in small states are invariably met from grants provided by Parliament, with provision being made for them to be able to benefit from donor assistance.⁵³ Funding is a critical issue for any law reform agency; it demonstrates the political willingness to commit funds to the process.⁵⁴ Funding must be sufficient to enable it effectively to discharge its mission with

52 Section 5(1) of the Trinidad and Tobago Law Reform Act 1969 (as amended) makes provision for the appointment of committees by the Commission to provide advice and information and to consider and report on any matter under consideration; appointment of persons as members of a committee is not restricted to members of the legal profession. Section 4(3) of the Dominica Law Reform Commission Act 1992 also provides that the Commission may set up temporary or standing committees to examine particular branches of the law with a view to making recommendations as to reform, either in the form of proposals, reports or draft Bills.

Under s 3(6) of the Fiji Law Reform Commission Act 1979 (as amended in 1985), for the purposes of the examination by the Commission of any particular branch of the law, the Attorney-General may appoint on a temporary basis a committee to advise the Commission and to consider any matter which should, in the opinion of the Commission, be referred to such committee and to report thereon to the Commission.

Under s 10(1)(b)(ii) of the Namibia Law Reform and Development Commission Act 1991, the Commission may, if it deems it necessary for the effective performance of its duties or functions, establish a committee, which shall consist of such members of the Commission as the Commission may designate and the other persons appointed by the Minister for the period determined by the Minister.

According to s 8(1) of the Mauritius Law Reform Commission Act 2005, for the purposes of advising and assisting the Commission in any particular project, the Commission may establish an advisory panel presided over by a member and consisting of persons having specialised knowledge in, or particularly affected by, the matter to be studied and such other members as the Commission may deem appropriate. Currently, there are three Advisory Panels, dealing respectively with "Family Law and Law of Persons", "Financial Services Law", and the "Jury System".

53 *Vide*, for instance, s 16 of the Lesotho Law Reform Commission Act 1993, s 15(1) of the Mauritius Law Reform Commission Act 2005, s 9 of the Solomon Law Reform Commission Act 1994.

54 What is said in the 2011 Annual Report of the Vanuatu Law Commission is indicative of the type of constraints a law reform agency may face in a small state:

While the Law Commission Act [Cap 115] (the Act) has been in place since 1980, steps to formally establish the VLC were not taken until 2009. In August 2011, the first Secretary of the VLC, Mrs Bertha Pakoasongi, was appointed.

competent and motivated staff operating in a conducive environment (adequate office space with the required logistics).⁵⁵

IV FUNCTIONS AND POWERS OF LAW REFORM AGENCIES IN SMALL STATES AND THEIR WORKING METHODOLOGY

A Functions and Powers of Law Commissions

Law commissions in small Commonwealth states are invariably mandated to review laws and make recommendations for reform.⁵⁶ Their functions may include the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments, the simplification of the law, the development of new approaches to and new concepts of the law in keeping with the changing needs of society, the adoption of new or more effective and

55 It is quite apposite to refer to what was said by F Kabui and A Guthleben, in their Presentation on "The Establishment of a Commission in Solomon Islands" (ALRAC Conference, 2004) at pp 4-5:

In 2005, the then Minister responsible for law and justice appointed the former Chairman of the then defunct Law Reform Commission, a sitting High Court judge, the acting Chairman of the Law Reform Commission. The Minister also appointed the four other part-time members of the Commission. These appointments were rather symbolic in nature in that there was no budget for the Law Reform Commission for the financial year 2005 There was however a budget for the Law Reform Commission for the financial year 2006.

In April, 2006, the acting Chairman of the Law Reform Commission retired from the bench and was immediately appointed the full-time Chairman of the Law Reform Commission. Although there was a budget, the Law Reform Commission (again) had no staff, office, stationary, furniture and equipment. The new Chairman had to operate from his High Court Chambers with the permission of the Chief Justice as a temporary measure until the Commission found a home. Immediate recruitment of staff was not possible due to lack of office space. The task of finding a suitable office space took longer than expected In late October, 2006, an office was located and rented by AusAID for the Commission plus the purchase of furniture, computers, stationary, telephone service etc. The Chairman, a typist and a clerk immediately moved into the new premises.

56 For instance, s 4 (1) of the Mauritius Law Reform Commission Act 2005 is to the effect that the functions of the Commission shall be to keep under review in a systematic way the law of Mauritius; to make recommendations for the reform and development of the law of Mauritius; and to advise the Attorney-General on ways in which the law of Mauritius can be made as understandable and accessible as is practicable.

Section 6(b) of the Samoa Law Reform Commission Act 2008 provides that the functions of the Commission are to research and analyse areas of law considered to be in need of reform and report its recommendations for reform.

economical methods for the administration of the law and the dispensation of justice,⁵⁷ as well as the codification of the law.⁵⁸

In some states, with the colonial legacy of plural legal systems, comprising laws and legal institutions from both the Common Law and the customary legal system, law commissions are also tasked to review customary law.⁵⁹ It has been argued by Teleiai Lalotoa Mulitalo Ropinisone Silipa Seumanutafa, in her book *Law Reform*

57 For instance, s 4(1) of the Trinidad and Tobago Law Reform Act 1969 (as amended in 2000) is to the effect that it shall be the duty of the Commission to keep under review all the law applicable to Trinidad and Tobago with a view to its systematic development and reform, including in particular the modification of any branch of the law as far as that is practicable, the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law.

Section 7(1)(a) of the Lesotho Law Reform Commission Act 1993 provides that the functions of the Commission are to review the laws of Lesotho with a view to the systematic development and reform of law, including in particular

- (i) the modernization of the law by bringing it into accord with current conditions; and
- (ii) the elimination of defects in the law; and
- (iii) the simplification of the law; and
- (iv) the adoption of new or more effective methods for the administration of the law.

See also s 6 of the Namibia Law Reform and Development Commission Act 1991, s 4 of the Bahamas Law Reform and Revision Act 1975, s 4(1) of the Dominica Law Reform Commission Act 1992, s 5(1) of the Fiji Law Reform Commission Act 1979 (as amended in 1985), s 12(2) of the Papua New Guinea Constitutional and Law Reform Commission Act of 2004, s 5(1) of the Solomon Islands Law Reform Commission Act 1994, s 29(1) of the Tonga Law Commission Act 2007, s 7 of the Vanuatu Law Commission Act 1980, as well as section of the Cayman Islands Law Reform Commission Law 6 of 2005.

58 Such as s 4 of the Bahamas Law Reform and Revision Act 1975; s 6(b) of the Namibia Law Reform and Development Commission Act 1991; s 5(1)(a) Fiji Law Reform Commission Act 1979 (as amended in 1985); s 29(1)(a) of the Tonga Law Commission Act 2007.

59 Section 6(c) of the Namibia Law Reform and Development Commission Act 1991 provides that one of the objects of the Commission shall be the integration or harmonization of the customary law with the common and statutory law.

Section 12(2)(d) of the Papua New Guinea Constitutional and Law Reform Commission Act of 2004, as well as s 5(1)(d) of the Solomon Law Reform Commission Act 1994, requires of the Commission that it makes recommendations in relation to the restatement, codification, amendment or reform of customary laws. is also to the same effect.

According to s 7(b) of the Vanuatu Law Commission Act 1980, one of the functions of the Commission is the reflection in the law of the distinctive concepts of custom, the common and civil law legal systems and the reconciliation where appropriate of differences in those concepts.

Section 4 of the Samoa Law Reform Commission Act lays down that the purpose of the Act is to facilitate the review, reform and development of the laws of Samoa in order to:

- (a) promote Samoan custom and traditions;
- (b) enhance the social, cultural, economic and commercial development of Samoa; and
- (c) ensure that the laws of Samoa are kept in a modern state which meets the needs of Government and the community.

in Plural Societies,⁶⁰ whilst focusing on Samoa, that South Pacific countries continue to adopt a Western approach to law reform without considering legal pluralism, which often results in laws which are unsuitable and irrelevant to Samoa; effective law reform in Samoa can only be achieved where the law reform process recognises the legitimacy of the two primary legal systems.

