Introduction

This is the fifth Annual Report of the Ombudsperson for Children (OC) who was first appointed on 10 December 2003 and who is now at the beginning of a second mandate of four years.

Section 11(1) of the Ombudsperson for Children’s Act 2003 (OCA 2003) provides that: “The Ombudsperson for Children shall, not later than 30 September in each year, submit a report on its activities during the preceding year, to the President.”

Section 11(3) of the Act provides that “The President shall cause every report sent to him under this section to be laid before the Assembly within one month of its submission.”

This year, in Chapter I, the Ombudsperson for Children analyses the Convention on the Rights of the Child and the concluding observations of its Treaty Body to assess progress made.

Chapter II and Chapter III are the traditional main chapters which cover the issues of protection of the child and of the prevention of violence against children. The protection chain is examined once more to see the progress made and the areas where there is still an urgent need to improve in order to ensure that the rights of children are respected and that they are not victims of child abuse and neglect for lack of proper policies and strategies.

As regards violence, the OC looks at all the different aspects of violence, including domestic violence and the impact of alcohol, cigarette and drugs on children. The progress made and the challenges still facing children are noted. New proposals are also highlighted for all types of violence including HIV/AIDS. The OC also notes the efforts made to prepare a proper plan of action in consultation with all stakeholders. She also examines the beginning of implementation of the recommendations made by Professor Paolo Sergio Pinheiro who prepared the UN Global Report on violence against children (2006).

The OC also introduces the Women and Children’s Solidarity Programme (WCSP) and comments on its pertinence and on the efforts being made to help NGOs make the most of such a programme which targets mainly women and children victims of violence.

Chapter IV deals with the role of the family, the need to protect family as a fundamental unit of society and the various difficulties that unfortunately different members of families face.

Chapter V addresses the issue of women’s rights and analyses the impact of the lack of empowerment of women on their children. The OC notes the good programmes put in place by the Ministry of Women’s Rights, Child Development, Family Welfare and Consumer Protection, hereinafter referred to as the Ministry as provided for in the OCA 2003. She also discusses the major challenges which remain specially attitude changing and the role of all stakeholders in struggling against gender stereotypes and the negative image of women in the press, publicity and even in literary or cultural production.
In Chapter VI, the OC writes on the implication of her work in Rodrigues.

Chapter VII has as main objective to show that the OC and her investigators do not work in a vacuum. They are in close contact with others working in the field of children’s rights. Participation in various regional and international meetings is highlighted.

Chapter VIII on communication, sensitisation and capacity building relates to talks and seminars attended, as well as training programmes and sensitisation campaigns organised by the Ombudsperson for Children’s Office.

Last but not least Chapter IX presents selected cases which give a good overview of the investigations carried out. It also describes in detail the method of work of the OC.
Chapter I

The Convention on the Rights of the Child (CRC)

On 20 November 2009, we will be celebrating the 20th anniversary of the CRC. This should be marked in a special way all over the world. Apart from the celebration, one should also keep this date in mind to pursue every effort to comply with the Convention which is the most universally ratified Human Rights Convention. Indeed, only the United States of America and Somalia have not ratified the CRC. The CRC therefore remains a major instrument which “puts children’s rights at the cutting edge of the global struggle for human rights.”

Ratification of a Convention however is not sufficient. Governments and other stakeholders must uphold these rights. In the case of countries like Mauritius which have a dualist system there must be domestication of the treaty by incorporating all its provisions in the laws of the country.

There are two very important steps which Mauritius has taken in the past few years which show our commitment towards children’s rights. The first one was the setting up of an office of Ombudsperson for Children with a clear duty “to promote compliance with the Convention” (section 5c of OCA). The OC must also “ensure that the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and associations of individuals” (section 5a of OCA) and “promote the rights and best interests of children” (section 5b of OCA).

When the OC deals with specific complaints made to her, she does not only look at the laws of the country to ensure that they are being respected, but she also analyses each situation with regard to the CRC. If no law exists to protect children in a specific field, she makes proposals to the authorities to legislate, either by amending an existing law or by introducing a new law.

Several examples of such proposals and their outcome are given throughout this Annual Report.

The second decision is the official declaration of the Minister of Women’s Rights, Child Development, Family Welfare and Consumer Protection to the UN Committee on the Rights of the Child (UNCRC) in January 2006. Indeed, while deponing before the Committee in Geneva on the occasion of the presentation of the Second Report of Mauritius, she gave the undertaking that a Children’s Act would be voted. In the meantime, the Ministry is actively preparing the terms of reference for the recruitment of an expert to draft that comprehensive legislation.
The UNCRC has invited the State party to submit its 3rd, 4th and 5th consolidated report 18 months before its due date, i.e. by 1st March 2011. In view of the fact that the very drafting of the Report is a huge task, the OC has set up a Committee to start reviewing compliance based on the concluding observations of 2006. These can be accessed on our website and were reproduced in our Annual Report 2005 – 2006. In this Report we give a brief overview of the progress achieved up to now.

The Ombudsperson for Children sent an alternative report to the Committee in October 2007. She made a presentation before the Committee at a pre-sessional meeting before the Government was questioned in January 2006. The UN Committee also listened to NGOs.

The first thing that the Committee notes relates to insufficient compliance with regard to some of its previous recommendations. In particular, it notes that there have been “insufficient facilities for the rehabilitation of child victims of abuse and inadequate research on critical areas concerning children”.

Attention is particularly drawn to non-conformity with the CRC regarding the laws on adoption and juvenile justice.

The Committee further laid emphasis on insufficient coordination between different government departments and institutions dealing with children’s rights. The Committee noted with appreciation that there was a National Plan of Action and that it includes an effective monitoring mechanism on the provisions of the Convention.

Only part of this monitoring has however been done. We commend in particular the collaboration between the Ministry and the police with regard to children who put themselves at risk by being absent from home and schools and by playing truant in some very dangerous places. An effort has also been done between the two abovenamed stakeholders and the Ministry of Health and Quality of Life regarding children who are sexually abused. The whole procedure for dealing with children victims of sexual abuse has been improved. The most difficult remains the rehabilitation of those victims. The Minister is very attentive to the fact that a day drop-in-centre is not sufficient and that some victims specially of incest and those who have fallen in the trap of prostitution need to be placed in a specialised centre. But this is not yet a reality.

The Committee recommended that “the State party implement a comprehensive National Plan of Action (NPA) covering all areas of the Convention and incorporating the objectives and goals of “A world fit for children”, the outcome document of the special session of the General Assembly on children in 2002. In this regard the Committee recommends that the State party involve the Ombudsperson for the Children’s Office and civil society in the revision and implementation of this NPA.”

The NPA has not been updated. However, a National Plan of Action on the Prevention of Violence against Children has been prepared following a two-day workshop with all stakeholders organised by the Ombudsperson for Children. This draft is meant to help the Ministry which will decide whether to incorporate it in the existing NPA or otherwise.
There is another area in which some progress has been made. The Committee expressed its concern regarding resources available to NGOs. The Women and Children’s Solidarity Programme, described later, is providing funds to NGOs. All programmes to support and rehabilitate children victims of violence, abuse or neglect are considered as top priority.

**Non discrimination**

Article 2 of the Convention on the Rights of the Child (CRC) stipulates that all the rights of children must be exercised without discrimination. It provides that: “(1) States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

(2) States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs on the child’s parents, legal guardians, or family members.”

The Convention of the Rights of the Child guarantees the right of every child to education. Article 28 provides that: “States Parties recognize the right of the child to education and, with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need.”

The UN Committee on the Rights of the Child referred to the issue of non-discrimination in its main areas of concern and recommendations made in January 2006 as follows: “Whilst appreciating that several measures have been introduced to support vulnerable groups, the Committee expresses its concern at the fact that discrimination against certain groups of children still exists in practice, particularly with regard to children with disabilities, children affected and/or infected by HIV/AIDS, children from disadvantaged families and girls.”

The Committee recommends “that the State Party undertake all necessary measures to eliminate de facto discrimination in full compliance with article 2 of the Convention.”

The issue of non-discrimination in the provision of education to the population is one of the most important. We have to ensure that all children are treated on an equal footing at all levels of education and enjoy the same privileges. It is only if we ensure this, that our
young democracy will be seen as one which respects human rights and promotes equal opportunity to all citizens.

In the past, the Ombudsperson for Children has had several opportunities to draw the attention of the authorities on the need to ensure that children can access educational institutions without unnecessary barriers. One example was the Ombudsperson for Children’s plea to the Government that all children should get free transport, irrespective of the fact that they do not attend mainstream schools.

Sometimes it was important to ensure that some categories of children enjoy their rights in a particular way as they have a special need either in terms of their physical or mental condition or because of their social status and standard of living. The Government has responded positively in many instances to such proposals. Consequently, free transport has been granted to children who are attending different kinds of schools. Likewise, handicapped children have seen their per capita contribution doubled.

The Empowerment Programme has an “Integrated Social Development Programme” which not only provides support to vulnerable families living in conditions of extreme poverty, but more importantly, offers them opportunities to move out of the poverty trap. The Programme has initiated a project for setting up a model village in Bambous where 200 vulnerable families will be relocated in 200 housing units under construction. More importantly, the families are being given the means to empower themselves through a job-related training for all those who are unemployed, through civic education, health education, parenting skilling and incentives to take care of the education of their children, and through the provision of kindergartens and facilities to children attending schools.

This year the Minister of Finance and Economic Development has decided to provide a sum of Rs. 395 million to eradicate absolute poverty. A subcommittee of the Trust Fund for Social Integration of Vulnerable Groups has also been set up to look at the poorest of the poor and manage an Eradication of Absolute Poverty Programme (EAP). Emphasis is being laid on children aged three to ensure that they attend pre-primary school as from that age.

The new measures in the budget regarding pre-school concern, at this stage, 545 children who have been identified. The subcommittee has been set up to find ways and means of touching those families which are living below the poverty line. The new measure’s rationale is to motivate these parents to send their children early to school in order to mainstream them at an early age and “leave no child out of school”. The importance of this measure is manifold. As at now, since Government was providing Rs. 200 for each child as from age four, many poor families were unable to send their children to a pre-primary school. If they did send them at the age of four, the latter were already not at par with those who had already socialised at school for a whole year.

The project is interesting as it caters for all the needs of those vulnerable children. It provides for “free transportation facilities to and from school with maximum security and safety for children”, free food pack for the day, free school materials for the year, as well as free clothing. “NGOs will be enlisted to provide counselling to parents.” It also proposes
accompagnement scolaire to ensure that the children are in school. Free medical check-ups will be available as well as glasses and hearing aids for those who need them. This part of the EAP programme targets “7157 families living in 229 pockets of poverty across the island”.

Cases of discrimination are occasionally referred to the Ombudsperson for Children’s Office. One such interesting case concerns a young girl who has double nationality. She was refused support for her examination fees on the grounds that her parents were not Mauritian. This case is fully described under chapter IX on selected cases.

**Best interests of the child**

The Committee recommends that “the principle of the best interests of the child enshrined in article 3 be systematically implemented in judicial and administrative decisions as well as in programmes, projects and services with regard to children in various situations.”

It is only in cases of divorce, separation and adoption that the principle of best interests is mentioned in the law itself. The Civil Code (Code Civil Mauricien - CCM) provides that “s’il y a des enfants mineurs, le juge en chambre se prononce sur leur garde, ainsi que sur le droit de visite et d’hébergement, en tenant compte exclusivement de leurs avantages et de leurs intérêts.” (Article 242)

Article 353 of the CCM provides that the judge in chambers when pronouncing adoption shall verify if the law is respected and “si l’adoption est conforme à l’intérêt de l’enfant.”

The concept of best interests of the child is well known and applied by judges.

Section 5(b) of the Ombudsperson for Children’s Act 2003 (OCA 2003) provides that the Ombudsperson for Children must “promote the rights and best interests of children.”

In the Civil Code, nowhere mention is made that in exercising their parental authority, adults must promote the best interests of children. However, the rules for losing parental authority does show that, if they do not act in the best interests of the child, they can be the subject of a “déchéance de l’autorité parentale.”

In the new Children’s Act, there must be very specific provisions regarding the principles of best interests of the child. All laws regarding decisions taken with regard to child must in fact be applied by respecting this principle.

At the Ombudsperson for Children’s Office, we have had to summon officers responsible for supermarkets on how to deal with children in cases of suspected shoplifting or other cases.
Respect for the views of the child

Article 12 of the CRC provides that: “(1) States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

(2). For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

In Mauritius, the Divorce and Judicial Provisions Act provides for statutory consultation of children above ten years but nothing is specified about younger children. Judges, can of course, decide to consult them in some cases. Section 18(3) of the said Act relating to orders for custody of children provides that “the Court shall have regard to the interests of the child concerned as the first and paramount consideration.” Section 18(4) provides that “in determining the interests of the child under sub section (3) the court shall inquire into all the circumstances of the case and shall for that purpose hear the child if the child is above the age of 10 and capable of discernment.”

The fact that the term “shall” has been used makes it statutory for the judge to consult the child. However, no guidance is provided on what consultation actually means. This means that depending on the personality of the judge, the exchange can be brief. Fortunately, some judges have the experience and skill needed to respect those legal provisions fully. However, listening to a child is an art. Hearing what he says or refuses to say is even more difficult. There are professionals who are trained to practice such listening skills. The Family Court should ideally have recourse to such professionals in order to really respect the rights of children.

On the other hand nothing in the law provides for consultation for other administrative proceedings or for other persons dealing with children. Once again if the general principle is introduced in the new Children’s Act it would have to be drafted to apply to all cases.

Article 12 has now evolved into what is termed the participation rights of children. In Mauritius there was the will at one time to set up a National Children’s Committee within the National Children’s Council. But no progress has been made to set up this Committee.

The Ombudsperson for Children’s Office has set up the network Budi’s friends with children aged 12 to 17 years. Now a National Children’s Forum has been set up to allow the Budi’s friends to interact with other children from the kites club of the NCC, the Scouts, the Guides, the Grup Abaim, the CEDEM and youngsters representing Mauritius on the Comité citoyen des jeunes de l’océan indien (CCJOI).
At this stage, the full recommendations on education, health, children with disabilities, those living with HIV/AIDS, drug abuse, sexual exploitation, etc. are not discussed in this Report as they will be taken up in the follow up Committee.

Other matters like monitoring mechanisms, review of placement, reintegration and recovery of children, violence including corporal punishment are dealt with more extensively in the other relevant chapters of the Report.

Last but not least, the OC notes with concern that the Government has not ratified the two Optional Protocols (OPs) to the CRC on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography: Government signed these OPs on 11 November 2001 and seven years later, despite the fact that several laws have been amended, no ratification has taken place. The good news is that the Prime Minister has announced in the National Assembly that Government will ratify.
Chapter II

Protection of the child: The chain of services

Each year we examine the chain of protection and assess the progress made to improve the system in place. There is no secret to good management even when it concerns human beings. We have explained that the good ingredients for satisfactory protection are an appropriate legislation, a good team, good strategies, adequate procedures and mechanisms and constant evaluation and monitoring.

The law

What are therefore the good points as regards protection? First of all, the legislation is not that bad. The Child Protection Act 1994 (CPA), has been improved over the years and it does constitute a good legal framework, as far as the protection mechanism is concerned. This concerns mainly protection orders and placement through committal orders. But a law is only a technical translation of policies. If the Ministry is keen to adopt new policies, then a new framework is needed or the present CPA will have to be amended. This is true for the mentoring system. It also concerns placement of children with their next of kin which is being done more and more, but is not based on any legal procedure. It is because some magistrates are proactive that in fact progress is often made. The OC has made recommendations to introduce these amendments, but progress on that score is rather slow. It appears that there is a lack of resources at the level of the Attorney General's Office and that legislative drafting in many fields are in fact in a queue. However, a proposal to grant grandparents better access to their grandchildren has already become a legal reality. The Civil Code has been amended (See annex 2).

There is also a public declaration made by the Minister that she will introduce a Children's Act. The UNDP has agreed to fund an expert for this huge but very important task. The terms of reference of such an expert is being drafted and recruitment should take place this year. It would be wise to seize this opportunity. The expert will have to work with a team at the Ministry in order to grasp the policy decisions. He/she will also have to work with the Attorney General's Office and evaluate the laws of Mauritius in order to harmonise them with the CRC. That should not be too difficult as the ground work has already been done. The OC will certainly collaborate fully to ensure that this new piece of legislation is compliant with the CRC and does provide for the best interests of children.

It is also important to remember that time is of the essence as Mauritius will be presenting its third report to the UNCRC Committee in 2011. In January 2006, the said Committee, made a strong plea in favour of such a comprehensive legislation being introduced to show the profound commitment of Mauritius towards the protection and promotion of the rights of the child. The Minister had in fact presented the Report officially and undertaken to
introduce a Children's Act. Next year will also be the twentieth anniversary of the CRC and the launching of the drafting of such a new law will be a fantastic way of celebrating.

**Mentoring**

There are many challenges in this very delicate field but some of them could certainly be taken up à bras le corps. We feel that the whole system can be reinforced with placement as a last resort. The Minister has said that she agrees with this principle. For this to become a reality however, two very important legs must be developed. One is the parental empowerment programme and the other is empowerment of children and support and guidance given to them to help them cope even when their families are not functioning in an ideal manner. For four years now we have proposed a mentoring system. The drafting of the law seems to be at the final stage. Let us therefore hope that soon this will become a reality. The OC believes that it is urgent to go ahead with the project which could be worked out with NGOs involved in specific areas. They could certainly provide the necessary pool of mentors as they know those who would correspond to the profile and who could be available. They can also act as a back up for the identification of children who can benefit from mentoring. They can also provide training and support of the mentors within the legal parameters and in the context of the Community Child Protection Programme.

**The parental empowerment programme**

When children are at risk, most of the time it is parents who need to be empowered even though children need to be helped as well. But if one teaches children their rights and even their responsibilities and talk to them about human values, and they go back to their homes and see that their parents have different values or hardly any at all, we are running the risk of wasting our time and energy. And we may not see results.

If we send children to see psychologists and their parents are depressed, or are addicted to alcohol or drugs or are just unable, for medical or other reasons, to take care of them properly, the therapy will probably be insufficient. There are known cases of children who take care of their parents or even of their siblings. A few even manage to bring some positive change in their families. But these are rare cases and we cannot condone the fact that children act like heads of household. We have a duty to assist families to help them to take care of their children properly. The CRC is clear on this.

Article 18 provides that "for the purpose of guaranteeing and promoting the rights set forth in the present Convention States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children." This article places the ultimate responsibility on the State, though the primary responsibility is on parents. "Assistance to parents" must be read in its widest sense. It can mean financial assistance but it also includes empowerment in a far wider sense.
The UN Report on Violence against Children recommends that “governments implement culturally appropriate and gender-sensitive parenting and care-giving programmes to support families in providing a violence-free home. Such programmes should include: (a) increasing the understanding by parents and caregivers of the physical, psychological, sexual and cognitive development of infants, children and young people in the context of social and cultural factors; (b) promoting non-violent relationships and non-violent forms of discipline and problem-solving skills; and (c) addressing gender stereotypes.”

The Ministry has developed a parental empowerment programme to complement the case to case empowerment which is ongoing with parents whose children have been removed and can after a certain period of time, be returned to them. The programme content respects the spirit of the UN report. It touches not just on good parenting practices and parental responsibility but also on the causes and consequences of violence and child abuse. The parents are also taught to recognise signs and symptoms of child abuse.

The Ministry of Education and Human Resources and the Brigade pour la protection des mineurs also conduct some such programmes. Some co-ordination is needed in order to ensure that the work being done is harmonised and also that it is sustainable.

**Participation Rights of Children**

We have written extensively on the participation rights of children in previous Annual Reports. We want to commend the efforts of all those who are involved in promoting the participation rights of children. A strong child protection policy must include the empowerment of children themselves to strengthen their own capacities to struggle against abuse and violence. It is important to give them possibilities to fully enjoy their liberties in terms of access to proper information in order to formulate their opinions, be able to express themselves freely and coherently so that they can become productive citizens.

We commend the new sensitisation campaign of the Ministry, which is complementary to the work being done with children by the Ombudsperson for Children’s Office, the Brigade pour la protection des mineurs, the Police Family Protection Unit, the National Children’s Council, the Observatoire des droits de l’enfant de la région de l’Océan indien as well as NGOs. The same applies for Rodrigues.

**Alternative care**

Alternative care includes provisional care at a government shelter as well as placement in institutions and in foster care families. The government shelter has now been transferred to Pointe aux Sables where an average of 90 children are located. This shelter is run by the Ministry itself and can cater for up to 100 children. There are 24 carers and a head of the shelter. Unfortunately it also provides space for battered women with their children. When we visited the shelter on 14 August 2008 we were pleasantly surprised by the new environment in which child victims are now placed. The building was fresh and bright
looking and full of space. It was well organised as regards amenities though some
maintenance is always needed. Two handymen are on site to attend to these. There is just a
problem of echo due to the openness of the common space downstairs which must be
reduced. Questions of security seem to have been taken into consideration. The transparent
and wide open space is one of them as surveillance is facilitated.

There were four women victims of domestic violence and one had a child with her.
Although we had understood that victims of domestic violence would be separate from
children victims of abuse, we noted that in fact it is only at night that they sleep in different
rooms but on the same floor as the girls. They mix with the children for meals, which is not
so problematic. But an effort must be done to ensure that the types of problem that this kind
of promiscuity has caused in the past are not renewed. This implies great supervision, and it
appears that at night this might be difficult in the circumstances.