A law commission may also exceptionally be required to review the workings of the Constitution⁶¹ and submit comments on any Bill.⁶²

60 Teleiai Lalotoa Multitalo Ropinisone Silipa Seumanutafa. *Law Reform in Plural Societies* (Springer International Publishing (The World of Small States 2) (2018)).

61 Section 12(1) of the Papua New Guinea Constitutional and Law Reform Commission Act of 2004 requires of the Constitutional and Law Reform Commission provides that the Commission shall inquire into and review the workings of the Constitution and the Organic Laws, and inquire into such other matters of a constitutional nature as directed by the Head of State.

As to the constitutional dimensions of law reform in the Pacific, see G Powles "Challenge of Law Reform in Pacific Island States" in B Opeskin and D Weisbrodt (eds) *The Promise of Law Reform* (Federation Press, Sydney, 2005) at pp 416-419.

62 According to s 9 of the Law Commission Act 1980 of Vanuatu:

- (1) When a Government bill is published the Commission may submit comments and recommendations on the bill by notice in writing to the Speaker before any debate on the bill is commenced;
- (2) When the Speaker receives a private member's bill he shall furnish the Commission with a copy so that it may, if it considers fit, give the Speaker notice of its comments and recommendations as provided in subsection (1) for Government bills;
- (3) The Speaker shall provide each member of Parliament with a copy of any notice of the Commission received in accordance with subsection (1) or (2) as soon as practicable after he has received it.

The aspects of the law to be reviewed are generally referred to the law commission by the law Minister,⁶³ who may also request the Commission 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.⁶⁴ There is also the opportunity given to the Law Commission to consider proposals from stakeholders⁶⁵ and to embark on projects

63 Section 6(1) of the Mauritius Law Reform Commission Act 2005 thus provides that 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.

Under s 6(b) of the Samoa Law Reform Commission Act 2008, the functions of the Commission are, *inter alia*, in accordance with references made to it by the Prime Minister, Cabinet or the Attorney-General (whether at the Commission's suggestion or otherwise), to research and analyse areas of law considered to be in need of reform and report its recommendations for reform to the Prime Minister and the Attorney-General. Section 9(3) further provides that the Prime Minister, Cabinet and the Attorney-General may at any time require the Commission to examine any aspect of the laws of Samoa and the Commission shall review the law accordingly and report to the Prime Minister with its recommendations.

See also, for instance, s 7(1)(b)-(e) of the Lesotho Law Reform Commission Act 1993; s 4(2)(a) of the Dominica Law Reform Commission Act 1992; s 5(2)(a) of the Fiji Law Reform Commission Act 1979 (as amended in 1985); s 12(2) of the Papua New Guinea Constitutional and Law Reform Commission Act of 2004; s 5(1) of the Solomon Law Reform Commission Act 1994; s 29(2)(c) of the Tonga Law Commission Act 2007; and s 8(a) of the Vanuatu Law Commission Act 1980.

64 Section 4(d) of the Bahamas Law Reform and Revision Act 1975; s 4(2)(d) of the Dominica Law Reform Commission Act 1992; s 4 (1) (f) of the Trinidad and Tobago Law Reform Act 1969 (as amended in 2000); s 29(2)(c) of the Tonga Law Commission Act 2007.

In some instances, such function can be performed without the need for request from the law Minister. Section 6(c) of the Samoa Law Reform Commission Act 2008 thus provides as one of the functions of the Commission that it shall advise Government Ministries and agencies on the manner or content of reviews of the law conducted by those Ministries and agencies. According to s 11(b) of the Papua New Guinea Constitutional and Law Reform Commission Act 2004, the Commission shall provide advice and information to any government department or governmental institution, authority, organisation, instrumentality or body concerned with proposals for the reform or amendment of a law.

65 Section 7(2) of the Namibia Law Reform and Development Commission Act 1991 provides that the Commission may invite and receive any suggestions relating to its objects from any person or body and may include such suggestions in its work program. According to s 4(1)(a) and (b) of the Trinidad and Tobago Law Reform Act 1969 (as amended in 2000), the Commission may receive and consider suggestions for the reform of the law which may be forwarded to it (either on the invitation of the Commission or otherwise) by Judges, public officials, lawyers and members of the public generally; receive and consider proposals for changes in the law recommended by any Law Reform Committee, Association of Lawyers or other learned bodies. Section 4(2)(a) of the Dominica Law Reform Commission Act 1992 is also to the effect that the Commission may, in the exercise of its functions, receive and consider proposals for changes in the law recommended by any Law Reform Committee, Association of Lawyers or other learned body. See also s 5(2) (b) of the Fiji Law Reform Commission Act 1979 (as amended in 1985), s 29(2)(b) of the Tonga Law Commission Act 2007 and s 8(a) of the Vanuatu Law Commission Act 1980.

on its own initiative,⁶⁶ with the approval of the law Minister.⁶⁷ The rationale is that:⁶⁸

Having a law reform commission that has a law reform agenda completely different from Government could mean that its recommendations would probably only fall on

According to s 5(2)(a) of the Mauritius Law Reform Commission Act 2005, the Commission may consider any proposal made to it by any person; the Commission has indicated, in its 2008 Annual Program of Review, Reform and Development of the Law, at p 2, the criteria used for the selection of projects:

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);

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;

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.

66 Section 8(b) of the Vanuatu Law Commission Act 1980 is to the effect that the Commission may on its own initiative carry out such studies and research of a legal nature as it may consider necessary for carrying out its functions including research relating to other legal systems. See also s 5(2)(a) of the Mauritius Law Reform Commission Act 2005.

67 It is typically provided in the legislation establishing a law commission that it is required to submit to the Law Minister, for his approval, a programme for the review of specified aspects of the law. Section 4(1)(c) of the Trinidad and Tobago Law Reform Act 1969 (as amended in 2000) provides that the Commission shall prepare and submit to the Minister from time to time specific programmes for the examination of different branches of the law with a view to reform including recommendations as to whether such examination should be carried out by the Commission or some other body. Section 4(b) of the Bahamas Law Reform and Revision Act 1975, as well as s 4(3) Mauritius Law Reform Commission Act 2005, is to the same effect.

Subsections (1) and (3) of s 7 of the Namibia Law Reform and Development Commission Act 1991 are to the effect that, in order to achieve its objects, the Commission shall from time to time prepare and submit to the Minister for approval, programmes in which the various matters which in its opinion require consideration are included in order of priority, and that the Commission shall, as far as possible in order of priority, examine the matters appearing on any programme as approved or amended by the Minister. Similarly, s 6 of the Fiji Law Reform Commission Act 1979 (as amended in 1985) provides that the Commission shall, before setting a work programme for any year, seek the approval of such programme by the Cabinet through the Attorney-General, and the implementation of such programme is subject to that approval and the degree of priority (if any) decided on by the Cabinet and notified by the Attorney-General to the Commission. Section 9(1)(a) and 9(4) of the Samoa Law Reform Commission Act 2008, as well as s 30 of the Tonga Law Commission Act 2007, are to the same effect.

68 MC Leung Wai, Attorney-General of Samoa, in his presentation at the ALRAC Conference in 2008 about "Samoa's Experience with the Establishment of a Law Reform Commission", at para 35.

deaf ears. Whilst it is important that a law reform commission be allowed to look into areas of law not required by Government, its resources should not all be directed into such areas.

In some instances, law commissions are also requested, when making recommendations for reform, to prepare draft legislation.⁶⁹ This helps tap the benefits that a legislative drafter may bring to the law reform process,⁷⁰ thereby ensuring that "if Government wants to take the law reform to the next level, it can easily refer the draft law to the Attorney General's Office to be finalised for referral to Cabinet before reaching Parliament."⁷¹

To perform their functions, law commissions are empowered to request information from any Government department, any organisation or person in relation to the review, reform or development of any aspect of the law;⁷² obtain such information in regard to the laws and legal systems of other countries as is likely to facilitate the performance of any of its functions;⁷³ initiate, sponsor and carry out such studies and research;⁷⁴ publicise its work, conduct public hearings,

69 According to s 4(2) of the Mauritius Law Reform Commission Act 2005, the Commission shall, when making its recommendations, where applicable and as far as practicable, attach a draft Bill to the recommendations. Section 7(4) of the Namibia Law Reform and Development Commission Act 1991 is to the effect that, if after examining any matter the Commission is of the opinion that legislation ought to be enacted with regard to that matter, the Commission shall prepare draft legislation for that purpose. See also s 4(c) of the Bahamas Law Reform and Revision Act 1975; s 4(2)(b) of the Dominica Law Reform Commission Act 1992; s 4(1)(d) of the Trinidad and Tobago Law Reform Act 1969 (as amended in 2000); s 29(2)(d) of the Tonga Law Commission Act 2007.

70 PP Biribonwoha "The Role of Legislative Drafting in the Law Reform Process" [2006] 32(4) CLB 601-608.

71 MC Leung Wai, Attorney-General of Samoa, in his presentation at the ALRAC Conference in 2008 about "Samoa's Experience with the Establishment of a Law Reform Commission", at para 35.

72 Section 11 (a) of the Papua New Guinea Constitutional and Law Reform Commission Act 2004; s 5(2)(d) of the Mauritius Law Reform Commission Act 2005; s 7(2)(b) of the Samoa Law Reform Commission Act 2008; s 6(a) of the Solomon Islands Law Reform Commission Act 1994.

73 Section 4(e) of the Bahamas Law Reform and Revision Act 1975; s 4(2)(e) of the Dominica Law Reform Commission Act 1992; s 4(1)(g) of the Trinidad and Tobago Law Reform Act 1969 (as amended in 2000); s 11(g) of the Papua New Guinea Constitutional and Law Reform Commission Act 2004; s 6(g) of the Solomon Islands Law Reform Commission Act 1994.

74 Section 5(2)(b) of the Mauritius Law Reform Commission Act 2005; s 11(e) of the Papua New Guinea Constitutional and Law Reform Commission Act 2004; s 7(2)(a) of the Samoa Law Reform Commission Act 2008; s 6(e) of the Solomon Law Reform Commission Act 1994.

Section 8(b) of the Vanuatu Law Commission Act 1980 is to the effect that the Commission may, for the performance of its functions, on its own initiative carry out such studies and research of a legal nature as it may consider necessary including research relating to other legal systems.

seek comments from the public on its proposals, consult any person or class of persons;⁷⁵ hold seminars and conferences on appropriate legal issues.⁷⁶

In some instances, a law commission may be empowered to summon witnesses and call for the production of document, with the same powers as a High Court or a Commission established under a Commission of Inquiry Act.⁷⁷

In order to render a law commission accountable to the Legislature, and make the latter aware of its work (and its recommendations for changes to the law), the commission is statutorily required to submit periodic reports (generally annually)

75 Section 5(2)(c) of the Mauritius Law Reform Commission Act 2005; s 7(2)(c) of the Samoa Law Reform Commission Act 2008.

76 Section 11(d) of the Papua New Guinea Constitutional and Law Reform Commission Act 2004; s 6(d) of the Solomon Law Reform Commission Act 1994.

77 Section 7(5) of the Namibia Law Reform and Development Commission Act 1991 entrusts to the Commission the following powers:

(a) (i) For the purpose of ascertaining any matter relating to a subject being examined by it, the Commission shall have the powers which the High Court of Namibia has, to summon witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents and objects.

(ii) A summons for the attendance of a witness or for the production of any book, document or object before the Commission shall be signed and issued by the secretary of the Commission in a form prescribed by the chairperson of the Commission, and shall be served in the same manner as a summons for the attendance of a witness at a criminal trial in the High Court of Namibia.

(iii) If required to do so by the chairperson of the Commission a witness shall, before giving evidence, take an oath or make an affirmation, which oath or affirmation shall be administered by the chairperson or such official of the Commission as the chairperson may designate.

(iv) Any person who has been summoned to attend any sitting of the Commission as a witness or who has given evidence before the Commission shall be entitled to the same witness fees, as if he or she had been summoned to attend or had given evidence at a criminal trial in the High Court of Namibia held at the place of such sitting, and in connection with the giving of any evidence or the production of any book or document before the Commission, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book or document in that court, shall apply.

(b) Where the Commission has summoned any person in accordance with this subsection, the evidence and addresses of such a person shall be heard by the Commission in public, but the chairperson of the Commission may, in his or her discretion, exclude from the place where such evidence is to be given or such address is to be delivered any person whose presence at the hearing of such evidence or address is, in his or her opinion, not necessary or desirable.

According to s 12(5) of the Papua New Guinea Constitutional and Law Reform Commission Act 2004, the members of the Commission shall have, for the purposes of any inquiry, all the powers, authorities, protections and immunities conferred on a Commission under the Commissions of Inquiry Act 1951.

on its activities to the law Minister for tabling in Parliament.⁷⁸ In Papua New Guinea, provision is made for the reports and recommendations of the Constitutional and Law Reform Commission to be brought to the attention of Parliament.⁷⁹

B Working Methodology of Law Commissions

A Law Commission's working method in a small state may typically be as follows:

- (1) finding out whether there is a problem, and if there is, defining exactly what it is;
- (2) researching and summarising the existing law relevant to the topic;
- (3) suggesting how the relevant law might be changed to solve the problem;
- (4) preparing and publishing a consultative document based on items (1), (2) and (3);
- (5) receiving and discussing representations made in response to the consultative document;
- (6) preparing and publishing a final report culminating in either a detailed brief for the Law Draftsman or in a draft law prepared in consultation with the Law Draftsman.⁸⁰

78 According to s 9(2) and (3) of the Namibia Law Reform and Development Commission Act 1991, the Commission shall annually not later than the first day of March submit to the Minister a report on all its activities during the previous year, and the report submitted to the Minister shall be laid upon the Table of the National Assembly by the Minister within one month after receipt thereof if the National Assembly is then in ordinary session, or, if the National Assembly is not then in ordinary session, within one month after the commencement of its next ensuing ordinary session. Section 7 of the Trinidad and Tobago Law Reform Act provides that the Commission shall submit an annual report of its activities to the Minister who shall cause the report to be laid in Parliament. See also s 5 of the Bahamas Law Reform and Revision Act 1975, as well as s 17 of the Mauritius Law Reform Commission Act 2005, s 5(3) of the Fiji Law Reform Commission Act 1979 (as amended in 1985), s 9 of the Samoa Law Reform Commission Act 2008, and s 10 of the Solomon Islands Law Reform Commission Act 1994, which provide for the annual submission of a report of the Commission on its activities to the Legislature.

79 Section 15(5) of the Papua New Guinea Constitutional and Law Reform Commission Act 2004 is to the effect that reports and recommendations of the Commission, on the workings of the Constitution and its Organic Laws, shall be forwarded to the Minister through the office of the Attorney-General for presentation to Parliament. Section 12(2)(f) of the Act provides that the Commission, in reviewing other laws, shall liaise with the National Government and any other implementing Parliament about its recommendations. Section 16 of the Act further provides that, if the Parliament or a Committee of the Parliament requires the Commission to furnish to any information concerning the performance of the functions or the exercise of the powers of the Commission, the Commission shall comply with the requirement.

80 The Jersey Law Commission's working method, as reproduced as Annex B to its 2004 Annual Report.

Although a law commission in a small state would be committed to comparative legal research in order to evaluate the merits and demerits of its law in the light of the experience of other jurisdictions (laws should reflect best international practices),⁸¹ legal transplants must be made to adapt to the local context: laws must reflect and advance a country's social and economic interests. A law commission would have to be mindful to avoid importing "models" and transplanting laws that are inconsistent with national legal, customary and socio-economic norms.⁸²

Consultations with all the relevant stakeholders are regarded as crucial for the performance of a law commission's functions and are invariably resorted to in order to develop greater awareness of legal issues and contribute to capacity building for those called upon to apply the law.⁸³ The main reasons for consultation are: to establish how other people view the problems; find out what they think of the

81 The Mauritius Law Reform Commission in a Brief on its Work in September 2016, had this to say at para 25:

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.