Of course, women victims, placed by the Ministry, are sheltered only for short periods of
two weeks or so. This gives them time to obtain a protection order or be placed elsewhere.
There should be a clear policy on this and in the long term, there must be a specialised
shelter to cater for these victims. NGOs running shelters for battered women should be
given proper resources to be able to take more victims in and lessen the burden of the
Ministry. The same principles should apply to shelters catering for child victims.

In its concluding observations, the UN Committee on the Rights of the Child has laid
emphasis on the need to "provide services for the recovery and reintegration for child
victims of violence". It is for the State to provide these services. Funds must be made
available and personnel must be trained.

Currently all children, victims of different kinds of abuse and having different behavioural
problems, are in the same shelter for want of resources. The units are organised in terms of
age and sex. Children placed need to be rehabilitated and undergo some form of therapy.
Specialists must study the situation to find out whether it is proper to place all these children
in groups of the same age and mainstream them or whether they need at least for some time
to be taken together for a special attention. One of the psychologists of the Ministry is
following up the children in the shelter while they are there. The question is for how long
will they stay there and what is their projet de vie?

Several times we have raised the problem that children remain in these shelters for too long.
This makes it more difficult for those who take them in their institutions later to achieve
results in their efforts to help children recover. For example, we noted that there were 19
children under three years old there, some of whom are still babies. Some have been there
since their birth and are growing up in this very important period of their life in an
institution where they relate to different carers. The latter seemed to be very dedicated but
these children will in the end be separated from those adults with whom they will
necessarily have bonded. How many times do they need to be torn apart by recurrent forms
of “abandonment” before they find a family to keep them for good?
It appears that those babies are placed if their mothers are drug addicts or sex workers. Some have been abandoned. The Ministry cannot remain passive with regard to these infants. Some of them can be adopted.

**Problems of infrastructure**

The project to set up a Shelter in Bambous is still pending because of wrong identification of land and bureaucracy. The shelter of victims of child prostitution in Grand River North West also seems to be delayed. We are therefore still left with the "drop-in centre" which is only a day-care centre and is unfortunately unable to meet the needs of children who have fallen in the trap of prostitution and who need constant care and support.

It seems that more commitment is needed from all stakeholders who are involved in facilitating the procedures to make these budgeted projects become a reality. The best interests of children should be the guiding principle to ensure that whatever obstacles crop up are dealt with rapidly and efficiently.

Under this heading we also want to draw attention to the need for periodic review of placement. Again the UN Committee has emphasised the need to review placement. We understand that the CDU is in fact engaged in such review in close collaboration with the NGOs who are running alternative residential care institutions. Some children are being sent back to their parents after the latter have been given enough support to be able to welcome them again. The family is then monitored. This would be one more instance when mentoring might be appropriate.

We also learn that some children are removed from institutions and are placed with foster families.

**Foster Families**

We have learnt that there were 56 registered foster families but only 25 of these are in fact active. Some of them foster one child and some two children. Fifteen children have been adopted by their foster parents. Some foster parents gave up early after registration. A few had to give up because of personal problems. There are now 20 applications pending due to shortage of staff.

When the children become of age, the Ministry does not provide for them anymore. A few children remain at their foster family when they reach 18 and only one decided to go back to his biological father. Fortunately, most children who turn 18 are not totally rejected even in the institution where they are placed. Some get married. Others go to work and settle down. It is still a matter of regret that there are no half-way homes or young adults’ homes for youngsters between 18 – 21 years of age.
The OC has proposed that norms for residential care institutions and for carers should be finalised. A joint committee OCO/CDU has been set up to work on these before the end of this year.

**Community Child Protection Programme**

In last year's report we presented the new Community Child Protection Programme (CCPP). It is a mechanism which the Ministry has put in place to ensure that child abuse and neglect cases are detected and that every stake-holder is playing its role. It is based on the principle of decentralisation and is set up on a "district wise basis to ensure community development with respect to child protection and welfare." The OC wanted to know how far the CCPP is giving results.

During a regular meeting held between the OCO and the CDU on the follow up of issues raised, the CDU has reported as follows:

5 out of 10 District **Child Protection Committees** have already been launched. A person has already been earmarked for capacity building. These Committees are composed of members of NGOs, NCC, PTAs, local authorities, religious bodies, *forces vives* and Citizen's Advice Bureaux. They meet every two months and advise on child protection issues in the district.

Local institutions are playing their role fully and most of the time they facilitate meetings by putting community rooms at the disposal of the organisers of the meetings. Two batches of capacity building training have been completed.

**Community Child Watch** has been set up at Camp Levieux, Rose Hill, Cité Mère Térésa, Triolet and Cité Mangalkhan. Three more will be operational soon at Bel Air, Pointe aux Sables and Roche Bois. The role of this watch is to "ensure early detection of cases and report child-at-risk cases".

Case conferencing is held among all the stakeholders during the **Area Child Protection Committee**. This Committee consists of representatives of various ministries concerned (education, social security, health, labour, justice) as well as the BPM, the regular police and the Probation service. Its objective is to ensure better collaboration and cooperation. The objective of case conferencing is to review and monitor the handling of cases, help in lessening trauma and "trigger early rehabilitation of children victims of abuse and neglect." Case conferencing have been held at the different centres on a monthly basis during which about 15 cases have been discussed. The Head of the CDU proposed to refer some issues of the cases discussed during the case conferencing to the OC in the spirit of exchange of information. The OC has promised to study any issue which needs her intervention. She laid emphasis on the need to respect confidentiality of cases.
When the CCPP is working in all districts, it will be important to hold a full fledged National Child Protection Committee to discuss policy matters and take decisions that will help to improve the present chain of protection.

Adoption

Each year we draw attention to the fact that the CRC considers adoption to be an alternative for children who have been abandoned. Mauritius has acceded to the Hague Convention on the Protection of Children and Inter-country Adoption since 28 September 1998. Ten years later, this Convention has still not been domesticated. This does some harm to the image of the country since, at international level, we are criticised for the fact that it is possible for children to be adopted here in unacceptable circumstances. There have been a study visit to France, which is the country most concerned by this issue. It is also important to remember that there is a risk of child trafficking despite the fact that the Child Protection Act has been amended in 2005 to criminalise such trafficking.

There is a consensus on the fact that it is urgent to legislate in order to respect the Hague Convention. Innumerable meetings have been held. A draft legislation does exist. Now expert advice is being sought. In the meantime the National Adoption Council has been chosen to act as Central Authority but with no corresponding staff or other resources. This is mostly a problem concerning inter-country adoption.

Local adoptions should be better regulated in the meantime. But no progress at all has been made on the issue because of the decision to treat all adoptions as a whole. In the meantime, Mauritians are adopting children found individually because no agency exists either to identify children who are adoptable or to give an agrément to applicant for adoption. The burden still remains on the court. Judges seek a report. But many children have been abandoned for all intents and purposes and they are still not being adopted because no decision is taken to declare them adoptable. There is an economic cost for the up-keep of these children. But more importantly those children’s fundamental rights are being violated. They have the right to grow up in a family environment and to benefit from all the positive aspects of such an environment.

Abduction

Mauritius has also acceded to the Hague Convention on Civil Aspects of International Abduction. This is the only Convention which has been domesticated. The Ministry responsible for Child Development is the Central Authority. For the moment several countries have acceded to the said Convention and some have also recognised the accession of Mauritius. This procedure is very important in order to ensure cooperation in case of an abduction which may concern two States. The OC has stated several times that it is important to follow up closely on this procedure and not wait for a sad event to happen to run against time in order to get the system to work. One must remember that a lot of tragic stories take place concerning small children who are being kept away illegally from one of
their parents. We have a duty to help these children. Delay in such cases can often amount to a form of child neglect.

At the proposal of the OC, a meeting took place at the Ministry of Foreign Affairs, International Trade and Cooperation. Officers of the CDU responsible to follow up on that issue and the OC attended. A close collaboration between the two Ministries has now been established and a priority list of countries with which Mauritius has regular exchange will be drawn in order to ensure reciprocity of recognition in this context.

Family Court

The new Family Court sitting every day with dedicated judges is giving results in terms of reducing delay for delicate and urgent issues involved whenever there is a separation or family breakdown. It would appear that the CDU is being called upon to assist the court with social enquiries and reports.

However, in due course, it would be important that the court could engage in mediation with the recruitment of persons versed in family mediation. It will give good results if judgements and orders could be followed up. This again necessitates more resources. But it must be considered top priority if orders are to be enforced and not remain purely academic. As it is, specially in cases of custody and rights of visit and hébergement, it is a long struggle to enforce same. Those who have very little means find it difficult to enter new cases or cases of contempt. In 1998, there has been an attempt to criminalise the issue of non-payment of alimony and failure to represent a child to the person who has a legal right to see that child, as well as failure to inform the other party of any change of domicile. The Criminal Code has been amended to create specific offences with the relevant sanctions. This is far from being efficient as the police have to start an enquiry and, more often than not, it is lengthy, time goes by and the child loses touch with his other parent (see page 43 on parental alienation).

The OC does a lot of mediation, including mediation between parents either before a case is entered before court or afterwards if there is some difficulty in respecting these orders. Cases are also brought to us and are solved and never end up in court. Some magistrates and probation officers also mediate. But somehow parents have a lot of difficulty in understanding that they should not use their children to settle their own problems. They do not realise that they cannot either divorce from their children or manipulate them to suit their own purposes. Mediation is done on a voluntary basis and its approach is amicable. Mediation done by the Family court would be amicable but have the legal umbrella which is backed by a previous court order or by a new one if mediation fails. It seems to have a greater chance of success, specially if the same judge deals with the same parties throughout all proceedings concerning the family.
Legal issues and procedure

CDU officers are more and more called upon to deal with legal issues and procedure. They have to attend District Courts and swear affidavits and follow up on Emergency Protection Orders and Committal Orders. They deserve to be properly trained in this specialised field, particularly to act as prosecutors, the more so as the other parties concerned have recourse to trained lawyers. Further they have to provide magistrates and judges with satisfactory reports. They must also be able to define clearly the best interests of children as opposed to the interests of parents. They are definitely under a lot of pressure in order to satisfy the court that an order is urgent and resist the pressure of the other parties against whom the order is to be made.

It is to be regretted that despite the fact that the Child Protection Act (CPA) 1994 protects officers of the Ministry, they are sometimes victims of the use (or abuse?) of the media by lawyers of parties who can make rash comments or even threats, in total disrespect or ignorance of the law.

We have in the past had cases of children who have been removed and been returned to their parents who always have a legal remedy in the CPA. To declare that they will sue the CDU is unwarranted to say the least. We also had a case of a child victim of child abuse who was legally returned to his parents against the advice of the CDU. He ended up dead. One is tempted to state that prevention and protection is better when in doubt and specially pending a full enquiry. The role of lawyers is to defend their clients. But the principle of the best interests of the child always remains paramount. This is why the OC keeps on requesting that children should have their own lawyers in all proceedings where they are involved. This would better protect their rights as opposed to their parents’ rights. It would also "liberate" lawyers who would not always have the dilemma between their client's rights and those of children.

The placement of a child with his next of kin, or other appropriate member of the family, would have resolved those cases where a placement in a shelter is not the best solution, when the child needs to be away from his parents for a certain period of time. But again, in all fairness, members of the extended family do not always want to take the risk. It is important to say how the amendment of the Civil Code does open up avenues in this respect as opposed to the era when parents were overpoweringly the only ones to be able to raise up their children and keep in touch with them excluding all others. Since it has been recognised that, though the family unit must be respected and helped, it is unfortunately also not always a safe place for children, protection policies have evolved worldwide (see Chapter IV on the role of the family).

Resources

There is no way that child protection will be efficient if enough resources are not available to manage all the different aspects of the problem. The CDU will be less and less able to meet all its obligations if it is not provided with a team of officers who do dedicated work.
Six officers are at present involved in immediate child protection matters throughout the island. Only five psychologists are available at the six family support bureaux. There are no words to describe how inadequate this is. True it is that the Ministry has struggled at budget consultation time to obtain more officers. But these resources must be available to all the different units of the Ministry in such a way that its mandate, which is complex, is respected fully. Further, collaboration between the Units is essential to obtain results.

Women and children need to be better protected so that society makes progress. That was the credo of those who urged States to set up national mechanisms dedicated to this "human" mandate. In Mauritius, we took this up very seriously and set up a Ministry which developed with time. But with time also, the challenges in this field have grown to such an extent that more resources are definitely needed to respond to the new needs. The Ministry responsible for women's rights, child development and family welfare is far from being an unimportant one. It is responsible for strengthening the social base and has a direct impact on the kind of society that we want to have. It is an essential part of the government. It must be appropriately funded and everything must be done for it to obtain due recognition.

We urge the authorities to give their best attention to this.
We have already drawn public attention to some very important recent reports on the issue of violence: The WHO report on Violence and Health of 2002 and the UN Global Report on Violence against Children of 2006, as well as the UN World Report on Violence against Women of 2006.

We can no longer sit still thinking that violence is normal and cannot be reduced. We must work on strategies that will help us curb different forms of violence in different settings.

The World Bank has stated that violence has a negative effect on development and needs to be addressed as an important issue. This is an important step forward as, the world over, Ministers of Finance and their staff are being sensitised on the need to invest in preventive measures.

In Mauritius, as in most other countries women and children are vulnerable and need to be supported to get away from the cycle of violence which is damaging our society and constituting one of the biggest hindrance to proper human development as well as economic development. On the one hand, women who constitute more than half of the work force need to be supported to be full fledged productive citizens. On the other hand, everyone now realise that coping with victims of violence afterwards has a heavy financial cost. The budgets for law enforcement and the justice and penitentiary system, as well as amounts spent for physical and psychological recovery are enormous.

Further, official statistics give a high percentage increase for juvenile delinquency (47.5 per 1000). They reveal that from 2006 to 2007, the number of juvenile delinquency increased from 417 to 615 as follows: 3 murders/homicides, 261 violence, 168 larceny and 45 sexual violence.

Violence in the family

The family is the place ‘par excellence’, where a child should feel safe, protected, loved and cared for by his parents. It is the place where the child receives his most basic education, learns to socialise and behave in society. He is also taught to differentiate between what is
right or wrong. The family should be the place where the child is allowed to make mistakes and learns from these mistakes through proper guidance from his parents, in full respect of his dignity and developmental stage.

The Ombudsperson for Children notes with concern that the family is not playing its role in the protection of the child. During the past years, too many cases of violence in the family have been reported. The most common one is neglect. The Ombudsperson for Children has been informed, very often anonymously or by neighbours about cases where children are neglected, not sent to school, deprived of proper hygiene and in some cases lack of food. In many of these cases poverty is the main reason for neglect.

Achieving a clear and unconditional prohibition of all corporal punishment will require varying legal reforms in different States parties. It may require specific provisions in sectoral laws covering education, juvenile justice and all forms of alternative care. But it should be made explicitly clear that the criminal law provisions on assault also cover all corporal punishment, including in the family. This may require an additional provision in the criminal code of the State party. But it is also possible to include a provision in the civil code or family law, prohibiting the use of all forms of violence, including all corporal punishment. Such a provision emphasises that parents or other caretakers can no longer use any traditional defence that it is their right (“reasonably” or “moderately”) to use corporal punishment if they face prosecution under the criminal code. Family law should also positively emphasize that parental responsibility includes providing appropriate direction and guidance to children without any form of violence.

UN Committee on the Rights of the Child – General Comments No. 8 (2006)

Corporal punishment, humiliating and degrading treatment is also as common as neglect. In Mauritius, our laws do not explicitly prohibit the use of corporal punishment, except in schools. Most parents still believe that it is important to use the rod in order to discipline a child. In the past years, it is most unfortunate that children have been badly injured or even lost their lives as result of corporal punishment (see Chapter IX on Selected Cases). The Ombudsperson for Children is actively advocating for an amendment of the Criminal Code and the Child Protection Act so as to prohibit corporal punishment even by parents. Parental Empowerment Programmes should equip parents with alternative methods of disciplining children (see page 29 on Positive Discipline).

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and as appropriate, for judicial involvement.

Article 19 ‘UN Convention on the Rights of the Child’
During the past year, the Ombudsperson for Children has also received cases of violence in the family where children were the perpetrators. Several parents complained that their children are beyond control. They have great difficulty to deal with them. They complained that they are victim of verbal abuse, robbery and physical violence perpetrated by their children. It has been noted that in most of these cases, there was a problem between the father and the mother and that the child had the support of one parent (active or silent). Another worrying fact is that the age of the child perpetrator is in many cases less or around 10 years old. Some of these cases are the result of domestic violence experienced by the minors in their families.

**The effects of Domestic Violence on Children**

The Ombudsperson for Children is following closely the progress which is taking place in Mauritius, in order to curb domestic violence, which is one of the most common forms of interpersonal violence. This type of violence has always existed but was not recognised for a very long time. It was happening behind closed doors and was considered to be a private matter.

Domestic violence is now considered as a real societal problem, affecting and causing damage to our social fabric.

It is physical, emotional sexual or mental abuse which takes place in a close relationship either between spouses or concubines.

This abuse is perpetrated mostly by men on women and is rooted in the idea of male dominance and control within the family. Domestic violence affects women regardless of class, race, age, disability or lifestyle. Thus, even though in Mauritius women have conquered a legal status at par with men, they are often inhibited from participating fully in the social, economic or political life of their country. Some women are physically in danger, some even die. The victims are also psychologically affected.

**Statistics on Domestic Violence**

Since 2002 to date, a total number of 4,983 cases of domestic violence were reported to the Police. 1,654 spouses were assaulted whilst they were under a Protection Order, out of whom three passed away.

In homes where domestic violence occurs, children are at high risk of suffering physical abuse themselves. The emotional effects of witnessing domestic violence are very similar to the psychological trauma of being a victim of child abuse.

- Children in homes where domestic violence occurs may “indirectly” be injured. They may be hurt when household items are thrown or weapons are used. Infants may be injured if being held by the mother when the batterer strikes.
• Older children may be hurt while trying to protect their mother.
• Children in homes where domestic violence occurs may experience cognitive or language problems, developmental delay, stress-related physical ailments (such as headaches, ulcers and rashes) and hearing and speech problems.
• Many children in homes where domestic violence occurs have difficulties in school, including problems of concentration, poor academic performance, difficulty with peer interactions and absenteeism.
• Boys who witness domestic violence are more likely to batter their female partners as adults than boys raised in non-violent homes.

Children sometimes –
• take responsibility for the abuse.
• are constantly anxious that another beating will occur and they develop stress-related disorders.
• feel guilty for not being able to stop the abuse or for loving the abuser.
• fear abandonment.
• are socially isolated and have difficulty in interacting with peers and adults.
• have low self-esteem.

Younger children do not understand the meaning of the abuse they observe and tend to believe that they “must have done something wrong”. Self-blame can precipitate feelings of guilt, worry and anxiety.

Children may become withdrawn, non-verbal and exhibit regressed behaviours such as clinging and whining. Eating and sleeping difficulty, concentration problems, generalized anxiety and physical complaints such as headaches are all common.

Unlike younger children, the pre-adolescent child typically has greater ability to externalise negative emotions. In addition to symptoms commonly seen with childhood anxiety, such as eating, sleeping problems and nightmares. Victims in this age group may show a loss of interest in social activities, low self-concept, withdrawal or avoidance of peer relations, rebelliousness and oppositional-defiant behaviour in the school setting. It is also common to observe temper tantrums, irritability, frequent fighting at school or between siblings, lashing out at objects, treating pets cruelly or abusively, threatening of peers or siblings with violence and attempts to gain attention through hitting, kicking or choking peers and/or family members. Girls are more likely to exhibit withdrawal and run the risk of being ‘missed’ as a child in need of support.

**National Action Plan on Domestic Violence**

Domestic violence being socially and culturally acceptable, the need to act on all fronts to combat it became more and more evident. The Ministry of Women’s Rights, Child Development, Family Welfare and Consumer Protection and the Media Watch have both drawn a Plan of Action to combat this scourge.
On 22.08.07, the Ministry organised a workshop with the collaboration of the UNDP to harmonise both Plans of Actions with a view to come up with concrete actions to combat domestic violence.

In his speech, Mr. Calderone of UNDP described violence against women as ‘the most pervasive yet least recognised human rights abuse in the world’. He mentioned that this year the United Nations chose ‘Ending Impunity for Violence against Women’ as theme for the International Women’s Day. He assured the audience of the support of the UNDP and UN to reduce all forms of violence against women. He announced that the UNDP will fund a study on sexual harassment at workplaces, and a study on the nature and cost of domestic violence in the country as well as support the Government in the implementation of the National Action Plan on Domestic Violence.

The Ministry had conducted broad consultations with the Ombudsperson for Children as well as different stakeholders, to reflect on the causes and consequences of Domestic Violence, discuss ways and means to combat domestic violence and come up with recommendations for the way forward in 2006.

The five strategic objectives of the harmonised Plan of Action are as follows:-

(a) improvement in legislation on domestic violence and the justice system and the response capacity of other agencies;

(b) provision of appropriate, accessible, timely and coordinated multi-agency responses and support to victims, abusers and children who need it;

(c) sensitise and change attitudes to prevent domestic violence from happening in the first place;

(d) promote responsible reporting, advocacy, sensitization and provision of a forum of media specialists to encourage the community at large to discuss domestic violence; and

(e) undertake research and studies on domestic violence, strengthen capacity building and set appropriate mechanisms for monitoring and evaluation of the National Action Plan for the promotion of best practices.

The Ministry commemorated the International Day against Violence Against Women (IDAVAW) on 25 November 2007 to sensitise the public about the scourge of domestic violence and its impact on society.