82 In his presentation at ALRAC 2008 Conference on "The Birth and Rebirth of law Reform Agencies: The Establishment of the Vanuatu Law Commission", Al Kalsakau, Attorney-General of Vanuatu, laid emphasis on this aspect. This is what he had to say:

New laws in all jurisdictions are often inspired by foreign experiences ... in developing countries "legal transplants" or imported laws are common practice. Whilst well intentioned, donors and law reformers need to avoid the trap of drafting new laws to effect change and overcome loop holes or deficiencies with current systems without fully appreciating and understanding the role of custom traditions and the way institutions and enforcement agencies functions and are resourced. New laws do not solve problems simply by virtue of the fact they exist and laws and regulations that are overly complex or fail to take local context into account will not be effective and can in fact create more problems than they solve.

83 See, for instance, Mauritius Law Reform Commission's Brief on its Work, September 2016, at para 26.

commission's proposed solutions; alert the Commission to how the law works in practice; refine the proposals of the Commission; reinforce democratic values and give people a chance to be heard; and build a consensus in favour of reform.⁸⁴

Without consultation, without engagement with the law reform process, there can be no sense by the community of the relevance of the laws to their way of life and the importance of the rule of law in their day-to-day business. A sense of ownership is derived from consultation and participation in the process. Without this engagement, there is always the potential for conflict.⁸⁵ A law commission contributes to the strengthening of good governance and legitimacy by engaging communities in public debate over important social, legal, economic and political concerns and by recommending to legislatures areas of law that impede good governance and/or which are inequitable, discriminatory or otherwise in need of reform.⁸⁶

Following the necessary research, discussion and consultation on any project, a law commission normally produces one of the following publications:

- (a) Issue Paper: this is a paper identifying issues on which interested parties are invited to make submissions;
- (b) Research Paper or Review Paper: this contains the findings of research (analytical or empirical) done on specific topics;
- (c) Consultation Paper: a paper highlighting matters regarded as problematic and outlining reform options;
- (d) Discussion Paper or Working Paper or Position Paper: a thorough paper on an area of the law regarded as unsatisfactory with proposals for reform;

84 Namibia Law Reform and Development Commission, "Operating Manual for Law Reform", at p 13.

See also R Atkinson "Law Reform and Accessibility" (2004) *The Commonwealth Lawyer* 13(2) 29, where the author notes that public consultations and meetings serve two important purposes: to provide members of the public with an opportunity to raise concerns and express their views and to enable the Commission to perform an educational role.

85 G Powles "Challenge of Law Reform in Pacific Island States" in B Opeskin and D Weisbrodt (eds) *The Promise of Law Reform* (Federation Press, Sydney, 2005) quoting Mr M Qetaki, Chairman of Fiji Law Reform Commission, in his commentary on "Law Reform in the Pacific Area" (Paper presented at 2004 ALRAC Conference).

86 P Macfarlane and C Lakshman "Law Reform in the South Pacific" (2005) 9(1) *Journal of South Pacific Law*.

- (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 (including the inclusion of a draft Bill).⁸⁷

A few examples may be given to illustrate the work of the law commissions. When the Papua New Guinea Constitutional and Law Reform Commission reviewed the law on committal proceedings in 2007, it first produced an Issues Paper, in which it sought any form of submission from a broad cross-section of the community, as well as those with a special interest in the inquiry.⁸⁸ The Issues Paper was followed by wide consultations before the Final Report containing

87 The Namibia Law Reform and Development Commission, in its "Operating Manual for Law Reform", indicates that in a relation to a project the following stages must be followed sequentially:

- *Drafting of the Project Initiation Document;
- *Development of the Issue Paper;
- *Stakeholder consultation on the Issue Paper;
- *Development of the Working Paper (Discussion Paper);
- *Workshop on the Working Paper;
- *Drafting of the relevant Bill;
- *Consultation on the draft Bill;
- *Drafting Final Report with attendant Bill;
- *Consideration of Report by full Commission;
- *Submission in terms of Section 9(1).

88 Issues Paper 1 on "Review on Committal Proceedings" (March 2007). The Paper addressed conceptual issues on the essence, nature and purpose and functions of committal proceedings; an overview of the current law, practice and procedure governing committal proceedings; and preliminary issues on aspects of the law in need of reform. The Paper was meant for consultation widely within the community and the legal profession including and without limiting other consultation, regularly (whether separately or in a group or groups) with each of the Supreme Court, the National Court, the District Court and the Magistrates Court, the PNG Royal Constabulary, the Public Prosecutor, the Public Solicitor, the PNG Corrections Service, the Law Society of PNG, the Ombudsman Commission and the Department of Justice and Attorney General.

recommendations for changes to the law, to which was attached the Proposed Draft Legislation, was submitted to Attorney-General.⁸⁹

When the Samoa Law Reform Commission reviewed the Crimes Ordinance 1961, an Issues Paper was released in December 2009 in which the current law and practice relating to the operation of the Crimes Ordinance 1961 were examined, and options for reform explored, including 78 questions about potential legislative change. The Commission received six written submissions in response to the Issues Paper, which are referenced throughout the Report. The Commission held public forums about the issues raised in the review on 5 and 17 March 2010 in Upolu and Savaii, respectively. Subsequently, in May 2010, a Report was submitted to the Prime Minister with a list of 62 recommendations as to changes to the law.⁹⁰

The Solomon Islands Law Reform Commission, as well as the Mauritius Law Reform Commission, have been conducting the review of their Criminal Codes in different stages with the release of Issue Papers, as well as Research and Discussion Papers, meant to stimulate public debate and submissions about possible reforms, followed by Interim Reports.⁹¹

89 Report on "Review of Committal Proceedings" (August 2007). After the issuance of the Issues Paper on 30 March 2007, the CLRC with the support of Working Committee members conducted extensive national consultations in the month of April 2007. Eight teams of at least three persons were sent out to all major centres and those other district urban centres which had District Courts. These teams took with them the Issues Papers and Questionnaires and discussed the issues raised in the Issues Papers and furthermore, administered questionnaires and inspected District Court registry files. In those provinces like Madang, Morobe, Eastern Highlands, Western Highlands and East New Britain where there are Public Prosecutor's Office, those teams who covered those areas also inspected the Public Prosecutor's Election Registration files for those Schedule 2 Matters – indictable offences triable summarily. After this consultation process, a Draft Report was released which incorporated the views, comments and submissions we obtained from the consultations. Soon after the Draft Report was released, a seminar was conducted in collaboration with the PNG Law Society at which seminar, the various proposals for reform were discussed with a view to finalising the report.

90 Issues Paper IP 01/09, followed by Report 01/10.

91 See, in respect Solomon Islands Law Reform Commission, Issues Paper 1 on "Review of Penal Code and Criminal Procedure Code [November 2008]; Issues Paper on "Property Offences" [2012]; Research Paper on "Sexual Offences – Sentencing" [2011]; Consultation Paper on "Mental Impairment, Criminal Responsibility and Fitness to Plead" [2010]; Consultation Paper on "Review of Sorcery Offence" [2013]; 1st Interim Report on "Corruption Offences" [2011]; 2nd Interim Report on "Sexual Offences" [2013]; 3rd Interim Report on "Mental Impairment, Criminal Responsibility and Fitness to Plead" [2013].

As regards the Mauritius Law Reform Commission, see, for instance, Issue Paper on «General Principles of Criminal Law» (February 2013) and Paper on "Changes to Books I & II of Criminal Code (General Provisions)" (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 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

In Jersey, the Law Commission, when tasked to review the "Best Evidence Rule in Civil Proceedings", released a Consultation Paper which was followed by a Report feed-back from stakeholders.⁹²

V LAW REFORM AGENCIES IN SMALL STATES AND THEIR COOPERATION WITH OTHER INSTITUTIONS AND THEIR INVOLVEMENT IN REGIONAL LAW REFORM INITIATIVES

A law commission in a small state stands to benefit from cooperation with other law reform agencies in its region or across the Commonwealth in order to tap the wealth of experience that other law reform agencies have. Despite great variation between law reform agencies, the features law reform agencies have in common are more important than their differences; their core functions are same and they experience very similar successes and difficulties.⁹³

It clearly makes sense for a law commission in a small state when reviewing an area of law to consider reviews of that area which have been conducted elsewhere. Having made due allowance for all the differences between the jurisdictions and the factors surrounding the area of law, a law commission can often find extremely useful ideas in the reports of another law reform agency.⁹⁴ The experience of other law reform agencies on methods and best practices about the manner in which the law reform process could be carried out can also be of great assistance to a law commission.⁹⁵ A law commission in a small state may find it advantageous to develop twining arrangements with larger law reform agencies; mutual support can be particularly helpful when facing new trends or difficulties.⁹⁶ Interaction with

aux mineurs et à la famille)" (August 2012), and Paper on "Changes to Book III of Criminal Code (Offences against Persons)" (March 2015); Issue Paper on "Offences against Property (1) ("Des appropriations frauduleuses")" (December 2013) and 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)" (March 2015); Review Paper on "Criminal Protection of Children's Rights" (May 2016) and Review Paper on "Law on Fraud" (May 2016); Interim Report on "Reform of Criminal Code" (May 2016).

92 In the Consultation Paper No 3 on "Best Evidence Rule in Civil Proceedings" (Oct 1999), the Commission looked at the problems to be addressed, the position in Jersey, the position under English Law, and in the light thereof made recommendations and raised questions for consultation. Thereafter, after having received comments following the publication of its consultation paper, it finalised its Report in September 2000.

93 M Sayers "Cooperation across Frontiers" in B Opeskin and D Weisbrodt (eds) *The Promise of Law Reform* (Federation Press, Sydney, 2005) at p 246.

94 Commonwealth Secretariat Paper on "Small States and Law Reform" [LMSCJ(07)11], at para 46.

95 *Ibid*, at para 48 where it is stated that Planning; Public participation and outside expertise; Research and publications; Communications; and Post-report work.

96 *Ibid*, at para 49.

other law reform agencies by way of visits, exchanges, secondments and internships may prove valuable for the capacity building of a law commission.⁹⁷ Involvement in regional arrangements would also be very helpful, such as membership of Association of Law Reform Agencies of Eastern and Southern Africa [ALRAESA],⁹⁸ participation in regional conferences (such as the Australasian Law Reform Agencies [ALRAC] Conferences, which since 1973 are held every two years); also membership of CALRAs [Commonwealth Association of Law Reform Agencies], established in 2003 to foster and promote international cooperation on law reform and is committed to strengthening independent law reform in the Commonwealth.

A law commission in a small state needs also to be involved in regional law reform initiatives, when there is great potential for such development in its region; this is the case particularly in the Caribbean and the Pacific.⁹⁹

VI CONTRIBUTION OF LAW REFORM AGENCIES IN SMALL STATES TO THE DEVELOPMENT OF THE LAW

In a small state, a law commission does not have to be large or expensive to make a worthwhile contribution to the development of the laws of its country.¹⁰⁰ It suffices that it has adequate resources put at its disposal and that it operates in an environment conducive to law reform.

In the Caribbean region, the Law Reform Commission of Trinidad and Tobago has made proposals for changes on aspects of the law, such as the law on compensation for victims of crime, the law on computer misuse, adoption law,

97 Ibid, at para 50.

98 ALRAESA was formally established in Windhoek, Namibia, in August 2003. It is an association of law reform agencies from the following countries: Botswana, Burundi, Kenya, Lesotho, Malawi, Mauritius, Namibia, Rwanda, South Africa, South Sudan, Swaziland, Uganda, Zambia, Zimbabwe, Tanzania and Zanzibar.

99 Commonwealth Secretariat Paper on "Small States and Law Reform" [LMSCJ(07)11], at para 54-60.

See also M Sayers "Law Reform: In the Commonwealth, In Small States and in the Caribbean" (2008) op cit n 7; TN Slade "Law Reform Potential in the Pacific" [ALRAC, 2004]; P Macfarlane and C Lakshman "Law Reform in the South Pacific" (2005) 9(1) Journal of South Pacific Law.

100 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), at para 33.

judicial review and the mechanisms for the protection of human rights.¹⁰¹ The Cayman Islands Law Reform Commission has recommended reforms for the development of the law with regard to, inter alia, landlord and tenant, legal aid, the practice of law by legal practitioners, consumer protection law, and contempt of court.¹⁰²

The Jersey Law Commission, with a rather modest budget,¹⁰³ has come up with proposals for reform of the law in relation to legislation such as trust law (rights of beneficiaries to information regarding a trust, the prohibition on trusts applying directly to Jersey immovable property), evidence (best evidence rule in civil proceedings, corroboration of evidence in criminal trials), law of tutelles, dégrèvement, law of real property, voisinage, law of contract, law on charities, law on security on immoveable property, law of partnership, bankruptcy, divorce, administrative redress, and appeal against criminal convictions.¹⁰⁴

101 See M Sayers "Law Reform: In the Commonwealth, in Small States and in the Caribbean" (Paper presented at Seminar on Constitutional and Administrative Law Issues in the Caribbean, which was organised by the Legal and Constitutional Affairs Division (LCAD) of the Commonwealth Secretariat and held at the Pegasus Hotel, Kingston, Jamaica, on 28 May 2008) at para 18; Law Reform Commission of Trinidad and Tobago Report on Mechanisms for the Protection of Human Rights [2005] 31(3) CLB 143-156.

102 Discussion Paper on "The Law on Landlord and Tenant" (September 2006); Preliminary Discussion Paper on "Review of the Legal Aid System in the Cayman Islands" (March 2006); Report on "Review of the Law regulating Legal Practitioners in the Cayman Islands" (May 2007); Discussion Paper "Entrenching Consumer Supremacy in the Cayman Islands Legislation" (November 2015); Consultation on "Contempt of Court" (July 2016).

103 The total annual cost of the Secretary's services is unlikely to exceed £1,500 in any one year (2015 Annual Report, at p 6).

104 The following Consultation Papers (seeking input into the reform process) had been released: (2016) Scoping consultation report on criminal appeals against conviction; (2016) Improving Administrative Redress in Jersey; (2015) Divorce Law; (2010) Voisinage; (2010) Bankruptcy (Désastre) (Jersey) Law 1990 Social Désastre; (2009) Topic report on corroboration of evidence in criminal trials; (2008) Prescription and Limitation; (2008) Law of Partnership; (2006) The Prohibition on Trusts Applying Directly to Jersey Immovable Property; (2006) Security on Immoveable Property; (2006) Jersey Law of Charities (revised); (2004) Jersey Law of Charities; (2002) Jersey Law of Real Property; (2002) Jersey Law of Contract; (2002) The law of Tutelles; (1999) Best evidence rule in civil proceedings; (1998) Dégrèvement; (1998) The rights of beneficiaries to information regarding a trust.

Final Topic Reports (containing recommendations) are as follows: (2015) Topic Report on Divorce; (2011) Topic report on voisinage; (2011) Topic report on Bankruptcy (Désastre) (Jersey) Law 1990 Social Désastre; (2010) Topic report on Jersey law of partnership; (2009) Topic report on corroboration of evidence in criminal trials; (2009) Topic report on Jersey law of charities; (2008) Topic report on law of security on immoveable property; (2004) Topic report on the Law of Contract; (2002) Topic report on best evidence rule in civil proceedings; (2002) Topic report on law of Tutelles; (1999) Topic report on dégrèvement; (1998) Topic report on rights of beneficiaries to information regarding a trust.