The Protection from Domestic Violence (Amendment) Act 2007 provides that:

(a) the Court may hear an application for a protection order in such manner as it thinks fit;

(b) the Court, which has made a protection, occupancy or tenancy order, may also make an ancillary order as to alimony, which may be varied or discharged.
(c) the penalty for the offence of wilfully failing to comply with any order made under the Act be increased:
(-on first conviction to a fine of Rs25,000 and imprisonment not exceeding 2 years;
-on a second or subsequent conviction a maximum of Rs50,000 as fine and 2 years of imprisonment); and,

(d) that the police will act with diligence and “report the matter forthwith to the nearest hospital or other medical institution….“ and/or “to the Permanent Secretary where the complainant is in urgent need of counselling or any other form of psychological support”.

(e) the Court may order a spouse who has wilfully failed to comply with an order made under the Act, to attend to counselling sessions instead of sentencing him to a fine or imprisonment. If he fails to attend the sessions, the court may impose the sentence.

Regarding the last provision the Ombudsperson for Children fears that many perpetrators may attend the session just to avoid being sentenced. But for the therapy to work, the perpetrator must be a willing participant. No coercion is possible in any form of therapy.

**Domestic violence and school**

The impact of domestic violence on the school has not been measured in a scientific way yet. There is great scope for research in that field. However, it is obvious that domestic violence has a negative impact on children who witnessed or are witnessing such violence. The effect may be on their behaviour, performance or attendance at school. Children witnessing domestic violence have the tendency to develop violent behaviours. Some may also adopt a submissive attitude and accept to be victim of violence silently. Both behaviours would have a negative impact on the child’s performance at school. Furthermore, the only fact that a child is witnessing violence between two persons who are most significant to him is a traumatic experience. Even if the child is resilient and does not adopt any of the two types of behaviour mentioned above, his performance at school would drop.

Cases of domestic violence take a long time before being resolved before the courts. In many cases, the wife, victim of domestic violence, leaves the conjugal roof for her own safety and very often, she takes the children with her. The problem, which arises, is that she has to apply for a school transfer and in most cases the father would object. In the meantime, the children stay at home. The Ombudsperson for Children has intervened in such cases and requested the Ministry of Education and Human Resources to facilitate the transfer of the children so that they enjoy their right to education like all other children (see Chapter IX Selected Cases).
Violence at school

After home, school is a place where children should feel very safe, protected from all sorts of violence and abuse. A place where the rights of the child is the basis of any rules and regulation. A place where the child is allowed to make mistakes and to receive the proper guidance to help him to amend. School should be the place where the child is given the opportunity to develop his full potential, talents and creativity.

*States Parties agree that the education of the child shall be directed to:*

(a) *The development of the child’s personality, talent, mental and physical abilities to their fullest potential;*
(b) *The development of respect for human right, fundamental freedom and for the principles enshrined in the Charter of the United Nations;*
(c) *The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may original, and for civilisations different from his or her own;*
(d) *The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all people, ethnic, national and religious groups and persons of indigenous origin;*
(e) *The development of respect for the natural environment*

*Article 29 – UN Convention on the Rights of the Child*

During the past year, the Ombudsperson for Children has received many complaints from parents, pupils and teachers regarding violence, abuse and violation of rights at school. Cases of indiscipline, bullying, corporal punishment, peer violence and humiliating and degrading treatment at school have been reported to the Ombudsperson for Children’s Office. While dealing with these cases, it was obvious that many of these problems are the result of incidents occurring outside school. However, it is the way that these problems are dealt with at school which is of great concern. It seems that schools are not prepared to deal with such problems in a way respectful of the child’s rights and dignity.

In September 2007, a kit on the Prevention on violence at school was prepared by the office of the Ombudsperson for Children and launched by the Honourable Minister of Education and Human Resources. These kits were produced to be distributed in schools as from January 2008. Schools were to be grouped in clusters and training on how to implement the kit was to be organised for each cluster. Twenty primary schools from the four zones were selected for piloting. A Network of the Education Community comprising of different stakeholders in the education sector was set up to support the Ombudsperson for Children in sensitising the educational establishments as well as all those involved in educational matters on all the issues dealt with in the kit.

In the meantime, the Ombudsperson for Children has started a series of sensitisation workshops on the kit with different groups in the education community. In February 2008, a half day workshop was organised for Primary School Inspectors, Asian Language
Supervisors, Educational Psychologists and other members of the inspectorate. Similar workshops were organised for Heads of School of all zones, including Rodrigues. The Ombudsperson for Children conducted a module on Violence at school for supervisors of the pre-school sector at the request of the MIE. A meeting was also held with the responsible officers of the Municipal pre-primary schools of Beau-Bassin/Rose Hill.

The Ombudsperson for Children also had talks with the Chief Technical Officer to impress upon him the need to take heed of the principles defined in the kit while looking again at the issues related to discipline at school. The Ombudsperson for Children views with concern that there are still no harmonised rules and regulations for all schools. The Education Regulations of 1957 forbids corporal punishment. The Ministry sends circulars to all schools to remind everyone of the fact that, it is illegal to use corporal punishment. Even the Government Teachers Union has informed its members that they should not use corporal punishment. They stated this fact to the Ombudsperson for Children during a meeting with her recently.

However, the law neither defines corporal punishment, nor refers to humiliating treatment, verbal and moral abuse. Further, there are no clear sanctions that are proposed to teachers for cases of indiscipline. It has become urgent for the Ministry to consult all stakeholders to define the types of sanction that can be imposed for specific acts or omissions.

The Ombudsperson for Children has been very clear on the fact that corporal punishment is counter productive and does cause physical and psychological harm to pupils. She has however, always maintained that children need to be guided and constructive methods of discipline need to be applied. This is amply clear in the kit. Children should never be made to think that they can do what they want without restrictions. It is, of course, at home that basic principles and values need to be taught. But school also has a complementary role to guide children rather than using repressive methods to obtain superficial and immediate results. The kit emphasises the need to promote self discipline and to apply methods of restorative justice (see page 29 on positive discipline).

During the meeting with teachers, headmasters, inspectors etc. the Ombudsperson for Children invited comments. It is clear that in some schools, there are specific problems that need to be addressed. One which is spreading is parental interference and in a few cases parental violence and child violence against the staff of schools.

**Corporal Punishment**

“Progress towards abolishing corporal punishment is being made, but millions of the world’s children still suffer from humiliating acts of violence and these violations of their rights as human beings can have serious and life long effects. If we really want a peaceful and compassionate world, we need to build communities of trust where all children are respected, where home and school are safe places to be and where discipline is taught by example.”

*Desmond Tutu, Archbishop Emeritus*
The UN Committee on the Rights of the Child defines corporal punishment as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion, for example, washing children’s mouths out with soap or forcing them to swallow hot spices”.

In 2006, the Committee had special sessions to work intensively on the issue of corporal punishment. In the ‘General Comment No. 8 (2006)’ on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee analysed the issue and made several recommendations. The document is available on the internet (www.ohchr.org).

The Convention asserts the status of the child as an individual person and holder of human rights. The child is not a possession of parents, nor of the State, nor simply an object of concern. In this spirit, article 5 requires parents (or, where applicable, members of the extended family or community) to provide the child with appropriate direction and guidance, in a manner consistent with his/her evolving capacities, in the exercise by the child of the rights recognized in the Convention. Article 18, which underlines the primary responsibility of parents, or legal guardians, for the upbringing and development of the child, states that “the best interests of the child will be their basic concern”. Under article 12, States are required to assure children the right to express their views freely “in all matters affecting the child”, with the views of the child being given due weight in accordance with age and maturity. This emphasizes the need for styles of parenting, caring and teaching that respect children’s participation rights. In its general comment No. 1 on “The aims of education”, the Committee has emphasized the importance of developing education that is “child-centred, child-friendly and empowering”.

The Committee notes that there are now many examples of materials and programmes promoting positive, non-violent forms of parenting and education, addressed to parents, other carers and teachers are developed by Governments, United Nations agencies, NGOs and others. These can be appropriately adapted for use in different States and situations. The media can play a very valuable role in awareness-raising and public education. Challenging traditional dependence on corporal punishment and other cruel or degrading forms of discipline requires sustained action. The promotion of non-violent forms of parenting and education should be built into all the points of contact between the State and parents and children, in health, welfare and educational services, including early childhood institutions, day-care centres and schools. It should also be integrated into the initial and in-service training of teachers and all those working with children in care and justice systems.

(UN Committee on the Rights of the Child – General Comment No. 8 (2006))
In its Concluding Observations on Mauritius in 2006, the UN Committee on the Rights of the Child stated the following with regards to corporal punishment.

While noting that corporal punishment is prohibited in schools through the Education Regulations of 1957, the Committee remains concerned that corporal punishment is not explicitly forbidden by law in the family and in all settings, including in alternative care settings.

The Committee reiterates its previous concluding observations (CRC/C/15/Add.64, para. 31) and urges the State party to prohibit through legislation and other measures corporal punishment of children in the family, schools, penal institutions and in alternative care settings. The Committee further recommends that the State party conduct awareness raising campaigns among adults and children, the promotion of non-violent, positive, participatory methods of childrearing and education.

During the past year, the Ombudsperson for Children has multiplied her efforts to advocate for the elimination of corporal punishment in all settings. She organised several training sessions targeting school inspectors, heads of school, doctors, educational psychologists, social workers and teachers. Workshops were also organised for school children. On many occasions the Ombudsperson for Children had the opportunity to discuss this issue with parents, carers and NGO leaders. She and her officers participated in Radio and TV programmes to pass on the message that corporal punishment is harmful to children both physically and psychologically.

Positive Discipline – An Alternative to Corporal Punishment

Children have a right to care and guidance appropriate to their developmental capacities.

Article 5
UN Convention on the Rights of the Child

During the past years, the Ombudsperson for Children has been advocating for the application of the seven principles of constructive discipline as proposed by UNESCO. This year two posters have been produced in collaboration with the Mauritius College of the Air to be used as tool to support the campaign on prevention of violence against children. One is on reporting child abuse and a second one on effective discipline. These posters have been sent to all primary schools. A smaller format was also produced to be included in the kit on Prevention of Violence at school. Positive discipline is a concept which should be mastered by all persons working for the protection, development and welfare of children. The table below describes what positive discipline is.
What positive discipline is:

- Positive discipline is about long-term solutions that develop your child’s own self-discipline.
- Positive discipline is clear communication of your expectations, rules and limits.
- Positive discipline is about building a mutually respectful relationship with your child.
- Positive discipline is about teaching your child life-long skills.
- Positive discipline is about increasing your child’s competence and confidence to handle challenging situations.
- Positive discipline is about teaching courtesy, non-violence, empathy, self-respect, human rights and respect for others.

Positive discipline aims to build a culture of respect for human rights where parents and teachers work together with learners to develop self control and mutual respect within a caring and non-violent environment.

Positive discipline also involves: child participation, problem solving, praising and rewarding desired behaviour as well as role-modelling of desired behaviours by adults.

What are the differences between corporal punishment and positive discipline?

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<tr>
<th>Corporal punishment</th>
<th>Positive discipline</th>
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<tbody>
<tr>
<td>Involves the principal and teachers making the rules</td>
<td>Involves the principal, teachers and learners making the rules together</td>
</tr>
<tr>
<td>Insists on obedience</td>
<td>Encourages learners to develop self control</td>
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<tr>
<td>Uses physical pain to correct bad behaviour</td>
<td>Uses rewards to motivate good behaviour</td>
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<tr>
<td>Punishes learners for making mistakes</td>
<td>Teaches learners how to get it right</td>
</tr>
<tr>
<td>Criticises learners’ weaknesses – makes learners feel small</td>
<td>Builds on learners’ strengths – makes learners feel tall</td>
</tr>
</tbody>
</table>

The negative impact of alcoholic parents on children

Prevention is always better than cure, if started as from an early age it should help reduce the harm done to children and to families as a whole.

Parents are the role model in the family and they should inculcate good values, behaviour and attitudes to their children. It is therefore, imperative for them to guide and inform their children on the negative impact of alcohol/drug addiction and not let them be dragged
relentlessly into the abyss of any dangerous substance. Parents should not consume alcohol in front of their children nor encourage its consumption at any cost.

Alcohol consumption not only causes much harm to the consumer himself but the dramatic consequences on his environment are often difficult to imagine. It is not only the addict’s problem but becomes the problem of the whole family and society.

The family unit often explodes and the indirect victims are the parents, siblings, spouse or/and children. Drug users are often caught in the vicious cycle and once entangled, it is very difficult to get out of this situation.

Various cases of child abuse by alcoholic parents, both mothers and fathers have been reported to the Ombudsperson for Children’s Office. Traditionally, fathers consume alcohol and cigarettes. But nowadays, the rise of alcohol and cigarettes consumption among women, mainly mothers, is significant and such a situation is causing much emotional and psychological harm to youngsters.

The consumption of alcohol by parents at home or in parties in front of their children is considered as a normal habit in our society. Some parents even send their children to purchase cigarettes and alcohol for them. They are even encouraging their children to consume alcohol, beer or cigarettes without taking into consideration that they are destroying the health of these youngsters and pushing them to become slaves to alcohol day and night. Peer influence is also a contributory factor.

Yet the law strictly prohibits the sale and consumption of alcohol by minors.

Indeed section 16 of the Child Protection Act 1994 provides that

“(1) (a) No person shall sell any liquor, rum or compounded spirits to a child.

(b) Any person who causes or allows a child to have access to premises in respect of which a licence has been issued for the sale of liquor, rum or compounded spirits for consumption on the premises other than premises in respect of which-

(i) a restaurant (liquor, rum and compounded spirits) retailer licence; or

(ii) a hotel or boarding housekeeper (liquor, rum and compounded spirits) retailer licence has been issued, shall commit an offence.

(c) In this section “liquor” “rum” and “compounded spirits” have the same meaning as in the Excise Act”.

In its Campaign on the Prevention of Violence against Children, the Ombudsperson for Children’s Office has strongly condemned the easy access of alcohol to youngsters. In this context, several recommendations were made. The Ombudsperson for Children has specifically proposed the formal interdiction to sell alcoholic drinks together with other drinks and foodstuffs. Instead these drinks like Alcopops, beer etc. should be placed in
controlled areas of supermarkets or in specialised shops. This would make control on sale easier. It is obvious that, despite the law interdicting the sale of alcohol to minors, there is no systematic check. Moreover, a lot of awareness campaigns is needed through school, clubs, community-based organisations and the press. In this respect NATReSA is doing a good job but other NGOs must multiply awareness efforts as well as prepare projects to help children to get away from drugs and alcohol. They can benefit from funds from the Women and Children Solidarity Programme for such projects.

The OC has also recommended that pregnant women should refrain from taking alcohol for the healthy development of their child. The consumption of alcohol even in small quantity can cause a mental deficiency and social maladjustment of children.

Due to the rising influence of alcohol among adults and children, the Ministry of Health and Quality of Life has banned the advertising of alcohol products on billboards in the vicinity of schools. The Ministry has also introduced two regulations under Sections 193 and 194 of the Public Health Act; the Public Health (Restrictions on Tobacco Products) Regulations 2007 and The Public Health (Prohibition on Advertisement, sponsorship and Restriction on Sale of Alcoholic Drinks) Regulations 2007 which are presently being finalised at the State Law Office to further reinforce the existing laws.

**HIV/AIDS and Children**

HIV/AIDS is spreading very quickly in Mauritius and is causing much harm to our society. Officially from 1987 up to May 2008, 3,524 cases have been registered.

According to UNAIDS, the number of people affected is estimated to be 12,000 to 15,000 in Mauritius, i.e. a prevalence of 1.8% of the population. 610 women are HIV positive, according to official figures. Many of these women are heterosexuals (see Chapter V on Women’s Rights).

As the mode of transmission of HIV/AIDS has shifted from heterosexual to injecting drug users, the Ministry of Health and Quality of Life in collaboration with the Ministry of Social Security, National Solidarity, Senior Citizens Welfare and Reform Institutions has introduced as a substitution therapy, methadone, in the treatment of opiates addiction.

Methadone is very effective in –

(i) detoxification of drug addicts;
(ii) stopping the escalating trend of HIV in the injecting drug user population; and,
(iii) attracting other drug users to access the treatment.

To ensure its effective implementation, the Ministries have established a protocol and its modalities.
According to the Aids Unit of the Ministry of Health and Quality of Life the number of HIV affected Children, by age, sex and mode of transmission is as follows:

<table>
<thead>
<tr>
<th>Age</th>
<th>Sex</th>
<th>Mode of Transmission</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
<td>Total</td>
</tr>
<tr>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
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<tr>
<td>3</td>
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<tr>
<td>4</td>
<td>1</td>
<td>3</td>
<td>1</td>
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<tr>
<td>5</td>
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<td>8</td>
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<td>2</td>
<td>1</td>
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<td>10</td>
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<td>11</td>
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<td>12</td>
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<td>13</td>
<td>1</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>18</td>
<td>1</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>TOTAL</td>
<td>9</td>
<td>9</td>
<td>17</td>
</tr>
</tbody>
</table>

There is also one infected case of “Mother to Child Transmission (MTCT) and who has reached the age of maturity.

<table>
<thead>
<tr>
<th>Cases detected and still under the age of 18</th>
<th>Mode of Transmission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sex</td>
<td>MTCT</td>
</tr>
<tr>
<td>Age</td>
<td>Male</td>
</tr>
<tr>
<td>14</td>
<td>1</td>
</tr>
<tr>
<td>16</td>
<td>2</td>
</tr>
<tr>
<td>17</td>
<td>3</td>
</tr>
<tr>
<td>TOTAL</td>
<td>3</td>
</tr>
</tbody>
</table>

4 cases of Mother to Child Transmission passed away:

2 males of 1 year and 2 years old.
2 females of 1 year and 4 years old.

Its proliferation among the young generation is a matter of concern. 21.4 % of registered cases are within the age bracket of 15 to 24 years. Those who work at grassroots level have noted that in fact children aged 11, 12, 13 are now using injection for drugs which is a matter of great concern to the Ombudsperson for Children.

As regards younger children, it is important to note that anti-retroviral is now provided in paediatric form, i.e. syrup. However, we still do not have viral load count for babies born of mothers who are HIV positive. This implies that there can be no early detection of those living with the virus. Treatment of these infants, who are only found to be with the antibodies of their mother, cannot start early enough. One must wait until they are one and half years old to start treatment based on present day methods of detection.
In its concluding observations on Mauritius in 2006, the UN Committee on the Rights of the Child recommended “the provision of anti-retroviral drugs to pregnant women free of charge to reduce the mother-to-child transmission”. Although anti-retroviral drugs are provided freely by the Aids Unit, the lack of awareness about HIV/AIDS; the discriminatory attitudes; and fear of those affected act as an obstacle to come forward.

The National Agency for the Treatment and Rehabilitation of Substance Abusers (NATReSA), a NGO operating under the aegis of the Ministry of Social Security, National Solidarity, Senior Citizens Welfare and Reform Institutions, is providing the necessary services to drug abusers through counselling and detoxification programmes. However, much remains to be done at the grassroots level, to raise the awareness of drug addicts about the importance of not sharing the same syringes or else being at risk of HIV/AIDS. Each citizen must act in a responsible manner as this is of matter of national concern. The public should be provided with the right information on HIV/AIDS, specially on its mode of transmission so as to fight against discrimination and stigmatization which is not only aggravating the prevailing situation but further victimising those who are HIV positive.

To curtail the proliferation of HIV/AIDS, the Ministry of Health and Quality of Life has prepared an HIV and AIDS Preventive Measures Bill.

The Ombudsperson for Children had made several proposals to the Ministry of Health and Quality of Life on this issue to ensure respect for the fundamental rights of children, who are likely to be affected or are affected.

The following recommendations have been taken into consideration –

1. The possibility for a minor to seek a test in full confidence, even if he is not accompanied by his parents;
2. For full anonymity when there is a test, even concerning a child, even if he is HIV negative;
3. No institution, where children are committed, after an application to the District Magistrate can refuse:
   (i). to accommodate a minor who is HIV positive.
   (ii). to ensure that the minor is following an appropriate treatment under the supervision of the Aids Unit of the Ministry of Health and Quality of Life.
   (iii). to inform the said unit of any medical problem that might be identified while minor is under the care of the said institution.
4. Any person under whose care and custody a child has been placed, including a foster parent, a responsible officer of an institution including the Rehabilitation Youth Centre has a duty to report any suspected risky medical condition of any child to the appropriate medical authorities and, if need be, to the Aids Unit of the Ministry of Health and Quality of Life.
Provision has also been made in the Bill for sanctioning those who do not respect the above.

As our island relies a lot on its human resources, it is imperative to invest on preventive strategies to safeguard this asset. Schools and various NGOs militating against HIV/AIDS are working in close collaboration in the dissemination of Information Education and Communication (IEC) material to create awareness among youngsters on the prevalence of HIV/AIDS in our society. In this context, PILS has launched two informative booklets on sexuality which are distributed to secondary school pupils throughout the island.

However, the introduction of sexual education as a life skill in the school curriculum, at both primary and secondary schools is considered as most important.

Last but not least, there are only three dedicated doctors for the whole island. In prison where the prevalence is rather high, no doctor is posted there “permanently”.

A greater effort must be done to ensure that everything is done on all fronts to reverse the tendencies and protect those with HIV/AIDS as well as the population in general.

**Child Safety Online**

Article 17 (e) of the Convention of the Rights of the child refers to the child’s access to appropriate information:

> “the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health”

Evolution in the field of internet and mobile phones and its ease of access to children is not only an asset to our youngsters, it can also be dangerous and may exert harmful influence on their mental and moral development.