Law commissions in the Pacific islands have been active in reviewing various aspects of the laws relating to their legal systems in order to respond to the needs of their societies. The Fiji Law Reform Commission has, since its establishment in 1979, made recommendations for changes to the law on aspects such as community based alternatives to imprisonment, child abuse, the duty solicitor scheme, abortion, drink driving, the juvenile justice system, intellectual property and copyright, insurance, legal aid, solicitors trust accounts and legal practitioners fidelity fund, family law (divorce, affiliation, de facto relationships, maintenance, separation, custody and access, structure of family/domestic court), wills and succession, law regulating legal practitioners, criminal evidential rules (recent complaint, corroboration, confessions, competence and compellability, unsworn evidence, right to silence), bail, police powers, consumer protection, committal proceedings, liquor, bribery and corruption, prisons administration, and domestic violence.¹⁰⁵

105 The Reports/Papers include, inter alia, the following: (1983) DP on the Problems of Child Abuse; (1983) DP: Alternatives to Imprisonment; (1983) DP: The Duty Solicitor Scheme; (1984) DP: Review of the Prisons Act and subsidiary legislation; (1984) DP: The revision of laws relating to copyright in Fiji; (1984) Issues Paper: Imprisonment and Community based alternatives to imprisonment; (1986) Final Report: An examination of the laws and practices relating to Penal Policy in Fiji; (1986) Final Report: A review of the laws and practice of copyright and neighbouring rights in Fiji; (1993) Position Paper: Abortion law in Fiji and Proposals for Change; (1995) Final Report: Insurance Law Reform; (1996) Final Report: Legal Aid; (1996) DP: Rehabilitation and the problem of old convictions; (1996) Final Report: Solicitors Trust Accounts and Legal Practitioners Fidelity Fund Report; (1996) Working Paper: Family Law Working Group; (1996) Position Paper: Abortion law in Fiji and Proposals for Change; (1996) Final Report: Legal Practitioners Act Law Reform; (1997) DP: Family Law: Divorce; (1997) DP: Family Law: Affiliation; (1997) DP: Family Law: De Facto Relationships; (1997) DP: Family Law: Maintenance and Enforcement of Maintenance Orders; (1997) DP: Family Law: Marriage and Separation; (1997) DP: Family Law: Financial Support; (1997) DP: Family Law: Custody and Access; (1997) DP: Family Law: Structure of the Family/Domestic Court; (1997) Final Report: Drink Driving Report; (1997) Draft Bill: Juveniles Act Amendment Bill 1997; (1997) DP: Evidence law: Recent Complaint; (1997) DP: Evidence law: Corroboration; (1997) DP: Evidence law: Confessions; (1997) DP: Evidence law: Competence and Compellability; (1997) DP: Evidence law: Unsworn Evidence; (1997) DP: Evidence law: Right to Silence; (1997) DP: Evidence law: Expert Opinion Evidence; (1998) Final Report & Bill: Bail Law Reform Report; (1998) Issues Paper: Police Powers in Fiji; (1998) DP: Police Powers: Sources of Police Powers in Fiji; (1998) DP: Police Powers: Arrest and Detention; (1998) DP: Police Powers: Search and Seizure; (1998) DP: Police Powers: Investigation Procedures; (1998) Final Report: Police Powers in Fiji; (1998) Final Report & Bill: Intellectual Property and Copyright Law Reform in Fiji; (1998) Final Report & Bill: Consumer Credit, Hire Purchase; Bills of Sale Act & Sale of Goods Act; (1998) Final Report: Bankruptcy of Persons and Insolvency of Companies; (1998) Draft Bill: Criminal Procedure Code Amendment Bill 1998 (Bail can be appealed to the High Court); (1998) Draft Bill: Court of Appeal Act Amendment Bill 1998 (Bail) (jurisdiction of COA to entertain Bail appeals); (1998) Final Report: Sword sellers – Recommendations for law reform; (1998) DP: Cameras in the courtroom – televising coverage of court proceedings; (1998) DP: Revision of the Part VI and VII High Court Act; (1998) Final Report & Bill: Revision of the Part VI and VII High Court Act; (1999) Draft Bill: High Court Act Amendment Bill 1999 (increase in number of Puisne Judges to 12); (1999) Draft Bill: Penal Code Amendment Bill (Sacrilege

The Solomon Islands Law Reform Commission has, over the years, reviewed the Penal Code,¹⁰⁶ and also a matter of fundamental importance to the life of its people: Land below High Water Mark and Low Water Mark.¹⁰⁷

The Samoa Law Reform Commission has reviewed and recommended proposals for change on various aspects of its law: alcohol legislation, child care and protection legislation, civil procedure rules, commissions of inquiry legislation, coroners, the Crimes Ordinance, the Criminal Procedure Act, law relating to judicial system (District Court Act, Judicature Ordinance), law governing media regulation, law practitioners legislation, national heritage legislation, prisons law, sexual offenders' register legislation, the protection of Samoa's traditional knowledge and expressions of culture, and the Village Fono Act.¹⁰⁸

offence penalty increase); (1999) DP: Sexual Offences Against Children in Fiji; (1999) DP: Working Children in Fiji; (1999) DP: Children and Drugs; (1999) DP: Juveniles Justice in Fiji; (2000) Issues Paper: Sentencing law reform in Fiji; (2000) Final Report: Sexual Offences; (2000) DP: Wills and Succession law reform in Fiji; (2000) Final Report: FLRC Report for Children; (2001) Final Report: Wills and Succession Law in Fiji; (2002) Final Report: Committal Proceedings in Fiji; (2002) Issues Paper: Liquor Laws in Fiji; (2003) Final Report: Bribery & Corruption Reference: "Building an Anti-Corruption Culture for Fiji"; (2003) Final Report: Review of Liquor Laws in Fiji; (2004) Issues Paper: Prisons: Aspects of Prisons Administration; (2004) Issues Paper: Prisons: Matters promoting a shift from containment to corrections; (2004) Issues Paper: Prisons: Human Rights Considerations; (2004) Issues Paper: Prisons: HIV/AIDs in the Prisons Context; (2004) Discussion Paper: Domestic Violence: One: Context & Approach; (2004) Discussion Paper: Domestic Violence: Two: Criminal Justice System; (2004) Discussion Paper: Domestic Violence: Three: Civil Laws and Procedures; (2004) Final Report 1: Prisons Phase 1 Final Report and Draft Corrections Bill; (2005) Final Report 2: Prisons Phase 2 Final Report and Draft Regulation.

106 Issues Paper 1 on "Review of Penal Code and Criminal Procedure Code (November 2008); Issues Paper on "Property Offences" (2012); Research Paper on "Sexual Offences – Sentencing" (2011); Consultation Paper on "Mental Impairment, Criminal Responsibility and Fitness to Plead" (2010); Consultation Paper on "Review of Sorcery Offence" (2013); 1st Interim Report on "Corruption Offences" (2011); 2nd Interim Report on "Sexual Offences" (2013); 3rd Interim Report on "Mental Impairment, Criminal Responsibility and Fitness to Plead" (2013).

107 The Commission was requested to enquire and report on the following: (1) The current legal position regarding the ownership/control of beaches/shores and land below high water mark and low water mark; (2) The true position of ownership of beaches/shores and land below high water mark and low water mark in terms of customary land tenure; (3) Right of use of beaches/shores and land below high water mark and low water mark in custom; (4) The pros and cons pertaining to the current legal position in this regard; and (5) Changes in the law to reflect the true aspirations of the people of Solomon Islands.

A Consultation Paper was released in October 2009 for views from stakeholders and the Report was finalised in 2012, in which changes were recommended to the Land and Titles Act, the Customary Land Records Act, and the Town and Country Planning Land.

108 Issues Paper on "Alcohol Reform" (2013); Issues Paper on "Care and Protection Legislation to Protect Children (2009, IP 03/09) and Report on "Child care and Protection legislation" (2013, Final Report 11/13); Issues Papers on "Civil Procedure Rules: Supreme Court (Civil Procedure) Rules 1980 and Magistrates' Court Rules 1971 (2012, IP 10 & IP; 2014, IP 13); Issues Paper

The Vanuatu Law Commission, which became operational in 2011, has been able to address a few areas of law in need of reform and made recommendations for change, such as dangerous drugs legislation, public health legislation, water legislation, the law on marriage, civil status registration, the Leadership Code Act, and the Ombudsman Act.¹⁰⁹

The Papua New Guinea Constitutional and Law Reform Commission has during the past ten years reviewed and submitted proposals for change on aspects of the law on criminal justice system (committal proceedings, indictable offences triable summarily, law on sorcery and sorcery related killings, penalty provisions for criminal offences, laws on alcohol and drugs, review of district courts practices and procedure), ex parte proceedings, proof of business and electronic records, incorporated land groups and design of system of voluntary customary land registration, environmental and mining laws relating to management and disposal of tailings, laws on the development and control of informal economy, city planning and urban development.¹¹⁰ The Commission has also reviewed the

(2009, IP 05/09) and Report on "Commission of Inquiry 1964" (2011, Final Report 06/11); Issues Paper on "Coroners Ordinance 1959" (2009, IP 02/09); Issues Paper (2009, IP 01/09) and Report on "Crime Ordinance 1961" (2010, Report 01/10); Issues Paper (2010, IP 06/10) and Report on "Criminal Procedure Act 1972" (2012, Report 07/12); Issues Paper (2012, IP 09) and Report on "District Court Act 1969" (2013, Final Report 12/13); Report on "Judicature Ordinance 1961" (2011, Final Report 03/11); Issues Paper (2009, IP 04/09) and Report on "Law Practitioners Act 1976" (2011, Report 05/11); Discussion Paper (2011) and Report on "Media Regulation" (2012, Report 10/12); Discussion Paper (2012) and Report on "National Heritage Board" (2013, Report 13/13); Issues Paper (2010, IP 07/10) and Report on "Prisons Act 1967" (2011, Final Report 04/11); Issues Paper on "Protection of Samoa's Traditional Knowledge and Expressions of Culture" (2010, IP 08/10); Discussion Paper on "Sex Offenders' Register" (2013); Report on "Village of Fono Act 1990" (2012, Report 09/12).

109 Issues Paper on "Review of the Dangerous Drugs Act and the Penal Code" (IP No 1 of 2013) and Report on "Dangerous Drugs Act" (2013); Report on "Public Health Act" (2013); Issues Paper on "Review of Water Supply Act No 9 of 1985" (IP No 4 of 2013); Issues Paper on "Review of the Civil Status Registration" (IP No 1 of 2014); Issues Paper on "Review of Marriage Act" (IP No 2 of 2014); Issues Paper on "Review of Ombudsman Act" (IP No 1 of 2015); Issues Paper on "Review of the Leadership Code Act" (IP No 2 of 2015).

110 Issue Paper and Report on "Review of Committal Proceedings" (2007); Issue Paper and Report on "Review of Indictable Offences Triable Summarily" (2007); Issue Paper and Report on "Incorporated Land Groups and Design of System of Voluntary Customary Land Registration" (2007); Issue Paper (2012) and Report (2013) about "Review on Ex Parte Proceedings"; Issue Paper (2009) and Report (2012) on "Review of Proof of Business and Electronic Records"; Issue Paper (2011) and Report (2012) on "Review of the Law on Sorcery and Sorcery Related Killings"; Issue Paper (2013) and Report (2014) on "Review of Environmental and Mining Laws relating to Management and Disposal of Tailings"; Issue Paper (2014) and Report (2015) on "Review of the Laws on the Development and Control of Informal Sector"; Issue Paper on "Review of Laws on City Planning and Urban Development" (2013); Issue paper on "Review of All Penalty Provisions for Criminal Offences" (2013); Issue Paper on "Review of District Courts Practices and Procedures" (2013); Issue Paper on "Review of Laws on Alcohol and Drugs" (2015).

"Implementation of the OLPG & LLG (Organic Law on Provincial Government and Local-level Government) on Service Delivery Arrangements: A Six Provinces Survey".¹¹¹

In the African region, the Namibia Law Reform and Development Commission, which has recently celebrated 35 years of operation, has reviewed and recommended changes to various aspects of laws in order to enhance social justice and entrench a human rights culture in all spheres and aspects of the lives of its citizens, uplift vulnerable communities (pre-independent Namibia was characterised by institutionalised discrimination, which was based on race, gender and some other forms), and ensure that those that seek remedies for wrongdoing are appropriately assisted through various institutions and role players.¹¹² Aspects reviewed relate to family law (including the status of married women, maintenance, marital property, divorce, succession and estates), domestic violence, rape, customary law, public gatherings, the electoral system, fisheries, criminal procedure, domestication of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, administrative justice, insolvency law, Traditional Authorities in the Ovawambo Communities, Government Institutions Pension Fund Legal Framework, and the Transformation of the Polytechnic of Namibia into the Namibia University of Science and Technology.¹¹³

111 Monograph No 1 (2009).

112 Ms Y Dausab Chairperson, "Foreword" in the Annual Report 2015-2016; T Namiseb *Women and Law Reform in Namibia – Recent Developments* (2008).

113 Some of the Reports/Papers on aspects of laws reviewed are:

- LRDC 1 Aspects of Family Law: The Abolition of Marital Power and Equalisation of Rights between Spouses
- LRDC 2 The Ascertainment of Customary Law and the Methodological Aspects of Research into Customary Law: Proceedings of Workshop, February–March 1995
- LRDC 3 TW Bennett, Customary Law and the Constitution, October 1996
- LRDC 4 Report on the Law Pertaining to Rape
- LRDC 5 Report on Maintenance
- LRDC 6 Report on Small Claims Courts
- LRDC 7 Violence Against and Abuse of Women and Children Project: Formal Addresses made at the National Hearing-May 1997
- LRDC 8 Violence Against and Abuse of Women and Children Project: Verbatim Discussions held at the National Hearing-May 1997
- LRDC 9 Domestic Violence Cases reported to the Namibian Police – Case Characteristics and Police Responses
- LRDC 10 Report on Domestic Violence
- LRDC 11 Report on Uniform Consequences of Common Law Marriages (Repeal of Section 17(6) of Native Administration Proclamation, 1928 (Proclamation 15 of 1928))
- LRDC 12 Report on Customary Law Marriages
- LRDC 13 Report on Divorce
- LRDC 14 Report on Public Gatherings
- LRDC 15 Report on Marital Property

Many of the recommendations of the Namibia Commission have been implemented, such as the discriminatory concept of marital power, which was abolished by the Married Persons Equality Act;¹¹⁴ the recommendations arising out of the Domestic Violence Project have been implemented, and the Combating of Rape Act¹¹⁵ as well as the Combating of Domestic Violence Act¹¹⁶ have been enacted, both aiming at combating violence against women.

The Mauritius Law Reform Commission has since 2006, after the redesign it had undergone, embarked on a comprehensive review of Mauritian law and has submitted to the Attorney-General a significant number of Reports and Papers on various aspects of law reviewed, with recommendations for change (where appropriate). The recommendations are aimed at:

- (A) Strengthening the rule of law, consolidating good governance and democracy, and reinforcing the human rights protection system;¹¹⁷

LRDC 16 Report on Publications

LRDC 17 Report on Adjustment of Fines

LRDC 18 Further Report on Rape

LRDC 19 Electoral Law Reform Project: Revision and Reform of the Namibian Electoral Act, 1992

LRDC 20 Report on Succession and Estates

LRDC 21 Urgent and Targeted Report on Fisheries

LRDC 22 Working Paper on Issues Related to the Traditional Authorities in the Ovambo Communities

LRDC 23 Working Paper on Issues Related to Family Law in Namibia: Swakopmund Family Law Workshop

LRDC 24 Working Paper on Issues Related to the Criminal Procedure Act, 2004 (Act No 25 of 2004) and Statutory Time Limits Workshop

LRDC 25 Report on the Repeal of Obsolete Laws Project

LRDC 26 Government Institutions Pension Fund (GIPF) Legal Framework Discussion Paper

LRDC 27 Locus Standi – Discussion Paper

LRDC 28 Review of Administrative Justice in Namibia Concept Paper by Professor Hugh Corder

LRDC 29 Consumer Protection Discussion Paper

LRDC 30 Discussion Paper on the Transformation of the Polytechnic of Namibia into the Namibia University of Science and Technology

LRDC 31 Report on the Revision and Reform of the Namibian Electoral Framework

LRDC 32 Discussion Paper on Issues Relating to the Insolvency Act, 1936 (Act No 24 of 1936)

LRDC 33 Discussion Paper on the Possible Statutory Interventions to Curb the Alarming Spate of Domestic Violence, Murder and Gender Based Violence

LRDC 34 Report on the Domestication of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

114 Act No 1 of 1996. It has to be noted, however, that the abolition of marital power is not applicable to customary law marriages. Cf s 16 of the Act.