According to latest ICT indicators in 2006, the number of internet subscribers was 137,500 and the number of mobile cellular subscribers was 772,400. The expansion in the use of these IT technologies also entails a number of risks for the users, specially for children.

According to the Internet Child Safety Foundation (ICSF), in September 2007 in Mauritius, it has been found that less than 10% of parents monitored the websites visited by their children. Internet includes contents of an exclusive nature, meant for adult and until now, it has been difficult to block such contents for children. Children are thus exposed to a wide range of risks as they can access offensive and harmful content.

To ensure that children are not at risk of the negative impact of the internet, the Ministry of Information Technology and Telecommunications has set up a Committee comprising of different stakeholders as well as officers from the Ombudsperson for Children’s Office to work out a Child Safety Online Action Plan.
An assessment of the current situation reveals that youngsters can thus be exposed to inappropriate material, child grooming, and harassment.

Children can also disclose personal information and such disclosure on the internet may expose the child to substantial threats. Availability of a webcam can also be a source of an open window into a child’s bedroom.

The cellular phone devices can also be used to bully or harass a young person. Advanced software enable teens to view pornographic/obscene scenes and pass it from one handset to another.

Research also show that the favourite activity of young users is downloading of music and games. Cybercriminals can develop strategies to entice children through recreation programs if they are left on their own.

To protect the children from the ill-effects of online surfing, the committee worked out a Child Safety Online Action Plan. Its objective is to make sure that the public as well as those concerned in information technology and its related field are informed of the dangers of Internet. Policy makers are also provided with appropriate policies to curtail the risks that children may be involved in.

The Child Protection Act (CPA) 1994, the Information and Communications Technology Act 2001 as well as the The Computer Misuse and Cybercrime Act 2003 address the issue of Child Safety Online in Mauritius.

Under section 14(1) (a) of the CPA which deals with sexual offences, “any person who causes, incites or allows any child to be sexually abused by him or by another person commits an offence”. Under section14(2), “a child is deemed to be sexually abused where he has taken part whether as a willing or unwilling participant or observer in any act which is sexual in nature for the purposes of:

1. another person’s gratification.
2. any activity of pornographic, obscene or indecent nature;
3. any other kind of exploitation by any person.”

The Information and Communications Technologies Act 2001 stipulates that the transmission or reception of a message which is grossly offensive or of an indecent or obscene character is unlawful.


(1) in section 2 by inserting the following definitions in their proper alphabetical order-
“film” has the meaning assigned to it by the Films Act 2002;
“indecent photograph” includes an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film;

“photograph” includes –

(a) the negative as well as the positive version; and

(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;

“pseudo-photograph” means an image, whether made by computer graphics or by any other means, which appears to be a photograph;

(b) by inserting immediately after section 14, the following new section –

(1) Any person who-

(a) takes or permits to be taken or to make, any indecent photograph or pseudo-photograph of a child;

(b) distributes or shows such indecent photograph or pseudo-photograph;

(c) has in his possession such indecent photograph or pseudo-photographs, with a view to it being distributed or shown by himself or any other person; or

(d) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photograph or pseudo-photograph, or intends to do so,

shall commit an offence”.

The Child Safety Online Action Plan has made the following recommendations to further ensure that children are protected from exploitation and manipulation through the internet as well as via the mobile phones.

1. Public awareness campaigns.
2. Safety measures for schools and public internet access points.
3. Best practices for internet service providers.
5. Enforcement and reporting measures.
6. International co-operation.

The lack of parental awareness on the outcome of unsupervised use of Internet by children is a major issue to be addressed. Parental supervision and guidance can help in minimising the risks it entails.

Cases related to child safety are referred to the Police for investigation and to the Ministry of Women’s Rights, Child Development, Family Welfare and Consumer Protection for the provision of psychological services.
The incorporation and harmonisation of all these laws under the proposed Children’s Act will make it easier for the public to know all the laws regarding protection of the child. Legislation, of course, is not enough. Proper enforcement should be ensured for the real protection of all children.

**The Women and Children’s Solidarity Programme (WCSP)**

Last year the Minister of Finance decided to create a Women and Children’s Solidarity Programme with a provision of Rs. 25 million.

The objectives of the programme are:

(i) work on priority areas with the ultimate aim of diminishing all forms of violence against women and children;
(ii) provide relief and support to children who are victims of child abuse including neglect and violence against children;
(iii) educate the visually and hearing impaired; and
(iv) assist children with debilitating disease and serious ailment.

This year the Minister of Finance has included support for children with a parent serving a prison sentence. The programme is meant to fund NGOs which will submit serious projects which will directly benefit victims.

Unfortunately, the setting up of the programme took some time in 2007 and NGOs were not really prepared to submit their projects. Few projects were approved for the financial year 2007 – 2008.

This year, more NGOs are now aware of the programme and its objectives, and the criteria which they must respect in order to benefit from such a programme.

The Ombudsperson for Children sits on the Steering Committee of the WCSP which is presided by representatives of the Prime Minister’s Office. Representatives of the Ministries of Finance and Economic Development; of Women’s Rights, Child Development, Family Welfare and Consumer Protection; and, of the Social Security, National Solidarity and Senior Citizens Welfare and Reform Institutions also sit on the said select committee.

An Evaluation Committee has been set up to study the submissions of projects and make recommendation to the Steering Committee.

The specificity of the WCSP is that NGOs are encouraged to work with at least one other partner, either another NGO or a local authority or an entity of the private sector. They need to put 15% of their own funds or contribution in kind in the project. However, some of the funds can be used for training, either their own training or that of others who will be empowered to work on the project.
Of course, NGOs need to be registered as funds up to Rs. 1 million can be given and need to be properly managed. Transparency and accountability are the most important elements which will ensure that public funds are not being wasted. To ensure good governance, projects will need to be evaluated and monitored.

From the very beginning of this programme, it was obvious that many NGOs in Mauritius and Rodrigues are not equipped to prepare and monitor their projects by themselves and that some help would be needed. The UNDP proposed to put a consultant at the disposal of the WCSP to help NGOs identify viable projects and find appropriate partners. Help can also be extended and write the project in the format required.

In Rodrigues, it was also clear that many associations are doing a fantastic job at grassroots level but they are not registered and sometimes not properly structured.

This is something of a challenge in a Republic where we already have hundreds of associations. We often wonder whether all of them are really active or are fictitious. No updated information was available at the Registrar of Associations. MACOSS has informed us that out of 250 registered members they have 65 working with children and youth.

It is also important to bear in mind that several programmes exist for NGOs and that there is a need for an overall evaluation of these programmes and a proper coordination to ensure that the same NGOs are not eating up the lion’s share and others are being left behind, despite the commitment of their members.

Projects can be of an educational, social, cultural or rehabilitative nature. They can also be a combination of several approaches for example:

A project to teach music to children who are otherwise neglected will be educational, cultural and social. Indeed, it can help to diminish the suffering of children victims of abuse, though in some cases proper therapy is needed. A parental empowerment programme can be coupled with a programme to help children catch up on their educational difficulties. Another one may teach children role-play so that they can verbalise their problems while engaging in a cultural activity which will reinforce their self-confidence.

Projects on domestic violence can combine special men’s meeting with women’s empowerment and the training of children in some craft, gardening or other activity. These activities would concern the same facilities but be run separately for a length of time before converging.

In fact, there are great possibilities under this programme. The ideal would be to carry out these activities in a coordinated fashion.

Logically, Mauritius and Rodrigues are small islands and our population is not so huge. If there were a minimum of 50 projects for this particular programme which would be supplementing other projects to empower and support the same families in the same region, there should be a tangible change for the better at least for the next generation or even next
half generation. But the efforts must be sustainable and a lot of patience, perseverance and commitment is needed to believe that change will come. Tangible results will not be visible immediately but a regular evaluation will allow the stakeholder to ensure that the project is dealing with the issue which will make the difference.
Chapter IV

The role of the family in the Promotion of the Rights of the Child

The Convention of the Rights of the Child (CRC) lays emphasis on four principles: non-discrimination (Article 2), best interest of the child (Article 3), survival and development (Article 6) and participation (Article 12). The CRC recognises the primary responsibility of the family and places strict limits on State intervention and any separation of children from their parents.

The role of the child in the family

Traditionally, the child has been seen as a dependent, invisible and passive member. It is only recently that the CRC has given him the right to be heard and respected.

The family becomes the ideal framework for the first stage of democratic experience for each of its members including children.

In view of the external circumstances surrounding the family, whether economic, social or cultural, situations still occur in which the child is supposed to work for and with the family. The girl is expected to take care of her siblings and replace the mother in all the household tasks, encouraged at an early stage to prepare for her role as a ‘mother’.

Children are often abused, neglected and their right to physical integrity ignored on the assumption that the privacy of the family gives the parents the ability to make correct judgements with respect to the upbringing of future citizens. But now the CRC has established clearly the role of the parents and of the extended family as well as the role of the State in supporting families to play their role in the best interests of children. The State must also teach adults and children the implications of the CRC.

The basic institution in society for the survival, protection and development of the child is the family. When considering the family environment, the CRC reflects different family structures arising from various cultural patterns and emerging family relationships. It refers to the extended family and the community and applies in the nuclear family, separated parents, single-parent family and adoptive family. Such situations should be studied in the framework of the rights of the child within the family and measures have to be identified to protect the integrity of the family and ensure appropriate assistance in the upbringing and development of children.
The civil rights and freedom of the child within the family

The civil rights of the child begin within the family. The family has an important role to play regarding the right of the child to be registered with a name, a nationality and to know as far as possible his parents and to preserve his identity (Articles 7 and 8). Socialisation and acquisition of values are developed within the family for freedom of expression and association, for privacy and discipline and for the child not to be subjected to cruel, inhuman or degrading treatment or punishment, including neglect, corporal punishment, sexual or verbal abuse. The family is an essential agent for creating awareness, preservation of human rights and respect for human values and cultural identity. The balance between parental authority and the realisation of the rights of the child, including the right to expression, is to be considered.

Declaration of birth

Article 7 of the Convention on the Rights of the Child provides that “the child has the right to a name at birth. The child also has the right to acquire a nationality and, as far as possible, to know his or her parents and be cared for by them”.

According to the Civil Status Act, a birth should be registered within 45 days from the date of birth at the Civil Status Office of the locality within the district in which the birth took place or in which the parents resided at the time of the birth.

If a birth has not been declared within the 45 days’ delay as prescribed by law an authorization should be obtained from the Registrar of the Civil Status to enable registration.

If a child is not registered within 3 months of the birth, the parents have to apply for a declaration before the Magistrate of the District where the birth took place.

No witness is required at the time of registration.

The law provides that:

- if the parents are civilly married to each other, only one parent may appear before the Civil Status Officer to declare the birth.

- if the parents are not married and both wish to acknowledge the child, they should both call on the Civil Status Officer to acknowledge the child and sign the registers of birth.

- if only one parent declared a birth, the child will bear the surname of that parent.”
What about the child who has no family?

Article 20 of the CRC stipulates that the state has the duty to provide special protection for children who have no family. But is it possible to address the situation of those children within the framework of the fundamental rights? Should the system of protection be improved? Are the best interests of the child assessed? Is there any room for the participation of the child? Is there anyone to listen to them? Is it possible to prevent and combat discrimination? The answer is that concrete programmes and strategies at national level have to be designed and implemented on this issue.

Children, victims of violence between partners

Children are the most precious gifts of a family. Parents are supposed to nurture and love them. It is sad to see that violence in the family occurs recurrently.

In the hierarchy of power distribution within the family, children occupy the lowest rung of the ladder and thus are most vulnerable. They are often the scapegoats for the frustration of adults around them by the mere virtue of their position in this hierarchy. Several cases of violence against children in the family have been published in the press. Children are murdered because their father cannot accept the fact that their wives had left them or mothers kill their babies because they can no longer bear the battering of their husbands. It is so easy for these adults to relieve their frustration on these small vulnerable beings who cannot defend themselves and have no one to speak for them within the family.

The social inequalities between men and women often undermine the family as a source of support for children's rights. Family violence is a major problem to-day. Violence between parents affects children in many ways. They often witness or hear the violence between their parts and are caught in this violence.

Article 18 recognises the common responsibility of both parents in the upbringing of the child. Culturally, mothers are often given initial responsibilities for babies, infants and very young children and fathers have subsequent responsibilities and dominant powers in the life of a child. But this practice can cause a lot of problems when the parents are unable to agree on anything regarding the child. This leaves the child in a situation where no solution is achieved even for important matters. It may take months for a child to be able to change school or obtain a passport. The OC has, on many occasions, intervened to solve such problems. In such circumstances, no one should make inflexible presumption about which parent takes the priority. The grounds for the decision should focus on the best interest of the child.

Parental alienation

Article 5 of the Convention on the Rights of the Child together with article 18 deal with the relationship between the child, his or her parents and the State. Article 5 introduces the
concept of parents’ and others’ responsibilities for their children, linking them to parental rights and duties, which are needed to fulfill the responsibilities. The best interests of their child should be their basic concern.

Divorce always represents a painful, stressful and challenging period of life. When children are involved, the situation only gets more complicated for all concerned.

There has always been an assumption that mothers are better as child rearers. Accordingly, the father had to provide to the court compelling evidence of serious maternal deficiencies before the court would even consider assigning primary custody to the father. The Civil Code provides that «La Cour Suprême se prononce sur la garde des enfants, en tenant compte exclusivement de leurs avantages et de leurs intérêts». But it is clear that for children of «maternal» age, custody is always given to the mother. «Toutefois, la garde des enfants de moins de cinq ans doit toujours être attribuée à la mère, sous réserve de circonstances exceptionnelles de nature à compromettre la sécurité ou la santé de ceux-ci». This gave fathers an opportunity to gain custody of their children but they would have to bring proof that the health and security of the child would be jeopardised if they are with their mother.

It is sad to note that there is an increase in difficult child custody issues or parental alienation. Parental alienation is the denigration of one parent, often the father, by the other parent with the intention of alienating the child against the former. The purpose of such behaviour is to gain or retain custody of the child without the involvement of other parent.

Mothers often state that they want the child to visit the father and recognise the importance of such involvement, but in reality, they do exactly the opposite.

It is worth noting that such action is indeed a form of emotional abuse that can not only produce lifelong alienation from a loving parent, but also cause lifelong emotional disturbance in the child. Some parents, while maintaining ongoing denigration and rejection of a loving and devoted parent, exhibit complete disregard for the role of the alienated parent in the upbringing of the child. The result is that they manipulate the child to make him refuse to see the other parent.

Constant rejection from a child can be humiliating and demoralising for fathers who in the end prefer to give up rather than to allow the child to face the harsh consequences of the behaviour of the alienating parent.

The interference of in-laws also increases the complexity of custody issues. There is so much bad blood between the in-laws and the divorced husband or wife that the in-laws, while overprotecting their daughters or sons, encourage them to deprive their son-in-law or daughter-in-law of their right to see their children. This often happens in the case of children of tender age where the children cannot speak for themselves (see Chapter IX on Selected Cases).

Custody issue is becoming a challenge for the Court, psychologists, counsellors, CDU
officers and all those who deal with these issues. It is important to find ways to spare children the emotional pain and stress that result when they are caught in their parental crossfire. It also involves helping the parents to understand the harm that is being done through their actions. They must be properly counselled in order to find peace and reassurance in leading a life separate from each other and develop effective ways of co-parenting. They must also be taught that children do not ‘belong’ to parents and that each adult must learn to let go and live his or her own life. Children must be given the chance to become autonomous and not be tied to one parent for life.

In France, three years after passing a law in 2004, with a view to simplifying the procedures for divorce, custody issue remains a thorny problem and a large number of parents have not seen their children for years. This problem has recently been named the parental alienation syndrome. A considerable number of parents who are facing this problem have formed an NGO called Alpaca to sensitise the magistrates who are called upon to hear the child’s opinion on the matter.

Several magistrates have realised that it is imperative to stop this emotional struggle. Under this law, the magistrates can compel the divorcing parents to attend meetings respecting family mediation. Since 2007, several mediation centres have been set up with a view to settling the parental conflict. It is said that demands for mediation are on the rise and more and more couples call at these mediation centres of their own free-will rather than because of a court order.

The OC has communicated this information to the Attorney General. She has in the past proposed to the Ministry to organise for parents to visit their children in a child-friendly place which is under the control of the Ministry, as divorced or separated parents do not want to meet their estranged spouses. She is of opinion that dropping children in a neutral place could make things easier for everyone, but at present this is done only on an adhoc basis. Further, if judges give rights of visits on Sundays, this involves overtime for employees of the Ministry which has started organizing such meetings. Such a solution could also apply to grandparents in relevant cases since now the law gives them rights too.

**Access to grandparents**

In the past years, the office has received several complaints from grandparents respecting their difficulty to have access to their grandchildren. The breakdown of a marriage or a loss in the family can be upsetting for all those concerned specially for grandparents respecting their difficulty to have access to their grandchildren. This problem occurs specially in case of separation of parents. The partner, having custody of the minors, often denies access to the other party’s relatives, specially the grandparents.

Grandparents play an important role in the lives of their grandchildren. Legal action for grandparents who were denied access to their grandchild was not possible as there were no specific legal provisions in their favour. The court hesitated to intervene in family situations except in extreme circumstances directly related to the child’s welfare.
As this office has received several cases of grandparents who want access to their grandchild, the Ombudsperson for Children made proposals to the Minister so that the law could be amended to provide for children to retain close links with their grandparents, uncles, aunts and cousins on both sides. She also mentioned that giving grandparents a right to seek an order would also be more compatible with the protection policy of the Ministry to seek an Emergency Protection Order (EPO) in specific cases and commit children at risk to their next of kin.

The Civil Code has recently been amended to provide for the relationship of children with ascendants and third parties and for brothers and sisters not to be separated.

The Civil Code has been amended by adding immediately after article 371-3, the following articles –

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371.4  «L’enfant a le droit d’entretenir des relations personnelles avec ses ascendants. Seul l’intérêt de l’enfant peut faire obstacle à l’exercice de ce droit.

Si tel est l’intérêt de l’enfant. La Cour Suprême fixe les modalités des relations entre l’enfant et un tiers parent ou non.»
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Following this amendment, the Ombudsperson for Children intervened through radio programmes to explain how this amendment gave the grandparents access to their grandchildren.

The OC suggested that mediation could be attempted before starting court procedures bearing in mind that the grandparents being most of the time retired persons or pensioners cannot afford to enter cases before court. Often, they are not even entitled to legal aid being sometimes, owner of a house or plot of land. When mediation fails, the grandparents can only suffer in silence.

Unfortunately, mediation is not always successful. Sometimes there is too much bad blood between both parties to entertain any hope of an amicable settlement. In this case, the grandparents are advised to resort to court to have a right of visit.

The promotion of the rights of the child will have to be achieved in the context of the rights of parents and other members of the family including grandparents.

This will be the only way to promote the status and the respect for the family itself. The CRC is the appropriate tool to help to ensure the respect for the fundamental rights of all family members in their individuality.
The Family Policy

The Ministry has a Family Welfare and Protection Unit with the aim to implement appropriate policies and strategies to promote family welfare and reduce domestic violence.

The Ministry has reported as follows:

“A series of innovative measures have been taken in this field for the past few years. The law has been amended to provide better protection to victims of domestic violence and strengthen the enforcement mechanism of the Protection from Domestic Violence Act (2003)” (see page 22 on Domestic Violence).

An Action Plan on the National Policy Paper on the Family is being prepared.

The Families in Distress Scheme, previously known as the Women and Children in Distress Scheme, now provides financial assistance to widowers also. Since the setting up of the scheme in 2005, grants have been allocated to 53 beneficiaries.

5000 men and women have been targeted through the MAP (Men-as-Partners) Project.

The services of a consultant has been sought to implement the National Action.

Initiatives to combat domestic violence

Sensitisation campaigns on domestic violence with the collaboration of the Council of Religions are being carried out. A communication strategy has been devised and includes development of audio CDs, DVDs, and other IEC materials to be distributed island wise and the creation of a website to make information available on line to the public at large.

Several projects have been implemented by NGOs and a Family Counselling and Support Services Unit has been set up at the Central Prisons with the aim of enlisting the collaboration of stakeholders to combat family violence.

Recently, a training for trainers programme for 32 officers from government agencies and NGOs was conducted on Anger Management and Counselling Techniques in order to help them to identify different forms of anger and its effects as well as give the participants tools to enable them to create a peaceful environment for themselves and others (see page 22 on domestic violence).
Chapter V

Women's rights

When women thrive, all of society benefits, and succeeding generations are given a better start in life

Kofi Annan, former Secretary General of the UN

Up to now we have not been too inclined to make proposals on women's rights, not being directly mandated to deal with such rights. But in view of the fact that children's rights are extremely intertwined with those of women, it is important that we should express our opinions on this issue without hesitation. After all, the OCA 2003 does state that the OC must ensure that everyone gives due consideration to the rights and interests of children. If children are victims of child abuse and child neglect, we must look at all the causes of such abuse. One of them is unfortunately linked to the very condition of women.

In Mauritius it is interesting that the same Ministry is responsible for women’s rights, child development and family welfare. This should normally facilitate concerted action for all these issues which are closely linked though they have a different focus.

The Gender Unit of the Ministry, which was formerly called the Women’s Unit states that it has a two pronged approach: women’s empowerment and gender mainstreaming.

Officers of the OCO have participated in several meetings on gender issues, more particularly on domestic violence. They have helped in the preparation of the Plan of Action and its validation. The Office continues to be a close observer of what is happening with the rights of women.

Reproductive health

One of the most important issues concerning women’s lack of empowerment is their difficulty to deal efficiently with their reproductive health. Nothing could be more relevant to children’s rights than this lack of capacity of some women.

On World Population Day, the Ministry of Health and Quality of Life declared that it "provides free reproductive health information and services including family planning through a network of area and community health centres". It also reminded us that "Forty years ago, world leaders proclaimed that individuals have a basic human right to determine freely and responsibly the number and spacing of their children. Forty years later, contraception and family planning information remain out of reach for hundreds of millions
of women, men and young people. Unmet need is extreme among the poor and marginalised.

One could hope that, in Mauritius, the State and NGOs efforts to promote contraception and family planning would have, in fact, made the difference for women who are too poor, too lonely to have children and take care of them. Unfortunately, the problem is that the more one is unempowered, the more one tends to look for affection and end up pregnant through ignorance and lack of responsibility of male partners. We will never make progress if this problem is not dealt with seriously. The Ministry is a key partner in the implementation of a UNFPA project which focuses on the sexual and reproductive health for underprivileged women and youth.

Unfortunately, today, pregnancy is not the only risk. Out of 3,417 cases of women tested from 1987 to June 2008, 610 women are HIV positive. 23.6% of women who are HIV positive have been contaminated through sexual relations. These figures concern cases between January to June 2008 according to the Ministry of Health and Quality of Life.

This is of course cause for concern specially as it will definitely have an impact on children (see page 32 on HIV/AIDS and Children).

At the root of the problem is the issue of women's rights. It is high time to undertake a serious study to see how far women have now been empowered to take their destinies in their own hands. What programmes have been put in place and been carried out in a sustainable way to enable women to stand up and become citizens with rights, including reproductive rights? Why are so many women still dependent on their male partners? Why so many of these partners are not able or ready to take their responsibility towards their children? How many do not even declare those children? How many deprive children of their own flesh and blood from having a father?

**Filiation of children**

To-day the law is in favour of all children. In the Civil Code, it is spelt out that natural, legitimate and even adulterous children are on an equal footing as regards to their rights in the family specially their rights to claim alimony from their parents and their rights of succession. The law also provides for recherche de paternité et de maternité. But this procedure costs money and is also lengthy. Further, it can only take place within two years of the birth of the child. Failing that, it is for the child to enter the case after his majority. When the DNA Bill will be passed and when it will be available for such cases, it may be interesting to amend that law and remove that time constraint. After all it is the best interests of children that is our guiding principle. Moreover, it will have to be available to those who are at the bottom of the social ladder. However, it may not necessarily be the economic advantage that may be sought. Mothers and specially children themselves may be inclined to want to exercise their right to an identity which is upheld in the CRC. They need to do this through their research on their filiation.
All those who are versed in child psychology and child development know that a child needs a father and a mother. The father figure is important for the child's proper development. The rights to be sheltered and be properly nourished are some basic human rights. Normally parents have to provide for these rights. The State can help in needy cases. The State must ensure that all children of the Republic have these basic rights.

For the moment, children whose parents earn less than Rs10,000 can get several types of social security ranging from social aid, basic orphan's pension, child allowances, as well as subsidy in respect of payment of examination fees for the Cambridge School Certificate and Higher School Certificate. But very often women whose children are under their de facto custody without a father will live with a concubine. Accordingly, their social aid will be cancelled because the State considers that this new male partner, if he works, must take the responsibility of the whole family including the children. In most cases, even if the concubine is well intentioned he may not be able to afford to support such an economic burden. At times he does not want to do so and there is new conflict for the woman.

**Women’s economic empowerment**

The Government has also put a lot of emphasis on women's economic empowerment through training and also by encouraging women small entrepreneurs. The Ministry responsible for women's rights has, for many years, set up a unit to encourage entrepreneurship amongst women. The Ministry itself states that “the focus is now on fostering an entrepreneurship culture among womenfolk” and the objective is clearly to help them become sustainable economically.

The Ministry has innumerable centres both at national and regional levels so that all women are able to access information and training programmes easily. It is a fact that many women are benefiting from a variety of projects.

The Empowerment Programme has also started training for women, specially those who have lost their jobs in the textile sector. According to them, “Women more than men are affected by the restructuring of the economy. The Empowerment Programme has a Special Programme for unemployed/retrenched women. This programme provides opportunities to unemployed/retrenched women, especially those with a low level of education and with limited skills to either (i) recycle themselves into new jobs through training and on the job placement, or (ii) to start up a business. Technical assistance and training costs are entirely met by the National Empowerment Foundation whilst financial assistance is provided through a soft loan scheme specially designed for retrenched women. More than 500 women have so far taken advantage of this programme over the past two years that the programme has been launched.”
Sex discrimination

The setting up of a Sex Discrimination Division of the National Human Rights Commission shows commitment towards protection of women's rights. It became important to address the gender issue after having amended the Constitution in 1995 to ban all forms of discrimination based on sex. The adoption of the Sex Discrimination Act went even further. The Constitution only guarantees that no law can discriminate against any citizen on the grounds of all the differences listed in section 16(3). For 27 years the subsection did not contain the word “sex”. It was through a very long struggle that finally, after the CEDAW Committee made its recommendations that the amendment was brought.

It is, of course, very commendable to struggle against gender discrimination and sexual harassment as these are at the root of women's emancipation. But, if women do not know their rights and are not able to exercise them freely, they will not come forward to seek redress. It is, therefore, important to carry out sensitisation programmes all the time. Such programmes can and is being done by the Ministry, the NGOs and the Sex Discrimination Division of the NHRC. The OCO also includes elements on the issue when talking to children, parents, teachers and even the general public. But it is probably time now to go to the place of work to talk to women about their rights and those of children. Some more targeted programmes are needed. The Men-as-Partners programme, of the Family Unit of the Ministry, should be multiplied so that it bears its fruits all over the island and even in Rodrigues.

Attitude changing

However, if we want to see some real attitude changing, an ongoing work must be done with the new generation before they start being conditioned by society on their stereotyped roles. This education should be proposed in the normal education curriculum. Article 29 of the CRC states the objects of education and it lays emphasis on the fact that an important one concerns "the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes..."

These programmes must be worked out in the same way as for the introduction of Human Rights Education in schools. Unfortunately despite a lot of ground work done in this field, and in which the OCO participated, we do not see progress being made on this very important issue.

Furthermore, policies must also address the very important issue of the negative image of women which is projected in the press, in publicity and even in literature, songs and other forms of expression. These stereotypes that confine women to the private sphere or describe them as sexual objects, or as being femmes fatales or dangerous, etc. must be condemned by the State and not just NGOs. In fact a proper legislation is needed to criminalize such abuse, which may not be properly covered under the terms sex discrimination or sexual harassment.
The National Women’s Council, for example, could engage in a sustainable campaign to ban all forms of stereotypes. For the moment, it implements a training programme in self assertiveness, leadership and communications skills. Despite this and all the good policies mentioned above, many women remain psychologically dependent on men and are conditioned to believe that their role is really superficial and unproductive and they are unable to enjoy all their fundamental rights. Domestic violence seems to be increasing, and the kind of violence perpetrated is more shocking and often leads to fatal cases. Some of these are almost unbelievable because of the atrocious methods used. The question is not to lay the blame at the feet of men, because each case has a history of violence which is different. But they all have one thing in common. They reveal that intimate partner violence is common and that violence is in the homes in urban and rural areas, in rich and poor families, in families with little education as well as those with a certain level of education and with all cultural backgrounds.

It is also sad to note that violence against children not only concerns violence of parents against them, but it includes their witnessing of violence during the domestic struggles of their parents. Recently the newspapers reported a case of a child who witnessed her father killing her mother during a violent discussion. Such children are traumatised and can be considered as victims.

There is, now, a great awareness among researchers and rights-defenders that violence breeds violence. One reads more and more about trans-generational violence. It has been found that many perpetrators of violence have a history of violence in their family and that they have role-modelled on their parents or on some other violent person in their immediate environment. Or they may have been victims of violence. They may have been humiliated, or been severely and unjustly punished by their own parents. Children need to exist in the eyes of their parents and will obey them and protect them even if they are hurt by them. This is particularly well known regarding children who are victims of sexual abuse and incest.

On the other hand, children are often victims of their parents who either dote on them and do not let them develop properly. Some mothers who are not happy in their couples, will give more than the normal maternal attention to their male child. They expect too much from them or never sever the ties that bind them together. Cases are reported to our office where it is obvious that some men are so attached to their mothers that they are unable to have balanced relations with any other woman. Parental interference lead to the breakdown of the couple and again the children are then torn apart from their parents and grandparents.

The complexities of such relations are unfortunately at the root of many men-women problems. Our concern, is first and foremost, that children inevitably pay for such unhealthy relations. But, more importantly, we are convinced that the vicious cycle must be broken. Of course, each person can undertake a therapy or other analytical work in order to get at the root of their unresolved problems that is putting too much pressure at an individual level. All serious reports on violence, which we use as reference documents, lay emphasis on the need to prevent all forms of violence in all settings. Our chapter on violence dwells more on the issue. Women and children being, unfortunately, mostly
victims of such interpersonal violence, we cannot remain deaf. Prevention must be our main concern and it needs a multidisciplinary approach.

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) did remind us of the need to adopt a multidisciplinary approach since 1979. Since then, the UN has been following up on the Declaration and Plan of Action adopted in Beijing in 1995. Now, there is a UN Report on violence and women which is the landmark document on the issue since October 2006. At the same time the UN also adopted the Pinheiro Report on Violence against Children. Just to follow up on such international instruments and reports would help to strengthen women's and children's rights.
Chapter VI

Rodrigues

Each year the Ombudsperson for Children visits Rodrigues in order to ensure that the rights, needs and interests of all children of the Republic of Mauritius “are given due consideration by public bodies, private authorities, individuals and associations of individuals”.

According to her mandate as defined by the Ombudsperson for Children’s Act 2003, the Ombudsperson for Children also promotes the rights and best interests of children and the Convention on the Rights of the Child.

In line with that, the OC’s missions to Rodrigues usually consist of discussions with the Rodrigues authorities and with other stakeholders. She also organises meetings with different stakeholders including children in order to sensitise them.

The OC has been acting as facilitator since 2007 to help the authorities in the preparation of a plan of action to prevent violence against children. This year the OC engaged in the follow up of the 2007 meeting with NGOs to assess the progress achieved towards the commitment made.

A Committee has been set up under the aegis of the Commission for Social Security, Women’s Affairs, Child Development, Family Welfare and Alleviation of Poverty.

The Committee was set up following a three day workshop on the prevention of behavioural problems and abuse on children in Rodrigues and to review the application of Article 19 of the Convention of the Rights of the Child. The workshop was situated in the context of the study on teenage pregnancy in Rodrigues, report on cases from the Child Development Unit and the workshop held by the Office of the OC in August 2007.

Among the 36 participants were community health workers, social workers from NGOs and public sectors, special needs educators and pre-primary teachers.

The committee met on a quarterly basis and is chaired by Mrs. Vinolia Ramanitrarivo, Coordinator of pre-primary schools. The Secretary is Mrs. Susan Auguste, Educator of Trevor Huddleston specialised school.

One of the first actions of the committee was to work out on the responsibilities of parents and children. A booklet was distributed on 2 December 2007 in connection with Universal Children’s Day organised at Montagne Cabris Corail.
The Committee facilitated several other activities with regard to the:

(1) provision of bus passes to children attending special needs centres and refund of transport of accompanying parents by the Commission for Social Security.

(2) hearing aid facilities to children attending Trevor Huddleston centre at Camp du Roi.

The Committee also initiated discussion on the control of students after school hours on bus terminals and action is now being taken by the police service.

It took up the case of children from specialized schools who claimed that they should be in normal school. The case referred to psychologist and psychiatrist. One is still attending specialized school and a girl has reintegrated college.

The Committee also carried on training-

(i) 73 pre-school and 5 special needs teachers on capacity building of parents including a component on Convention on the Rights of the Child.

(ii) 26 NGOs and staff of the shelter on better parenting and capacity building of parents

Several actions have been identified by the Committee and action has been taken accordingly.

This year was also important in the sense that NGOs were made aware of the wide possibilities that exist for them to obtain funds from the Women and Children’s Solidarity Programme. The Minister of Finance having doubled the funds for NGOs from Rs. 25 million (last year) to Rs. 50 million (this year), any NGO which has a project which respects the criteria established, can obtain between Rs. 100,000 to Rs. 1 million (see page 38). NGOs were interested and have been encouraged to apply or at least to write projects with the help of the Ombudsperson for Children’s Office or the Prime Minister’s Office (PMO). NGOs have raised several difficulties that they need to overcome, the main one being the need for registration. The Ombudsperson for Children and the representative of the PMO present at the meeting have explained that it is important to ensure that NGO’s are registered for legal reasons as there should be absolute transparency and accountability. The OC promised to facilitate their registration.

They were also informed that once a UNDP Consultant would be available, he/she could help them to identify projects and partners and train them in writing the projects.

The Ombudsperson for Children held discussions with the Deputy Commissioner and Commissioner for Education, Training, Arts and Culture, Library Services and Human Resource and his staff. She also discussed with the Commissioner for Social Security, Women’s Affairs, Child Development, Family Welfare and Alleviation of Poverty and her staff.
During the visit, the Ombudsperson for Children trained primary school teachers on the prevention of violence against children and distributed kits on the subject as well as posters.

The Ombudsperson for Children also received members of the public on two occasions. Several complaints were registered. One main problem that dominates these sessions relates to minors who are “left” with grandparents or other family members by parents who leave Rodrigues for Mauritius. Often, this concerns young single women who are unemployed and come to Mauritius to try to look for a job. Sometimes the children are abandoned by parents when there is a family breakdown and each parent looks for another partner. The minors then constitute a burden for them and they leave their children behind promising to come back to fetch them or to cater for their needs. Often they cut off completely with their relatives and do not even bother to even phone their children. Those who have to take care of the children then have to look for funds to feed the minors and give them everything they need to grow up and enjoy their basic rights. The attempts for them to obtain social aid are often in vain. Sometimes social aid is available but the enquiry to establish the whereabouts of parents, even those who remain in Rodrigues, is lengthy. The OC has met the representative of the Ministry of Social Security, National Solidarity and Senior Citizens Welfare and Reform Institutions in Rodrigues. She has also written to the Minister, Honourable Mrs. Sheila Bappoo, to draw her attention to the sad plight of these innocent minors and advocate for the setting up of a system whereby the actual carers will obtain social aid, even if the parents are untraceable and cannot be made to give their authority for social aid to be transferred.

While in Rodrigues the OC was invited to participate in a debate organised by Amnesty International on the Universal Declaration of Human Rights (UDHR) and the rights of the child. She participated along with Rev. Father Harel and Kavi Pyneeandee of Amnesty International (Mauritius) and spoke on the UDHR and on the Convention on the Rights of the Child which translates the principles of the UDHR in specific terms for children.

Last but not least, the Ombudsperson for Children participated in a one hour programme on MBC radio to sensitise the Rodriguans on her role, powers and function and advocate for a greater commitment of the population on the promotion and protection of the rights of the child. Emphasis was laid on the need to prevent all forms of violence against children and on the negative impact of violence on the development of children and on society in general.

Rodrigues being a small island, the audience was very high for such a programme which was broadcast during prime time (17.00 – 18.00 hours). Reactions to the programme were immediate. This augurs well for the future of Rodrigues as radio can be an essential tool to pass important messages to the population.
Chapter VII

Regional and International exposure

Since its creation the Ombudsperson for Children and her staff have been associated to various meetings at regional and international level. The Ombudsperson for Children participated as a member of the Editorial Board of the United Nations Study on Violence against Children between 2004 – 2006. In the same context the Ombudsperson for Children attended the sub-regional consultative meeting for the Indian Ocean Region at Madagascar from 25 - 27 April 2005. She was accompanied by Investigator I. Bawamia who also attended the Regional consultation in Johannesburg from 18 - 20 July 2005.


During the reporting period, the Ombudsperson for Children attended four international meetings as follows:

1. The “atelier regional sur le suivi des observations finales du comité des droits de l’enfant” at Ouagadougou, Burkina Faso from 6 - 8 November 2007. She was invited by the Office of the High Commissioner for Human Rights (OHCHR) and UNICEF to present to the participants from the West African Region the role and function of an African Ombudsperson for Children and facilitate the working groups on the Prevention of Violence against Children.

2. A preparatory meeting organised by UNICEF – Innocenti Research Centre (IRC) in Florence, Italy, from 11 - 12 November to set up a Global network of Independent Human Rights Institutions for Children (IHRIC).

3. The 2nd Global meeting of the IHRIC in New York on 10 December 2007 organised by UNICEF (IRC). The purpose of the meeting was the setting up of a Global Network of Ombudsperson with all those who occupy such posts on all five continents. The first Global meeting had taken place on the eve of the Special Session on Children in 2002. Indeed at paragraph 31 of the outcome document “World fit for children” due recognition is given to the role of Ombudsperson as an important way to defend children’s rights to ensure that our world would be fit for children.

4. The UN Special Session on Children plus five (UNSSC+5) meeting held at the UN Headquarters in New York on 11 – 12 December 2007. The participation of the Ombudsperson was also facilitated by UNICEF (IRC) (see the statement of Independent Child Rights Institutions at the UNSSC+5 at annex 4).
In 2008, the Ombudsperson for Children’s Office was invited to join the Southern African Network to end Violence against Children. Investigator, Mr. I. Bawamia attended the 3rd Annual Meeting of the network held on 16 – 17 April 2008 in Cape Town. During that meeting he presented a paper on the situation in Mauritius and the advocacy work of the Ombudsperson for Children in the field of ending corporal punishment against children. Other countries presented their country reports.

The network will also advocate with the African Committee of Experts on the Rights and Welfare of the Child in the latter’s next meeting to be held in Swaziland in November 2008. It will also intervene to seek the support of FBO’s during the next meeting African Council of Churches to be held in December 2008. Documents are already circulated for discussion.
Chapter I

The Convention on the Rights of the Child (CRC)

On 20 November 2009, we will be celebrating the 20th anniversary of the CRC. This should be marked in a special way all over the world. Apart from the celebration, one should also keep this date in mind to pursue every effort to comply with the Convention which is the most universally ratified Human Rights Convention. Indeed, only the United States of America and Somalia have not ratified the CRC. The CRC therefore remains a major instrument which “puts children’s rights at the cutting edge of the global struggle for human rights.”

Ratification of a Convention however is not sufficient. Governments and other stakeholders must uphold these rights. In the case of countries like Mauritius which have a dualist system there must be domestication of the treaty by incorporating all its provisions in the laws of the country.

There are two very important steps which Mauritius has taken in the past few years which show our commitment towards children’s rights. The first one was the setting up of an office of Ombudsperson for Children with a clear duty “to promote compliance with the Convention” (section 5c of OCA). The OC must also “ensure that the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and associations of individuals” (section 5a of OCA) and “promote the rights and best interests of children” (section 5b of OCA).

When the OC deals with specific complaints made to her, she does not only look at the laws of the country to ensure that they are being respected, but she also analyses each situation with regard to the CRC. If no law exists to protect children in a specific field, she makes proposals to the authorities to legislate, either by amending an existing law or by introducing a new law.

Several examples of such proposals and their outcome are given throughout this Annual Report.

The second decision is the official declaration of the Minister of Women’s Rights, Child Development, Family Welfare and Consumer Protection to the UN Committee on the Rights of the Child (UNCRC) in January 2006. Indeed, while deponing before the Committee in Geneva on the occasion of the presentation of the Second Report of Mauritius, she gave the undertaking that a Children’s Act would be voted. In the meantime, the Ministry is actively preparing the terms of reference for the recruitment of an expert to draft that comprehensive legislation.
The UNCRC has invited the State party to submit its 3rd, 4th and 5th consolidated report 18 months before its due date, i.e. by 1st March 2011. In view of the fact that the very drafting of the Report is a huge task, the OC has set up a Committee to start reviewing compliance based on the concluding observations of 2006. These can be accessed on our website and were reproduced in our Annual Report 2005 – 2006. In this Report we give a brief overview of the progress achieved up to now.

The Ombudsperson for Children sent an alternative report to the Committee in October 2007. She made a presentation before the Committee at a pre-sessional meeting before the Government was questioned in January 2006. The UN Committee also listened to NGOs.

The first thing that the Committee notes relates to insufficient compliance with regard to some of its previous recommendations. In particular, it notes that there have been “insufficient facilities for the rehabilitation of child victims of abuse and inadequate research on critical areas concerning children”.

Attention is particularly drawn to non-conformity with the CRC regarding the laws on adoption and juvenile justice.

The Committee further laid emphasis on insufficient coordination between different government departments and institutions dealing with children’s rights. The Committee noted with appreciation that there was a National Plan of Action and that it includes an effective monitoring mechanism on the provisions of the Convention.

Only part of this monitoring has however been done. We commend in particular the collaboration between the Ministry and the police with regard to children who put themselves at risk by being absent from home and schools and by playing truant in some very dangerous places. An effort has also been done between the two abovementioned stakeholders and the Ministry of Health and Quality of Life regarding children who are sexually abused. The whole procedure for dealing with children victims of sexual abuse has been improved. The most difficult remains the rehabilitation of those victims. The Minister is very attentive to the fact that a day drop-in-centre is not sufficient and that some victims specially of incest and those who have fallen in the trap of prostitution need to be placed in a specialised centre. But this is not yet a reality.

The Committee recommended that “the State party implement a comprehensive National Plan of Action (NPA) covering all areas of the Convention and incorporating the objectives and goals of “A world fit for children”, the outcome document of the special session of the General Assembly on children in 2002. In this regard the Committee recommends that the State party involve the Ombudsperson for the Children’s Office and civil society in the revision and implementation of this NPA.”