115 Act No 8 of 2000.

116 Act No 4 of 2003.

117 For instance, Report on "Access to Justice and Limitations of Actions against Public Officers and the State" (May 2008); Discussion Paper on "Judicial Review" (November 2009); Report on

- (B) Improving the judicial system, the operation of the legal profession and the provision of legal services;¹¹⁸
- (C) Modernising the civil justice system;¹¹⁹
- (D) Modernising the criminal justice system:
 - (1) Criminal investigation procedures;¹²⁰
 - (2) Criminal trial by jury;¹²¹
 - (3) Law on bail;¹²²
 - (4) Rules as to disclosure;¹²³
 - (5) Rules as to costs;¹²⁴
 - (6) Criminal evidential rules;¹²⁵
 - (7) Effective handling of criminal cases;¹²⁶ and

"Local Government Reform" (June 2009); Report on "Law relating to NGOs" (November 2008); Issue Paper on "Social Partnership Framework" (November 2009); Opinion Paper "Aspects of Electoral Reform" (May 2014). Issue Paper on "Constitutional Protection of Human Rights" (October 2010); Issue Paper on "Equality/Anti-Discrimination Legislative Framework (Re Equal Opportunities Bill No XXXVI of 2008)" (November 2008).

- 118 Report on "Opening Mauritius to International Law Firms and Formation of Law Firms/Corporations" (May 2007); Opinion Paper on "Establishment of Court of Appeal and Composition of JLSC (Judicial and Legal Service Commission)" (August 2011); Issue Paper on "Establishment of Family Court and Conduct of Family Proceedings" (November 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).
- 119 Discussion Paper on "The New Code de Procédure Civile" (May 2012) and 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).
- 120 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); Opinion Paper on "Draft PACE Bill" (March 2012).
- 121 Opinion Paper about "Jury System" (LRC_R&P 128, Dec 2018).
- 122 Report on "Bail and other Related issues" (August 2009).
- 123 Issue Paper on "Disclosure in Criminal Proceedings" (December 2007) and Report on "Disclosure in Criminal Proceedings" (December 2008); Opinion Paper on "Draft PACE Bill" (March 2012).
- 124 Opinion Paper on "Costs in Criminal Cases" (April 2011).
- 125 Issue Paper on "Evidence of Reluctant/Intimidated Witness in Criminal Proceedings: Proposal for Reform of the Law" (May 2010).
- 126 Opinion Paper on "Effective Handling of Criminal Cases" (February 2014).

- (8) Mechanism for review of miscarriages of justice and for the correction of errors;¹²⁷
- (E) Renovating the criminal law in accordance with human rights norms and best international practices;¹²⁸
- (F) Modernising the Code Civil Mauricien:
- (1) Law on persons and "Droit extra-patrimonial de la famille";¹²⁹
 - (2) Law on succession and matrimonial regimes (Droit patrimonial de la famille);¹³⁰
 - (3) Law on obligations and specific contracts;¹³¹
 - (4) Property law (including the law on "co-propriété");¹³²
 - (5) Law on "sûretés" and credit transactions;¹³³
 - (6) Law on prescription;¹³⁴ and
 - (7) Aspects of private international law;¹³⁵
- (G) Improving the legal infrastructure for business:

127 Review Paper on "The Criminal Justice System and The Rights of an Accused Person" (September 2008); Report on "Mechanisms for Review of Alleged Wrongful Convictions or Acquittals" (Nov 2012).

128 For instance, Interim Report on "Reform of Criminal Code" (May 2016); 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 "Law on Fraud" (May 2016); Opinion Paper about "Law on Social Media (Fake Profiles, Fake News and other Harmful Digital Communications)" (LRC_R&P 126, Sep 2018).

129 For instance, Report on "Relationship of Children with Grand Parents and Other persons under the Code Civil Mauricien" (June 2007); Report on "Law on Divorce" (December 2008); Interim Report "Reform of Code Civil Mauricien (Droit extrapatrimonial de la famille)" (April 2016).

130 For instance, Interim Report "Reform of Code Civil Mauricien (Droit patrimonial de la famille)" (April 2016).

131 Issue Paper on "Law of Contracts and Obligations under Code Civil Mauricien" (March 2013); Report on "Crédit-Bail (Leasing) & Location Financière" (November 2011), 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).

132 Issue Paper "Droit des biens" (June 2015); Report on "Copropriétés des immeubles sociaux" (August 2012) and Report on "New Regime for Copropriété" (November 2012).

133 Report on "Droit des Sûretés" (August 2012) and Issue Paper on "Secured Transactions Reform" (October 2013); Report on "Encadrement des Opérations de Crédit" (December 2014).

134 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).

135 Issue Paper on "Incorporation in the 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).

- (1) Reform of the Code de Commerce;¹³⁶
- (2) Reform of Regulatory Framework for the activities of real estate agents;¹³⁷
- (3) Reform of the consumer protection regime;¹³⁸ and
- (4) Mediation and conciliation as mechanisms for settlement of disputes in commercial matters.¹³⁹

A significant proportion of the Final Recommendations of the Mauritius Law Reform Commission have been implemented:

- (a) Recommendations contained in Report on "Opening Mauritius to International law Firms and Formation of Law Firms" [May 2007];¹⁴⁰
- (b) The recommendation contained in the Report on "Relationship of Children with Grandparents and other Persons under the Code Civil Mauricien" [June 2007];¹⁴¹
- (c) The recommendations in the Report on "Law on Divorce" [December 2008];¹⁴²
- (d) Recommendations of the Report on "Bail and Related Issues" [Aug 2009];¹⁴³
- (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];¹⁴⁴

136 Issue Paper on "Timeshare (Droits de Séjour à Temps Partagé)" (July 2011); Report on "Code de Commerce (Livre Premier) (fonds de commerce, garanties autonomes, crédit documentaire, franchise, concession exclusive & timeshare)" (May 2012; 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 "Reform of Code de Commerce" (May 2016).

137 Review Paper on "Regulation of the Activities of Real Estate Agents" (February 2016) and Paper on "Legislative Framework for the Regulation of the Activities of Real Estate Agents" (February 2016).

138 Report on "Review of Aspects of Consumer Protection Law and Proposals for Reform" (October 2010).

139 Report on "Mediation and Conciliation in Commercial Matters" (November 2010).

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

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

142 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).

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

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

- (f) The recommendations contained in the Report on "Crédit-Bail & Location Financière" [November 2011];¹⁴⁵
- (g) The recommendations contained in Report about "Code de Commerce (Livre Troisième) [navigation & commerce aériens]" [June 2012]¹⁴⁶ and the recommendations in Report on "Code de Commerce (Livre Premier) [about fonds de commerce & garanties autonomes]" [May 2012], subsequently reproduced in the LRC's Issue Paper on "Secured Transactions Reform" [October 2013];¹⁴⁷
- (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.¹⁴⁸

Observations contained in Reports/Papers submitted by the Commission have also been taken into account by the legislature.¹⁴⁹

VII CONCLUDING OBSERVATIONS

The globalisation/internationalisation of law has far reaching implications for researchers, practitioners, policy-makers and reformers. A law 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

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

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

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

148 The Criminal Appeal (Amendment) Act of 2013.

149 These include:

Observations contained in the Discussion Paper on "Forensic Use of DNA" (April 2009), about appropriate legislative framework, were taken into account when the DNA Identification Bill was debated in 2009 in the National Assembly;

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;

Views expressed in Opinion Paper on "Liberalization of Usher Services" (January 2011) were taken into account when the Court Ushers (Amendment) Bill 2011 was passed;

Observations in Opinion Paper on "Legal Aid Reform" (February 2011) were retained when the Legal Aid (Amendment) Bill No VII of 2012 was passed;

Observations in Opinion Paper "Offences against Persons (Re Draft Criminal Code (Amendment) Bill)" (April 2012) were 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.

or consultation with a wide range of stakeholders is needed. Projects undertaken by a law 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. As an institution, a law reform agency, in a small state as well as in a large jurisdiction, must always identify new concepts and new approaches to law, and consider ways of enhancing the engagement of the community it serves with the law and public institutions. This requires of the law reform agency that it periodically re-designs its methodology so that it remains creative and responsive.