The NPA has not been updated. However, a National Plan of Action on the Prevention of Violence against Children has been prepared following a two-day workshop with all stakeholders organised by the Ombudsperson for Children. This draft is meant to help the Ministry which will decide whether to incorporate it in the existing NPA or otherwise.
There is another area in which some progress has been made. The Committee expressed its concern regarding resources available to NGOs. The Women and Children’s Solidarity Programme, described later, is providing funds to NGOs. All programmes to support and rehabilitate children victims of violence, abuse or neglect are considered as top priority.

**Non discrimination**

Article 2 of the Convention on the Rights of the Child (CRC) stipulates that all the rights of children must be exercised without discrimination. It provides that: “(1) States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

(2) States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs on the child’s parents, legal guardians, or family members.”

The Convention of the Rights of the Child guarantees the right of every child to education. Article 28 provides that: “States Parties recognize the right of the child to education and, with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need.”

The UN Committee on the Rights of the Child referred to the issue of non-discrimination in its main areas of concern and recommendations made in January 2006 as follows: “Whilst appreciating that several measures have been introduced to support vulnerable groups, the Committee expresses its concern at the fact that discrimination against certain groups of children still exists in practice, particularly with regard to children with disabilities, children affected and/or infected by HIV/AIDS, children from disadvantaged families and girls.”

The Committee recommends “that the State Party undertake all necessary measures to eliminate de facto discrimination in full compliance with article 2 of the Convention.”

The issue of non-discrimination in the provision of education to the population is one of the most important. We have to ensure that all children are treated on an equal footing at all levels of education and enjoy the same privileges. It is only if we ensure this, that our
young democracy will be seen as one which respects human rights and promotes equal opportunity to all citizens.

In the past, the Ombudsperson for Children has had several opportunities to draw the attention of the authorities on the need to ensure that children can access educational institutions without unnecessary barriers. One example was the Ombudsperson for Children’s plea to the Government that all children should get free transport, irrespective of the fact that they do not attend mainstream schools.

Sometimes it was important to ensure that some categories of children enjoy their rights in a particular way as they have a special need either in terms of their physical or mental condition or because of their social status and standard of living. The Government has responded positively in many instances to such proposals. Consequently, free transport has been granted to children who are attending different kinds of schools. Likewise, handicapped children have seen their *per capita* contribution doubled.

The Empowerment Programme has an “Integrated Social Development Programme” which not only provides support to vulnerable families living in conditions of extreme poverty, but more importantly, offers them opportunities to move out of the poverty trap. The Programme has initiated a project for setting up a model village in Bambous where 200 vulnerable families will be relocated in 200 housing units under construction. More importantly, the families are being given the means to empower themselves through a job-related training for all those who are unemployed, through civic education, health education, parenting skilling and incentives to take care of the education of their children, and through the provision of kindergartens and facilities to children attending schools.

This year the Minister of Finance and Economic Development has decided to provide a sum of Rs. 395 million to eradicate absolute poverty. A subcommittee of the Trust Fund for Social Integration of Vulnerable Groups has also been set up to look at the poorest of the poor and manage an Eradication of Absolute Poverty Programme (EAP). Emphasis is being laid on children aged three to ensure that they attend pre-primary school as from that age.

The new measures in the budget regarding pre-school concern, at this stage, 545 children who have been identified. The subcommittee has been set up to find ways and means of touching those families which are living below the poverty line. The new measure’s rationale is to motivate these parents to send their children early to school in order to mainstream them at an early age and “leave no child out of school”. The importance of this measure is manifold. As at now, since Government was providing Rs. 200 for each child as from age four, many poor families were unable to send their children to a pre-primary school. If they did send them at the age of four, the latter were already not at par with those who had already socialised at school for a whole year.

The project is interesting as it caters for all the needs of those vulnerable children. It provides for “free transportation facilities to and from school with maximum security and safety for children”, free food pack for the day, free school materials for the year, as well as free clothing. “NGOs will be enlisted to provide counselling to parents.” It also proposes
 accompagnement scolaire to ensure that the children are in school. Free medical check-ups will be available as well as glasses and hearing aids for those who need them. This part of the EAP programme targets “7157 families living in 229 pockets of poverty across the island”.

Cases of discrimination are occasionally referred to the Ombudsperson for Children’s Office. One such interesting case concerns a young girl who has double nationality. She was refused support for her examination fees on the grounds that her parents were not Mauritian. This case is fully described under chapter IX on selected cases.

**Best interests of the child**

The Committee recommends that “the principle of the best interests of the child enshrined in article 3 be systematically implemented in judicial and administrative decisions as well as in programmes, projects and services with regard to children in various situations.”

It is only in cases of divorce, separation and adoption that the principle of best interests is mentioned in the law itself. The Civil Code (Code Civil Mauricien - CCM) provides that “s’il y a des enfants mineurs, le juge en chambre se prononce sur leur garde, ainsi que sur le droit de visite et d’hébergement, en tenant compte exclusivement de leurs avantages et de leurs intérêts.”(Article 242)

Article 353 of the CCM provides that the judge in chambers when pronouncing adoption shall verify if the law is respected and “si l’adoption est conforme à l’intérêt de l’enfant.”

The concept of best interests of the child is well known and applied by judges.

Section 5(b) of the Ombudsperson for Children’s Act 2003 (OCA 2003) provides that the Ombudsperson for Children must “promote the rights and best interests of children.”

In the Civil Code, nowhere mention is made that in exercising their parental authority, adults must promote the best interests of children. However, the rules for losing parental authority does show that, if they do not act in the best interests of the child, they can be the subject of a “déchéance de l’autorité parentale.”

In the new Children’s Act, there must be very specific provisions regarding the principles of best interests of the child. All laws regarding decisions taken with regard to child must in fact be applied by respecting this principle.

At the Ombudsperson for Children’s Office, we have had to summon officers responsible for supermarkets on how to deal with children in cases of suspected shoplifting or other cases.
Respect for the views of the child

Article 12 of the CRC provides that: “(1) States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

(2). For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

In Mauritius, the Divorce and Judicial Provisions Act provides for statutory consultation of children above ten years but nothing is specified about younger children. Judges, can of course, decide to consult them in some cases. Section 18(3) of the said Act relating to orders for custody of children provides that “the Court shall have regard to the interests of the child concerned as the first and paramount consideration.” Section 18(4) provides that “in determining the interests of the child under sub section (3) the court shall inquire into all the circumstances of the case and shall for that purpose hear the child if the child is above the age of 10 and capable of discernment.”

The fact that the term “shall” has been used makes it statutory for the judge to consult the child. However, no guidance is provided on what consultation actually means. This means that depending on the personality of the judge, the exchange can be brief. Fortunately, some judges have the experience and skill needed to respect those legal provisions fully. However, listening to a child is an art. Hearing what he says or refuses to say is even more difficult. There are professionals who are trained to practice such listening skills. The Family Court should ideally have recourse to such professionals in order to really respect the rights of children.

On the other hand nothing in the law provides for consultation for other administrative proceedings or for other persons dealing with children. Once again if the general principle is introduced in the new Children’s Act it would have to be drafted to apply to all cases.

Article 12 has now evolved into what is termed the participation rights of children. In Mauritius there was the will at one time to set up a National Children’s Committee within the National Children’s Council. But no progress has been made to set up this Committee.

The Ombudsperson for Children’s Office has set up the network Budi’s friends with children aged 12 to 17 years. Now a National Children’s Forum has been set up to allow the Budi’s friends to interact with other children from the kites club of the NCC, the Scouts, the Guides, the Grup Abaim, the CEDEM and youngsters representing Mauritius on the Comité citoyen des jeunes de l’océan indien (CCJOI).
At this stage, the full recommendations on education, health, children with disabilities, those living with HIV/AIDS, drug abuse, sexual exploitation, etc. are not discussed in this Report as they will be taken up in the follow up Committee.

Other matters like monitoring mechanisms, review of placement, reintegration and recovery of children, violence including corporal punishment are dealt with more extensively in the other relevant chapters of the Report.

Last but not least, the OC notes with concern that the Government has not ratified the two Optional Protocols (OPs) to the CRC on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography: Government signed these OPs on 11 November 2001 and seven years later, despite the fact that several laws have been amended, no ratification has taken place. The good news is that the Prime Minister has announced in the National Assembly that Government will ratify.
Chapter IX

Investigation and Selected Cases

As we have explained in our previous Annual Reports, the complexities of the cases investigated by the Ombudsperson for Children (OC) are such that it is becoming difficult to present them all each year. It has now been decided that follow up will be done in all cases and, at regular intervals, a Report with relevant details will be posted up on the web-site. This will be available for consultation by all those who have a particular interest in the details of such investigations. It will also give an incentive to investigators of the OCO and other stakeholders, to whom some cases have been referred, to monitor more closely the cases and show progress achieved.

Since the setting up of the OCO to date, 2006 cases in all have been investigated. Some of these have been solved and filed. Others are still under investigation. During the reporting period, i.e. from September 2007 to August 2008, when the Report was ready for publication, 384 investigations had started. Data collection on the cases is a very difficult process in view of the immense pressure that is ever present in an office which has to deal with such a wide and difficult mandate as that detailed in the OCA 2003. The OC must ensure that everyone, not just public officials, give due consideration to the rights and interests of the child. She must constantly promote those rights and interests and also promote compliance with the Convention (CRC). Investigation is only one of the functions of the OC. But it is nonetheless an important part of the work of the OCO.

The OC has decided not to investigate in the same way that others do and to refer appropriate cases to those who have a clear mandate to do such investigation. This is explained regularly as there is always someone who fails to appreciate the differences between various bodies, institutions and organisations.

For instance, when there is a criminal case and it is reported to the police, the OC will not interfere except to ensure that the police and any stakeholder involved does investigate in all fairness and by respecting the rights of the child. If the complainant decides not to proceed with a police case he may seek a mediation which can sometimes be a more child-friendly procedure and can give more rapid results. If the case is first referred to the OC, she will request the Commissioner of Police to investgate and the OCO will follow up on the matter.

The same procedure applies to all cases of all children who may need to be removed and placed under the Child Protection Act 1994. The OC is not mandated to deal with such cases which fall clearly under the responsibility of the Ministry, which is clearly mandated to protect children who are at risk. All cases of child abuse and neglect are therefore referred to the CDU for investigation, action and report.
As for cases that concern schools, the OC does refer some of them to the parent Ministry which has a team of inspectors who are mandated to investigate all kinds of cases within school premises. However, the OC does a lot of mediation in such cases.

The selection presented in this Report show a variety of cases that the OCO deals with. Many relate to violence in the home and at school. But we have also investigated a variety of cases which concern violations of the rights of children in different settings by different persons. This concerns non discrimination, the lack of understanding of the principle of best interests of children, improper treatment of children in supermarkets, at leisure complexes or sports facilities.

Moreover, we have tried as far as possible to present different aspects of different types of problems. The purpose of our investigations, it must be remembered, is not just to find solutions to individual problems, but to collect first-hand evidence to study specific issues and make relevant proposals to the Minister and others who deal with children. These proposals, whether they are of a general or specific nature, are also described in this chapter.

**Best interests of the child**

To determine the best interests of a child, one has to remain unemotional and if possible seek expert advice. All the information must be put in the balance before taking a decision.

**OCO/COMP/11/1666**

A mother complained on a private radio that her sister-in-law had taken her children to Rodrigues while she was mourning their father who had just passed away. The case was referred to our office.

The investigation led the Ombudsperson for Children to the following conclusions: The parents had both been drug addicts and the mother was following treatment. She was summoned and she admitted that she had not settled down in a fixed place but had the intention of getting a job. She wanted to go to stay at her sister’s place for a while before moving to her own house, inherited by her mother. But she was very evasive about when this could materialise. For their part the in-laws who were in Rodrigues explained that it was the mother herself who had given all the civil status documents of the children to them, at the time of the funeral, asking them to take care of the children. They agreed to send the children back if need be.

The Ombudsperson for Children decided to visit the children in their new environment while she was in Rodrigues. In the meantime a psychologist had also interviewed the children. The OC found that the children were being brought up in an environment where they were happy with many little cousins of their age. They were going to school. The psychologist found that they had adapted to their new environment.
It was decided to keep the arrangement which was in the best interests of the children. However, the OC decided that it was important to follow up the mother and not give up the hope that she would eventually be able to cope with her own life and take care of the children by respecting all their rights and responding to their emotional needs. One good point in her favour is that she is following her treatment regularly.

Sometimes bad blood between in-laws and parents may jeopardise the best interests of a child.

**OCO/COMP/11/1434**

Maternal grandparents whose daughter passed away a few years ago complained that they are being denied access to their grand-daughter. This situation was causing a lot of pain and suffering and the maternal grandmother asked the OC to mediate with the father to facilitate the access.

The OC convened the minor’s father to the office. The latter explained the attitude of his in-laws towards his second wife. The OC explained that despite this, he must first of all think of the best interests of the minor. She also interviewed the minor and her stepmother. He then agreed to allow the minor and her grandparents to meet under supervision. The OC personally arranged for the meeting to take place. The meeting was positive and both parties were happy. There was a second meeting and both parties expressed their satisfaction to the OC.

We also note that when parents are separated before the birth of a child, their disregard for the best interests of the child can be nonsensical and mean.

**OCO/COMP/11/999**

The case of a 16 year old minor who faced a dilemma when preparing an important examination because she was in possession of two birth certificates was reported to the office.

In fact, minor’s parents were living in separation when the minor was born. After being declared by her mother at birth, her father declared the minor anew without informing the mother.

The OC referred the case to the Civil Status Office requesting a report on the issue. When the report was received, it stated that the father had signed a deed acknowledging the minor as his natural child and has agreed that henceforth, the latter should bear his name. A new birth certificate has been issued with the substitution of the surname of the child into the father’s name mentioned in the annotation section. The mother was accordingly informed that she could have resort to a legal remedy if she did not agree to the outcome of the case.
The principle of non-discrimination

Often the Ombudsperson for Children has to draw the attention of the authorities to a case of discrimination which is being practised. In many cases, officers do not know that they have to respect this very important principle of the Convention on the Rights of the Child.

Case 1:  A young girl deprived of social security benefit on the grounds that her parents are not Mauritian.

OCO/COMP/11/25

A young girl whose parents are not citizens of Mauritius was born at a time when she could obtain Mauritian nationality by the fact of being born here, based on the principle of *jus soli* (*droit du sol*). She was in fact allowed to come back to Mauritius with her family in order to pursue her studies here as she had spent most of her childhood in Mauritius. She recently contacted the Ombudsperson for Children to inform her that she had been denied her right to be supported for her examination fees on the grounds that her parents were foreigners.

The OC wrote to the Minister of Social Security, National Solidarity and Senior Citizens Welfare and Reform Institutions citing articles 2 and 26 of the Convention on the Rights of the Child which provide that:

**Article 2:**

“1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.”

**Article 26:**

“1 States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.”

The Ministry has not yet taken a decision in this matter.
Case 2:  Pupils of a vocational institute deprived of their right to free transport.

When the Government decided to grant free bus fare to all students, it took sometimes before all pupils of all educational establishments could benefit from this privilege.

**OCO/VTI/71/8**

The Principal of a vocational institute complained that his pupils, who are mostly under 16 years, and who were benefiting from concessionary bus fare for students prior to January 2006, have been refused the student’s bus pass which would have allowed them to benefit from free transport to attend their courses. The OC wrote to the Ministry of Education and Human Resources to seek an explanation on the reasons why these pupils have not been issued a bus pass. The report from the Ministry stated that the courses offered by the Institute did not satisfy the criteria on the number of hours required to be recognised as full time courses. The institute was informed by letter.

One month later, the Principal of the institute sent a letter to the Ombudsperson for Children’s Office along with recognition certificates from the MQA, establishing that their courses are now approved as full time courses. Letters were sent to the Ministry of Education and Human Resources and the National Transport Authority to request the delivery of bus passes to the pupils concerned. As no reply was received, the Road Transport Commissioner was convened by the OC. However, before the date of the appointment, the Commissioner sent a letter to the OC to inform her that a bus pass will be issued to the pupils. The complainant was informed in writing to collect the bus passes at the National Transport Authority.

**HIV positive child deprived of his rights to health and education**

Children affected by HIV/AIDS should enjoy all their rights as prescribed in the Convention on the Rights of the Child.

**OCO/COMP/11/1546**

Minor’s maternal grandmother made a complaint to this office that minor, who is HIV positive, was ill-treated and humiliated by a treating doctor in Rodrigues. An enquiry was opened at the Ombudsperson for Children’s Office. The case was referred to the Ministry of Health and Quality of Life for enquiry and appropriate action. Report received from the Ministry stated that the matter was amicably settled between the complainant and the respondent.

Another complaint in respect of the above minor was received at the Ombudsperson for Children’s Office in 2008.

An NGO informed the office that the minor who is presently residing at mother’s concubine’s place in Mauritius is deprived from his rights to education and health. The
NGO has contacted the family on several occasions but they refused minor’s access to treatment at the Bouloux Centre.

The case was referred to the CDU for enquiry and appropriate action. The family did not allow officers to get access to minor nor were they willing to accompany him themselves.

The family was contacted by the Ombudsperson for Children’s Office and was apprised of the importance for minor to undergo treatment. The family stated that they were stigmatised and looked down upon by their neighbours. They requested for the child to be removed to a place of safety.

They were kindly requested to allow minor to follow his treatment pending his removal. The family acceded to our request and the child accompanied by the officers of the CDU and the NGO attended his treatment. As minor’s immune system was to the required standard, the child was administered with vitamins.

The family however, incessantly contacted the office, requesting for his removal. They were informed that social enquiry will take some time.

In the meantime, the maternal family in Rodrigues was contacted by the Ombudsperson for Children’s Office. The latter was willing to take the child. The case was also referred to the Commission for Social Security, Women’s Affairs, Child Development, Family Welfare and Alleviation of Poverty in Rodrigues for a social enquiry to be carried out and a full-fledged report to be submitted to the office.

The Ombudsperson for Children made an official visit to Rodrigues at this particular time and contacted minor’s maternal family. An officer from the Commission of Health also contacted us and informed us that they will ensure the medical follow up of the child in Rodrigues. The Commission also sent a report to the CDU regarding same.

Arrangements were also made by the Commission, for minor’s maternal uncle to come to Mauritius to take the child. An official procedure was made and the child was entrusted to his maternal uncle. Follow up is made to ensure that minor’s rights to education and health are respected.

Violence in the family

The family has always been considered as a sacred enclave, a place where children are nurtured with love and care, a sort of haven of peace for them, but as we kick over the rock we find that this place of safety can be a place of pure terror for children.

OCO/COMP/11/1668

Minor X, aged 8 years old, lived in a house with his mother, his stepfather and four siblings. On a regular basis, the mother of the perpetrator saw him and his eldest sister being
battered, ill-treated. Some people saw his eldest sister struggling with household chores that was too hard for her. The attention of the relevant authorities was drawn to this dreadful situation, but despite their intervention, the minor died presumably as a result of the severe ill-treatment and battering by his parents.

The minor in coma, was brought to hospital by his mother. During examination the treating doctor noticed cigarette burns and other marks of battering on him. The minor was admitted in the Surgical Intensive Care Unit and his state of health was judged to be serious. The case was immediately revealed to the Police as a case of battered child. The minor’s mother and her concubine were both arrested by the Police.

1. Was there laxity on the part of the authorities in dealing with the case?
2. Was the voice of the only person in the community who contacted the authorities not powerful enough to raise their concern?
3. Was there any close monitoring of the case by the authorities concerned?
4. Why did the relevant authorities not think it fit to remove the child and protect the siblings? This was only done at the request of the Ombudsperson for Children. The fact remains that an 8 year old boy died and we can no longer fail to react strongly when children are suffering and dying on a regular basis.

The OC has made the following interim recommendations to the Minister:

- That the officers working on child protection be properly trained on the protocol to be applied in all cases.
- That more officers be recruited.

In the light of the above case, it is clear that a Protocol on Child Protection should be signed and implemented by ministries and departments. This had been elaborated some years ago but in view of the heavy load of work, it is not being applied.

The OC made proposals to the Minister to amend the CPA 1994 and the Criminal Code in order to ban corporal punishment in all settings including homes, schools and even institutions.

She also appealed to the Honourable Prime Minister to set up a high level committee to look into this issue.

**Domestic violence, gender violence in the family and physical violence perpetrated by son on mother**

Children are affected by domestic violence. Some are victims of violence perpetrated by the violent parents and others adopt a violent behaviour even towards their parents.
OCC/COMP/11/44

A mother complained that her two daughters and herself are victims of violence perpetrated by her husband. She was battered several times and had to leave the conjugal roof many times for her own safety and that of her children. However, lately, her husband started to hit her two daughters, asking them to leave the house and damaging their personal belongings. He was also spoiling his two sons and encouraged them to become violent against their sisters. The mother reported the case of domestic violence and damaging of personal belongings to the Police but the latter did not intervene.

The OC referred the case to the CDU and the Family Welfare Unit of the Ministry of Women’s Rights, Child Development, Family Welfare and Consumer Protection. The complainant received legal advice, was granted a protection order by the court and received psychological support. The Police also sent a report which stated that the root of the problem is the husband. Two police officers were also lectured by the Chief Inspector to attend promptly in all cases.

Two years later, the mother complained again on violence inflicted on her, but this time by her younger son, aged 11 years. She reported that the latter used abusive language and even hit her several times. All this violence is done with the approval of the husband. The latter encouraged his son to be violent against anyone who annoyed him.

The OC referred the case again to the Family Welfare Unit and the CDU. The complainant refused to attend couple counselling but insisted that her son should be followed by the psychologist. The child is presently attending counselling sessions.

Corporal punishment in the family

While having laws regarding corporal punishment at school, there is no explicit law prohibiting corporal punishment at home. Sometimes this conveys a message that parents have the right to physically punish their children and even torture them.

OCC/COMP/11/1021

The OC opened an own motion investigation in a case where corporal punishment was applied as a form of chastisement.

Minor, aged 3 years old, was conveyed to the hospital unconscious. She was examined by a medical practitioner who certified that she had already passed away. The case was referred to the Police for enquiry. The minor’s mother was arrested and her concubine had run away and was wanted by the Police. She admitted having beaten the minor because she was not potty-trained and she spit all her food around when she was being fed. The small body of the minor bore bruises, cigarette burns and even burnt marks left by a hot knife.
The minor’s older brother had also been ill-treated and battered. After the incident, he was removed by the Ministry and admitted to the hospital with fractured legs and a dislocated shoulder. During the enquiry, the small boy accused his stepfather of battering him and his sister. He related how their legs and hands were tied, their mouths filled with rags to prevent them from screaming when they were battered. Often this occurred because his step-father wanted them to be silent while he was sleeping.

After his discharge from hospital, he was placed at the shelter and was later committed to an institution.

In view of the precarious psychological conditions in which the minor was, following the case which involved his younger sister and himself and in which he was a main witness, the OC advised the Ministry that a proper case conference be made before the placement of the minor.

She drew the attention of the Minister on the need for early detection of children at risk in order to save their lives. She also proposed the total banning of all forms of corporal punishment by anyone in any setting.

It seems that the minor’s mother was subjected to violence as she only revealed that her concubine used to batter both children violently when she heard about his suicide, a few days after the minor’s death. She disclosed that her concubine had threatened to hurt her oldest son if she disclosed anything to the Police.

The maternal grandfather came back from Rodrigues and requested that the minor be placed under his care. He did not like the idea of his grandchild, who had lost his sister and was separated from his mother to be placed in a shelter.

After a thorough enquiry, the minor has been placed under the care of his maternal grandfather. Follow-up is being regularly done by the Ministry. The minor is well cared for at his grandfather’s place and he is attending school. His mother does not reside under the same roof but visits him occasionally.

The OC however, regrets that there has still been no amendment of the law to make it clear that even parents cannot use corporal punishment against children for whatever reasons. Parents still feel that the provisions of the Criminal Code applies to others and that they have “every” right over their children to “correct” them physically.

The link between alcohol and domestic violence.

All cases of domestic violence are not directly related to alcohol consumption. Sometimes if the head of a household drinks heavily it can lead to domestic violence. It wrecks families, ruins health and has a negative impact on the well being of children.
Case 1: Father alcoholic

OCO/COMP/11/1681

A complaint was made to the office that minors’ father had become alcoholic and was neglecting and ill-treating his children.

According to the complainant, minors’ father was a responsible father and was supporting his family. But since he has fallen prey to alcohol, his behaviour and attitude towards his family has changed drastically. He often uses harsh, vulgar language and violence against his children. His wife is victim of domestic violence. The children are victims of such a situation and most of the time they are deprived of their rights to basic needs. The children who were hard working at school could no longer concentrate in their studies. Minors’ class teacher informed the parents that minors’ academic performance is deteriorating. Complainant also informed us that she could no longer live under the same conjugal roof and, if minors’ father did not change his lifestyle, she would enter a case of divorce in court.

Minors’ father was contacted. The latter stated that he consumed alcohol but was not conscious of the extent of its impact on his family’s life. He was also informed that, due to his violent behaviour and lack of consideration, his children were emotionally affected. They were even refusing to attend school.

The latter understood that he was responsible for all the problems in his family. He made up his mind to change his behaviour and attitude for the well being of his family. He was referred to an institution to follow a detoxification treatment. He was also advised to spend his leisure time in a more fruitful manner. The latter who had been warned that he would be expelled from his work due to a high rate of absenteeism, started to attend work regularly.

The couple was also advised to contact the Family Support Bureau for counselling sessions and psychological support. The complainant later stated that they eventually attended several counselling sessions and the couple reconciled.

The case is being closely monitored by the office. Minors’ father has become more caring and affectionate towards his children. The children who were psychologically assisted, are no longer emotionally affected. They are attending school regularly and their academic performance has improved.

Children are terrorised and deprived of various basic needs in case their parents are alcoholic.
Case 2: Father alcoholic and mother victim of domestic violence

OCO/COMP/11/1236

A minor came to make a complaint at this office. The latter who was a secondary pupil was experiencing problems with her father. When under the influence of alcohol, minor’s father becomes very aggressive towards his family. He beats his wife and when the children intervene, he beats them also. Minor stated that the fact that she is the eldest and is the one to stand against her father’s authority, she is always victimized. The latter stated that her father cannot afford her school materials and she is having problems to study at school. She feels humiliated as she is always asking her friends to lend her books. Her father is not willing to pay her exam fees also. She requests the intervention of our office to help her to get out of the difficult situation and also to make her parents aware of their responsibilities towards her and the other siblings.

The parents were convened to the office. Minor’s mother is aware of the problems faced by her child but she could not help. She is victim of domestic violence and she has no right to challenge the authority at home. She stated that she does some domestic work to earn some money. Minor’s father was made aware of all problems he was causing to his family. He was informed that his children were interested to study and he was acting as an irresponsible father. He was spending his money on alcohol instead of catering for the needs of his family. The latter stated that he was facing financial problems and as he could not make both ends meet, he became alcoholic to forget all the problems that he was having.

The latter was advised to contact the Social Security Division for social aid and other assistance, regarding the purchase of books as well as the payment of the examination fees.

He was also advised to contact the Trust Fund for the Integration of the Vulnerable Groups for assistance.

The minor who was depressed was referred to a psychologist.

The Officer in Charge of minor’s school was contacted and was informed of the problems faced by the minor and to provide her with proper assistance and counselling at school.

Alcohol addiction by mother has a dramatic effect too, on her conjugal life as well as the well being of her children.

Case 3: Mother alcoholic

OCO/COMP/11/1601

Another case of alcoholism was reported to the office, after the decease of Minors’ father, Minors’ mother started to consume alcohol. She ill-treats and neglects her children.
Minors’ mother spends all her social aid on alcoholic drinks. The children are deprived from their rights to education. One minor who was following a treatment at the hospital is deprived from his right to health.

Minors’ mother was convened, she did not attend. She was convened anew, informing her of Section 11A of the Ombudsperson for Children’s Act which provides that

“A person shall commit an offence –
(a) where he
   (i) fails to attend before the Ombudsperson;
   (ii) refuses to take the oath before the Ombudsperson; or
   (iii) will fully refuses to furnish any information or to produce any document, record file or exhibit.”

The latter attended office and acknowledged that she was alcoholic as she was depressed.

She was made aware of her responsibility towards her children. She was advised that she had to respect her children’s rights to education and health. She was also advised to follow a therapy at a detoxification centre. The children were also referred to the CDU for psychological assistance.

The mother finally gave up alcohol and became more responsible. The children are attending school and the one whose state of health was deteriorating, is following a treatment at the hospital.

Case 4: Mother depressed and alcoholic

This case describes the irresponsible behaviour of a mother entangled in the intake of alcohol and its consequences on her family life.

OCO/COMP/11/1673

Minors’ aunt requested the intervention of our office, as minors’ mother is no longer assuming her responsibilities towards her children. Minors’ father has left the conjugal roof, as he could not live with an alcoholic wife. He has tried to take her out of this scourge but, as he has not succeeded, he went abroad. He left the children with their mother, expecting that his wife would become conscious of her responsibilities towards the children and would stop consuming alcohol.

After his departure, minors’ mother became more depressive and became a slave to alcohol. Minors’ aunt took the responsibility of the children and requested our office to help the minors and their mother. The children were affected by the separation of their parents. The lack of consideration from their mother and lack of affection and attention were deteriorating the situation. Minors’ father was sending money to cater for the financial needs of the children but it was managed by minors’ aunt. If the money was given to
minors’ mother, it would be spent on alcoholic drinks. The children would then be deprived of their basic needs and they would not be able to attend school.

Minors’ mother was convened to the office. She stated that she became alcoholic as a result of her separation. She is depressed and lonely in life. She feels rejected and isolated by all members of her family. She affirms that she loves her two children and could not bear the separation from her children.

She was informed of her responsibilities towards her children. The fact that the minors are deprived of their father’s love, her duty is to provide them with love and affection. She is destroying not only her own life but also that of her children and other family members.

She was advised to attend a detoxification centre and to seek the help of a psychologist. She eventually went through a therapy at a residential care detoxification centre. She became a more responsible, loving and caring parent. Minors’ aunt phoned to inform the office that the children are living at their mother’s place. She shows interest in her children. Her relationship with her children and the other family members has improved for the better.

**Case 1: Complainant not informed by court that her divorce was pronounced.**

The court should ensure that both parties are consulted before a court order is issued, mainly with regard to alimony, rights of visit and *hébergement.*

**OCO/COMP/11/1103**

A case was referred to our office concerning three minors who were ill-treated and neglected by their mother. The case was reported to our office by minors’ paternal grandmother. The case was referred to the CDU for enquiry and appropriate action. CDU’s report revealed that the minors were being properly cared for by their mother and that it is the paternal grandmother who interfered too much in their conjugal life and imposed on her son to act according to her desires. Such a situation was causing much problem in the couple’s life and the children were being victimised.

The family was advised on their responsibilities towards the minors and on the negative impact of violence on children and the well being of the family. The grandmother contacted our office anew and stated that the couple could not live under the same roof. Her son had been to court to ask for divorce. As the case was pending in court, she was informed that our office could not intervene but she was referred to the CDU for advice and counselling.

In March 2008, the complainant phoned our office stating the minors’ mother had left the conjugal roof and had gone to live at her mother’s place. She stated that she had taken the three children with her and that the latter were deprived of their right to education. She also informed the office that divorce was pronounced in that case. Minor’s mother had obtained the custody of the children and the minors’ father had the rights of visit and “*hébergement*” and there was an order for him to provide alimony to his children.
The peculiarity of this case is that divorce was pronounced when the couple was living together under the same conjugal roof. Minors’ mother was not even aware of her divorce. She alleged that her husband never mentioned it to her and she was fulfilling all her duties of wife and mother. However, she admitted that she was victim of domestic violence and was enduring all the assaults and psychological, emotional sufferings on account of her children.

She was entrusted the custody of her children without being consulted whether she would be able to take their responsibility or not.

Respondent informed the office that she could not take her children with her. She stated that her mother is a widow and that the fact that she had never worked before, made it difficult for her to do so immediately. She even admitted that it would be difficult for her to inform her mother of her divorce. The children were left in the custody of their father and paternal grandparents. The father is assuming his responsibilities towards the children and the latter are attending school.

Respondent has lived for a while at an Aunt’s place and her mother was eventually informed of her divorce. She is presently living at her mother’s place and has entered a case in court in respect of the procedures and ruling of her divorce case in court.

The Ombudsperson for Children recommends that in any divorce case in court, all parties concerned should be made aware of the rulings of the court. The problem lies with the address given for service of documents. In this case, it was the same address as that of the husband and the mail was never handed over to her.

In case of custody, rights of visit and ‘droit d’hébergement’, the best interests of the children should be taken into consideration. Whenever the custody of the child is entrusted to one party, it is important to ensure that the party concerned is willing and able to assume his/her responsibilities towards the child. If that party does not turn up in court, the CDU or Probation Officer should be involved to enquire.

The OC has discussed with all concerned to ensure that the new Family Court has the resources needed to render justice to all parties concerned while ensuring that the best interests of the child is respected.

**Case 2: Child affected by separation of mother**

Parents should not use children as scapegoats in any conjugal conflict. Children are often victimised and traumatised and have to endure the aftermath of parental separation.
OCO/COMP/11/1563

Minor’s Aunt made a complaint to our office that minor’s mother left the conjugal roof as a result of conjugal problems. She later stated that since she left home, the mother cut all contacts with her family including her children.

Minor, 3 year old, who was very close to her mother, was psychologically affected and was having fever. She requested the intervention of the Ombudsperson for Children’s Office, to make the mother aware of her responsibility towards her child. The child who was examined by a doctor was found to be emotionally affected. She was even referred to follow a treatment to the Brown Sequard Mental Health Care Centre.

Minor’s parents were contacted. They both attended the office. Minor’s mother stated that she was victim of domestic violence and that her husband was jealous of her. She was beaten everyday. She could no longer bear this situation and went to live at her mother’s place. As she was humiliated and unable to face society, she preferred to leave the child at her father’s place.

Minor’s father stated that, under the influence of alcohol, he becomes violent. In such a state, he is often harassed and humiliated by his wife and he has recourse to violence. He admits that he has beaten his wife on several occasions. He asked for forgiveness and wanted to reconcile with his wife.

His wife was against reconciliation and did not want to return to the conjugal roof as she feared for her life. However, she was informed to take into consideration the health of her child. She was advised to keep contact with the child and she could meet her child elsewhere than at the conjugal roof. Minor’s grandparents were also recommended to encourage their daughter to see the child as latter’s health was deteriorating and she was seeking for maternal love.

The mother finally acceded to our request and started to keep contact with the child. Minor is now following treatment with a private doctor and the latter’s health and emotional state has improved.

Domestic violence and school

Case 1: Child’s schooling affected by domestic violence

OCO/COMP/11/1644

A woman, mother of a 4 year old child, had to leave the conjugal roof as she was victim of domestic violence and had to be admitted to hospital. The child had just been admitted in Standard One and had attended school for two days only as the mother took him with her. At the time of complaint, the minor had not been to school for three months. The Ombudsperson for Children wrote to the Ministry of Education and Human Resources,
requesting to facilitate the transfer of the minor to a school nearer to his place of residence. The child was transferred within one week.

It is very unfortunate that the cases of domestic violence, children have to make many adjustments in their lives like changing home, school and environment. They have to restart their lives, change friends, adapt to new school culture and adjust to fit in their new neighbourhood.

Consequences of tardy declaration of birth

While abiding to article 7 of the CRC which upholds the right to have a name, it would be worth mentioning that minors still face several problems after they have been declared. Several cases pertaining to these problems have been reported at the OCO. These cases show that all the consequences of a declaration of birth should also be considered before proceeding with such declaration. It is unfair that children should be traumatised because of the lack of sensitivity and irresponsibility of adults who attach more importance to procedure than human considerations.

Case 1: Child declared by ‘adoptive’ parents.

This is a case of lack of responsibility of a couple who had taken charge of a newborn baby.

**OCO/COMP/11/329**

An 18 year old woman had abandoned her baby and claimed her one year after. She has entered a case before Court and obtained custody of the baby, while the couple, who had declared the baby as their own, has been granted a right of visit. As there are several matters pending before court, the Ombudsperson for Children did not intervene, but referred the matter to the Ministry of Women’s Rights, Child Development, Family Welfare and Consumer Protection for follow-up to prevent future abuse of the child who has already gone through an ‘abandonment’ and a change of environment, if not of parents.

Case 2: Lack of proper records in tardy declaration.

Sometimes, the situation is absolutely shocking as the failure to keep proper records of children declared or to undertake a full enquiry regarding paternity, maternity and siblings can affect children of the same family.

**OCO/COMP/11/995**

Four children of the same family had been placed in an institution by the Ministry as they had been abandoned by their mother and their father was in prison. Two of the children
were undeclared. Procedures for their declaration have been undertaken and have recently been completed. Presently the newly declared minors are upset. Each of them bears a different surname and one of them is sitting for an important examination at the end of the year. The problem is that, while having a different surname, they do not also bear the same surname of their other two siblings.

Another important aspect of the case is that the father who has been released from prison recently has contacted the institution alleging that he is ready to assume his paternal duties and declare both minors.

The Ombudsperson for Children thinks that the different aspects of the procedure for late declaration of birth should be discussed thoroughly and the law should be amended to prevent such an incongruent and sad impact on children in the future. She has made proposals to that effect.

**Right of visit**

Respecting custody issues, problems often occur even if parties reach an agreement in respect of the right of visit.

**OCO/COMP/11/1555**

A father in distress requested the Ombudsperson for Children to intervene as he was being denied the right to visit his 11 months baby boy, who had been admitted to hospital after a fall. The minor’s parents were living in separation and had entered a case before court respecting the right of visit. Both parties had reached an agreement that the father would visit the baby at the in-laws’ place every Sunday with the result that the mother denied access to the father in the hospital because the father was not in possession of the court order. The OC informed him that she could not intervene as there was a case pending before court, but discussed with the administrative staff of the hospital on humanitarian grounds and the father could visit his son.

Unfortunately, after the minor left the hospital, his father, while exercising his right of visit at his in-laws place, was allegedly battered by the in-laws. Besides the minor had been declared only by the mother but the father had formally recognised the child.

As the father had knocked in vain at the door of several institutions to have his rights as a father respected, the OC decided to mediate at a time when the case in Court was over. She convened all the parties separately and an agreement was reached that the minor’s father would visit him in presence of an officer of the Brigade pour la protection des mineurs, who would report to the OC thereon. The OC was informed by the Police officer that the minor was reluctant to remain in his father’s presence despite the toys, sweets and presents the father brought for the child. It was obvious that the mother had not made any effort to bring up the child to understand that he had a father. If the father gives up his right of visit to see his child, he will be totally alienated in the years to come.
Violence at school

Suspending a pupil from school is not necessarily a good method of discipline. Some pupils even enjoy this kind of punishment. But at the end of the day the child does not learn much from having been rusticated. Instead he may be lagging behind when he comes back to school. Further all punishment must be proportional to the indiscipline or misbehaviour.

Case 1: A young girl suspended from school for three months.

OCO/COMP/11/1380

A mother complained that her daughter, a Lower Six student has been suspended from school following a collective gross misconduct and will be allowed to resume school at the beginning of the third term, i.e. three months later. The mother was of opinion that such a long absence from school would handicap the minor in her studies. Furthermore, the mother believed that her daughter is victim of discrimination as the other pupil were rusticated for only two days.

The minor was interviewed by an Investigator of the Ombudsperson for Children’s Office. She stated that some pupils in her class spread glue on the teacher’s chair. At first she got a two day rustication like her other classmates but the next day she was informed by the Rector that she was suspended for the rest of the second term. She admitted having misbehaved in the past and was sanctioned to do community service in a home, which she did.

The Ombudsperson for Children wrote to the Rector to request her to reconsider the excessive punishment and to replace it by a constructive sanction which would not handicap the minor in her studies. As she received no reply from the school, the Ombudsperson for Children visited the school and discussed with the Rector. A second letter was sent to the latter. One week later a letter was received from the Rector stating, among others, that the minor has resumed school, after she had addressed a letter of excuse to the teacher.

Case 2: A problem child faced more problems at school.

In some cases the problems of a child who has been a victim of child abuse and neglect can be so serious that keeping him at school will be a problem both of himself and to the whole class.

OCO/COMP/11/705

A teacher of a ‘complementary school’ informed the Ombudsperson for Children that one of the pupils, who is already in conflict with the law, came to his afternoon class with several bruises on his body. The minor, a boy aged 9 years, alleged that he was beaten by his step father. The CDU was informed. A CWO visited the family and got a different explanation from the parents. The minor was given an appointment with the Psychologist.
Three months later the OC learnt through the press that the minor attempted suicide at school. She phoned the CDU to ensure that the minor is still being followed by the Psychologist. In the same week, she received a petition from parents requesting the removal of the minor from the school as he was violent and disturbed others in their studies. Several reports were also received from the Head teacher regarding the misconduct of the minor at school. The child was reported to be a threat to others and himself. On several occasions the Head teacher had to call the Police and the CDU for help. She was advised by a Psychologist/Consultant from the Ministry of Education and Human Resources to convene the mother of the minor. The mother was given three options for the child:

1. To have a remedial class with a small group at school.
2. To join a special programme run by an NGO.
3. To let the minor live with his father.

The mother opted for the third choice, i.e. to send the minor to his father. A case conferencing was held at school. The OC declared in that meeting that she would meet the father first and discuss with him before sending the child to his place. The father was convened at the Ombudsperson for Children’s Office. The OC explained to him the implications of having the child with him. He accepted to take the responsibility of the minor.

She had a second meeting with the minor and his father before requesting the Ministry to issue the transfer certificate for the child to attend another school. A few weeks later, the Head teacher informed the Ombudsperson for Children’s Office that the father had not collected the transfer certificate. The father was convened at the OCO again, but he never turned up. His mobile stopped working.

The Liaison Officer of the school informed the OC that the minor is not living at his father’s place permanently and that very often he is at his mother’s place. The CDU was requested to visit the father’s place and report back. In his report, the CWO stated that the stepmother made allegations of a sexual nature against the minor. The father wanted to go to Court to request that the minor be committed to the RYC. In the meantime the minor returned definitely to his mother’s place and was readmitted in his previous school.

The OC started receiving complaints again. A second case conference was organised. The NGO which was the second option proposed to the mother, accepted to take the minor in its special programme and proposed to empower the mother through visits. The child is presently following the special programme during the day and returns to his home in the afternoon. According to the latest report, the rehabilitation of the minor is successful. There is a definite change in the behaviour of the minor. The OCO will keep on monitoring this case for a while.
Case 3: Sexual violence in school bus

Unfortunately, children can also be perpetrators of violence including sexual violence. In such cases, both the author and the victim of the violence must receive special attention.

OCO/PRO.SCH/42/66

The mother of a Form I male pupil complained that her son was sexually abused in the school bus by a Form IV male pupil of the same school. He was harassed and forced to indulge in sexual acts. The case was reported to the Rector by the parents, but no action was taken. Furthermore, the perpetrator and his gang threatened the child that they would beat him.

The Ombudsperson for Children wrote to the Ministry of Education and Human Resources and asked the following:

(1) To be briefed by the Rector in writing on action taken at his end following the reported case.
(2) To transfer the child victim to another school within the zone.
(3) To ensure that the minor is provided with adequate psychological support.

A report was submitted by the Ministry, informing the OC that:
(i) The perpetrator was heard by the School Disciplinary Committee. He confessed and was asked to present a written note of excuse. His conduct is being monitored.
(ii) The victim is being followed by the Educational Psychologist.
(iii) The minor was transferred as requested.

The OC wrote to the Ministry to propose that the perpetrator be sent for a proper therapy.

Case 4: Lack of leadership at school and unfriendly atmosphere lead to violence

During the reporting period, we have had to deal with one case where children were facing different types of violence in their school. The case drew a lot of public attention. Fortunately the right decisions have been taken and there has been a significant improvement in the situation.

OCO/PRO.SCH/42/37

In early 2007, some students had complained to the Ombudsperson for Children about the poor hygienic conditions prevailing in their school as well as lack of maintenance. There were broken window panes, leakage in water pipes, unclean toilets, lack of electricity which led to having dark classrooms with mosquitoes. The OC asked the Ministry of Education and Human Resources for a full report on the situation. Within a month a report was sent to explain the various reasons why no maintenance had taken place. A complete plan for the
rehabilitation of the school was being worked out. New school blocks were also envisaged and some plots of land had been acquired.

One year later there were some violent incidents between two peer groups in the school yard. Some broken chairs and desks were used during the fight and, though no one was badly hurt, the situation was degrading and the atmosphere in that school was tense. The OC opened an investigation and went to the school to appreciate de-visu what was happening. She spoke to two groups of children who were in the hall for a general assembly called by a new Rector. She interviewed the pupils involved in the fights, some members of the Student’s Council, members of the PTA, teachers and staff of the school.

She saw for herself the very unfriendly atmosphere prevailing. No progress had obviously been made since her first letter to the Ministry in 2007. The toilets were stinking. There was no electricity and therefore no possibility of using computers or other electronic equipment. Pigeons were causing great damage to the premises, including the Hall. Children had nowhere to play football and often broke window-panes. Teachers’ morale was low. Pupils from both lower and upper levels were unhappy. There was talk of those who were drinking and using drugs. There had been a lack of leadership and laisser-aller according to the pupils themselves. The OC again wrote to the Ministry to make proposals regarding both the environment of the school and the way to tackle pupils with behavioural problems.

The Ministry’s lengthy procedures made it difficult for the OC to really help to address the issues at individual level. There was some reticence to give all information sought and the delay in replying was difficult to understand.

Luckily the direct contact with the school gave positive results. During a recent visit the OC noted that the new collective leadership seems to have made a great positive impact on the school. The main ingredient which can be cited to show how in three months time the school atmosphere has changed radically is certainly the new approach. The decision to enrol children themselves to help in keeping peace at school is certainly the best taken in the circumstances. The decision of the new Rector to introduce extracurricular activities, giving space for sports, giving value to children’s talents in music and creating a sense of belonging to the school has given quick results. Further the window panes have been replaced, pigeon nets installed, toilets are better ventilated and the premises are generally very clean and child-friendly. This should be used as a “good practice” for other schools.

Corporal punishment at school

Corporal punishment is prohibited in all education settings since 1957 (Education Regulations 1957). Furthermore the Child Protection Act 1994 imposes on all persons working in a school a “duty to report” any suspected or identified case of child abuse to the Permanent Secretary of the Ministry of Women’s Rights, Child Development, Family Welfare and Consumer Protection. School personnel is thus considered to be an essential actor in the protection of children. However, it is with deep concern that the Ombudsperson
for Children notes that corporal punishment is still practiced in our schools. Despite all the information given on the negative effect of corporal punishment on children, some people are publicly claiming the return of corporal punishment in schools and seem to believe that it is the solution to reduce indiscipline at school.

This is not surprising as the so-called virtues of corporal punishment are deep rooted in our subconscious. This practice having been socially and culturally acceptable for centuries, it is difficult to struggle against this conditioning. But it is extremely important to advocate against corporal punishment which is the most widespread form of violence against children, as already amply discussed in Chapter III.

Hereunder are some cases of corporal punishment reported to the Ombudsperson for Children’s Office.

Case 1: Corporal punishment in a primary school (urban)

**OCO/COMP/11/1614**

The mother of a 9 year old girl, a Standard V pupil suffering from a malformation at her cheeks, nasal allergy and regular nose bleeding alleged that the class teacher inflicted corporal punishment on her daughter, used humiliating and abusive language in class. The child was traumatised and reluctant to go to school.

The Ombudsperson for Children referred the case to the Ministry of Education and Human Resources for inquiry and report. An inquiry was carried out at zonal level. According to the report, the teacher denied having resorted to corporal punishment against his pupils. The Head teacher, on his part, stated that he never received any complaint of corporal punishment from any parent. The inquiry could not establish whether corporal punishment was inflicted or not. The Head teacher was asked by the inspectorate to monitor that particular class. The teacher, on his part, was requested to create a more conducive atmosphere in class in order to instill discipline. In the report it was mentioned that the child denied having been beaten by the teacher. However, when she was interviewed by an Investigator of the Ombudsperson for Children’s Office, she stated that the teacher has stopped inflicting corporal punishment after the visit of the inspectors. The mother will inform the OCO if the teacher resorts to corporal punishment again.

Case 2: Corporal punishment in a primary school (rural)

Corporal punishment at school can be inflicted by male and female teachers alike. Cases are also common in both urban and rural areas.
The Ombudsperson for Children was informed by a parent through e-mail that a Standard II lady teacher resorted to corporal punishment. It was alleged that the pupils were regularly beaten, hit on the head, and were victim of violent pulling of hair, and hitting of their heads against the desk by the teacher. She also prevented pupils to go to the toilet and once pupils urinated in their shorts in class. The parent complained to the Head teacher and to the inspectorate but no action was taken against the teacher.

The case was referred to the Ministry of Education and Human Resources for inquiry and necessary action. In its report, the Director of the Zone stated that the teacher denied the allegations. However, the Head teacher reminded her that on several occasions, parents have complained that their children were beaten by her in class. The inspectorate requested the Head teacher to monitor the teacher in her class. The latter refrained from using corporal punishment for some time but unfortunately relapsed. She was again called to order and a letter was addressed to her to amend.

However, as parents continued complaining, she was replaced by another teacher and is presently a floating teacher in that school. She was reminded that corporal punishment was an offence punishable by the penal code and any failure on her part to comply will be severely dealt with.

Cases of corporal punishment occur in different kinds of schools. Sometimes they are reported by pupils, sometimes by parents. In the past even a head of school reported a case after having tried to reason a teacher.

Case 3: Corporal punishment in a private secondary school

A Form I pupil phoned the Ombudsperson for Children’s Office on 177 to complain that his mathematics teacher resorted to corporal punishment. He alleged that Mr. X has the habit of slapping pupils on the face in class.

A letter was sent to the Rector of the school about the violent behaviour of Mr. X. He was requested to inquire and report to the OCO. The Rector reported that there was no one named X among the members of the teaching staff. The Ombudsperson for Children contacted the minor who gave her the exact name of the teacher, whom we will refer to as XK. She summoned both the Rector and the teacher for an amicable mediation. The Rector sent a letter to the OC informing her that for years he has not received any complaint regarding corporal punishment. He also stated that a thorough inquiry was being carried on Mr. XK and that a report would be forwarded to her the earliest possible.
The OC received the report of the Rector. The latter interviewed pupils of Form I. The children told him that Mr. XK has the habit of slapping pupils. A letter requesting written explanations was issued to Mr. XK. The latter agreed that sometimes he inflicted a few slaps on his pupils. But, according to him, this was not corporal punishment. However, he apologised to the Rector and promised not to repeat that in the future. The case of Mr. XK was submitted to the school management for any disciplinary action. The OC later spoke to the Rector and Mr. XK. The latter apologised and agreed to give up corporal punishment.

The OC on her part proposed to train the staff of the school on positive and constructive discipline practices. Two kits on the Prevention of violence at school were sent to the school. The pupil was informed about the outcome of the investigation verbally by the OC, as both his mother and himself had requested to remain anonymous for fear of reprisal and the office only had a phone number.

Case 4: Corporal punishment in a pre-vocational school

Children who attend pre-vocational schools are unfortunately also at risk although these schools have been established precisely in order to cater for children who are unable to adapt to a purely academic mainstream school. There is unfortunately a tendency to discriminate against children going to pre-vocational schools and they are often humiliated.

OCO/PRO.SCH/42/28

Two teachers of a pre-vocational school informed the Ombudsperson for Children that the Rector of their institution regularly inflicted corporal punishment on the pupils, used humiliating and abusive language towards them and tolerated other teachers using corporal punishment in class. His negative behaviour leads to early withdrawal from school on the part of the pupils as they preferred to get a job as apprentice instead.

The Ombudsperson for Children’s Office monitored the situation through a pre-vocational inspector of the region and the two complaining teachers. A further complaint was received. The OC referred the case to the Ministry of Education and Human Resources for inquiry and report. The Ministry submitted its report. The following observations were made:

1. The school had no student council.
2. Children informed the inspectors that the Rector is very severe and often uses corporal punishment.
3. The teachers supported the Rector in his method to maintain discipline at school.

The Rector was advised by the inspectorate to:

a) set up a disciplinary committee to deal with all matters pertaining to indiscipline, misbehaviour and non-respect to school rules.

b) refrain from using corporal punishment in his fight against indiscipline.
Case 5: Video clip of corporal punishment in class uploaded on a website

Nowadays privacy is being attacked from all sides with the advent of new technologies. In the past there have been scandals regarding youngsters indulging in group sex. Now teachers must beware as they could be filmed and be exposed to public reprobation.

OCO/PRO.SCH/42/64

A private radio announced in its morning news that a video clip showing a teacher inflicting corporal punishment in class against a pupil could be viewed on its website. The Ombudsperson for Children started an own motion inquiry. The investigators gathered the necessary information. The victim is a Form IV pupil. A letter was sent to the Ministry of Education and Human Resources requesting detailed information. The Ministry submitted its report, giving details about the identity of the perpetrator and of the victim as well as the incidents which led to the corporal punishment. However, as there is a *prima facie* against the teacher, the latter has been interdicted and the Ministry is awaiting the police enquiry and the criminal proceedings, if any, before contemplating disciplinary action against the teacher.

The case provided an opportunity for the OC to create better awareness on the negative consequences of corporal punishment and on positive discipline through both written and spoken press. The OC seized that opportunity to clear some misunderstanding, explaining that she has never stated that we should overlook indiscipline, but it should be dealt with in a positive and constructive way, respectful of the child’s dignity.

**Observations**

1. In most cases of corporal punishment at school reported to the Ombudsperson for Children, it could not be established whether the teacher inflicted such punishment or not.
2. An impartial mechanism should be set up at zonal level to investigate all reported cases of corporal punishment.
3. The staff of the schools should be trained in positive and constructive discipline as an alternative to corporal punishment. The OC has been carrying out such first-hand training with the introduction of the kit prepared for that purpose.
4. The MIE should include this subject as a module when training would-be teachers as well as serving teachers coming back for advanced courses.
5. Pastoral care should be introduced in all schools to support children with challenging behaviours.
6. Children should be actively involved in promoting discipline at school.
Violence in the Community

Harassment

Minors are often harassed, either sexually or otherwise in all sorts of public places. Several cases have been reported to the OC.

Case 1: Minor harassed in the streets

OCO/Comp/11/1689

A father complained that his teenage daughter was being harassed by a person who drove a vehicle which she had identified by its make, model and number plate. He had given a declaration to the police as a precautionary measure. But he decided to make a complaint to the OC. The OC decided to find the owner, which was not so difficult. She summoned the person who admitted that he had indeed offered a lift to the minor because she used to walk in front of his office and he thought that he was one of his neighbours. The minor had in fact explained that he had offered her a lift several times and each time she had refused and he was persistent. She denied ever using the street where he had his office and lived very far from there.

It was believed that he spent his time in his vehicle and had approached several girls in the same area, and going to the same school. He denied this and was given a strong warning by the OC. The minor does not see him anymore and he is probably behaving.

Case 2: Minor harassed at a leisure complex

Employees of sports and leisure complex must be trained in order to ensure maximum security. There must be female guards as well as male ones.

OCO/comp/11/1638

The OC received information to the effect that a female minor was harassed in a leisure complex by male employees in a part which was rather deserted. She was 12 years old and had come with a group of youngsters in a vehicle driven by an adult driver. She had left the group and was trying to find them when two male employees in uniform followed her and made some sexual proposals to her, while trying to undress her. She ran and found her mates but never found any security guards. She complained to the administrative staff but the immediate enquiry never gave any results.

The family did not choose to report the matter so that no first hand information was obtained. The child was probably too traumatised to want to relate the story, let alone confront the staff. The OC advised the informant to ensure that the minor gets psychological
advice, and advised that young children should always be accompanied by an adult on such trips.

Nonetheless, the OC decided to summon the responsible officer of the said complex who carried out an enquiry. But he was unable to find out who in fact committed the offence. He was however keen to assure the OC that everything was done to ensure that children are safe at the said complex. The OC insisted that, since there had been an incident, there should be more security guards at all times including female guards.

Case 3: Insecurity at a swimming complex

All settings where children spend their time, including sports complex, must be safe. Those responsible to run these facilities must take all precautions to ensure that security is something which is always born in mind. This implies the proper profiling of employees in such places.

OCO/Comp/11/1255

A mother complained that her daughter had been to her swimming lessons at a sports complex as usual. She had been dropped by her school van again as is the case each time. Unfortunately, on that day, the pool was out of service because of a technical problem. As it was raining, a security guard, asked her to step inside an office, which she did. She explained that her mother would come to fetch her. However when the mother called, the same security guard never told her that the daughter was inside and merely told her that the pool was not in use. She asked if there was anyone inside to which, according to her, he replied in the negative. She explained that her daughter had been dropped off as usual but he maintained that since there was no swimming course no one would be inside and she started panicking. She had to seek help before finding out that her daughter was indeed inside.

The authorities enquired at the request of the OC. One explanation was that the security guard was partly deaf and there had been a total misunderstanding between him and the complainant. They proposed to issue instructions for parents inviting them to ensure that there are swimming classes before sending their children and not to leave them on their own before and after classes.

However, it appears that a security guard who have hearing problems should perhaps not be on duty in such a place, with all due regard being given to persons who are handicapped. He could be assigned a duty where he would not have to deal with the public, specially children.
Case 4: The traumatic experience of a minor in a supermarket

Sometimes, while performing their duties, security officers fail to realise that their attitude can traumatisate and humiliate children.

OCO/COMP/11/1643

In the present case, a 16 year old minor sent an e-mail to the OC complaining that she had been wrongly accused of theft.

During a shopping spree in a hypermarket in company of her mother, minor saw an opened package in a section. She opened the package, examined the product and took another product of the same brand. A few minutes later, she was approached by a male security officer who questioned her about the damaged item. After discussion, the minor and her mother agreed to pay for the damaged item.

The minor was then taken to a room where she was forced by a lady security officer to sign a document attesting that she had stolen the item. On the way to the room the man kept on harassing her verbally. The same scenario was repeated when the security officer accompanied her to the counter to settle the bill. She felt very embarrassed and humiliated by the way she had been treated.

The OC convened the manager and all the persons involved in the incident and came to the conclusion that they did not respect the rights of the child in that:

1. they made her sign a document without her parents being present instead of asking her mother to accompany her.
2. they never questioned her about her age.
3. the minor signed a document which referred to theft but there was no allegation of theft. The OC considers that it is unethical to ask anyone to sign such a document as it mentions the committing of a crime.
4. the persons dealing with the case were not sensitive that they were traumatising the minor by their attitude.

The OC sent to the manager of the hypermarket some recommendations on the way of dealing with children in similar cases to prevent such trauma to minors in the future and insisted on the document on theft be replaced by another one regarding damaging of property.
THE OMBUDSPERSON FOR CHILDREN ACT – 10 November 2003

Act 41 of 2003

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation
3. Establishment of the office of Ombudsperson for Children
4. Appointment of Ombudsperson for Children
5. Objects of the office of the Ombudsperson for Children
6. Powers and functions of the Ombudsperson for Children
7. Investigation
8. Protection of witnesses
9. Immunity from legal proceedings
10. Staff of the office of the Ombudsperson for Children
12. Regulations
13. Commencement
An Act

To provide for the establishment of an office of Ombudsperson for Children
and for matters related thereto

ENACTED by the Parliament of Mauritius, as follows -

1. Short title

This Act may be cited as the Ombudsperson for Children Act 2003.

2. Interpretation

‘child’ means a person under the age of 18;

‘Convention’ means the Convention on the Rights of the Child, adopted by the
General Assembly of the United Nations on 20 November 1989;

‘Minister’ means the Minister to whom responsibility for the subject of child
development is assigned;

‘Ombudsperson for Children’ means the Ombudsperson for Children whose
office is established under section 3;

‘public body’ means-

(a) a Ministry or Government department;

(b) a local authority;

(c) a statutory corporation;

(d) any other company, partnership or other entity of which the Government
   is, by the holding of shares or some other financial input, or in any other
   manner, in a position to influence the policy or decision of such body.

3. Establishment of the office of Ombudsperson for Children

(1) There is established for the purposes of this Act the office of
Ombudsperson for Children.

(2) The Ombudsperson for Children shall be a person who has a wide
knowledge of the issues and the law relating to children in Mauritius.

(3) The Ombudsperson for Children shall take before the President the oath
specified in the Schedule before assuming the duties of his office.
4. **Appointment of Ombudsperson for Children**

(1) The Ombudsperson for Children shall be appointed by the President of the Republic, acting after consultation with the Prime Minister, the Leader of the Opposition, the Minister and such other persons as he considers appropriate.

(2) An appointment under subsection (1) shall be subject to such terms and conditions as the President may determine.

(3) The Ombudsperson for Children shall hold office for 4 years and shall be eligible for reappointment for only a second term of 4 years.

(4) The President may remove the Ombudsperson for Children from office for inability to perform the functions of his office, whether arising from infirmity of body and mind or any other cause, or for misbehaviour.

(5) The Ombudsperson for Children shall not engage in any trade, business, profession or political activity.

5. **Objects of the office of the Ombudsperson for Children**

The Ombudsperson for Children shall –

(a) ensure that the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and associations of individuals.

(b) promote the rights and best interests of children;

(c) promote compliance with the Convention.

6. **Powers and functions of the Ombudsperson for Children**

In carrying out the duties of his Office, the Ombudsperson for Children shall –

(a) make proposals to the Minister on legislation, policies and practices regarding services to, or the rights of, children;

(b) advise the Minister on public and private residential placement facilities and shelters established for the benefit of children;

(c) advise public bodies and other institutions responsible for providing care and other services to children on the protection of the rights of children;

(d) take such steps as he may deem necessary to ensure that children under the care of, or supervision of, a public body are treated fairly, properly and adequately;
(e) propose measures to ensure that the legal rights of children in care are protected and that the placement facilities promote the safety of children and conform with such norms as the Ombudsperson for Children may, from time to time, recommend;

(f) initiate an investigation whenever the Ombudsperson for Children considers that there is, has been or is likely to be, a violation of the rights of a child;

(g) investigate cases relating to the situation of children in the family, in schools and in all other institutions, including private or public bodies, as well as cases of abandoned children or street children;

(h) investigate any suspected or reported case of child labour;

(i) investigate cases concerning a child who is a citizen of Mauritius and who may be abroad at the time of the investigation, or a child who is not a citizen of Mauritius but who is residing in Mauritius;

(j) investigate complaints made by a child, or any other person, in relation to the rights of any child;

(k) advise the Minister on the establishment of mechanisms to afford children the ability to express themselves freely, according to their age and maturity, especially on all matters concerning their individual or collective rights;

(l) advise the Minister on the creation of partnerships with parents, teachers, non-governmental as well as governmental organisations, local authorities and any other stakeholders committed to the promotion of children’s rights.

7. Investigation

(1) Where the Ombudsperson for Children considers, either upon complaint made to him or on his own motion, that it is necessary to investigate a matter relating to the rights of a child, the Ombudsperson for Children shall investigate the complaint in such manner as he considers appropriate.

(2) For the purposes of an investigation under this Act, the Ombudsperson for Children may -

(a) request any person, including any public officer, to provide information concerning a child whose rights have been, are being or are likely to be violated;

(b) enter premises where –
(i) a child is present, either temporarily or permanently, including an educational or health institution and a place of detention, in order to study the environment of such a place and assess its suitability;

(ii) a child may be in employment;

(iii) there is reasonable ground to believe that the moral and physical safety of a child may be in danger;

(c) request the Commissioner of Police to enquire and report to the Ombudsperson for Children on any allegation relating to the breach of the rights of a child;

(d) enter any licensed premises where the Ombudsperson for Children suspects that alcohol and tobacco may be handled, consumed or purchased by children;

(e) record the statement of any person in connection with an investigation;

(f) request the assistance of the Commissioner of Police and the Officer-in-Charge of any public body or institution, as the case may be, to facilitate any entry and effect, where appropriate, any seizure pursuant to paragraphs (b) and (d).

(g) summon witnesses and examine them on oath;

(h) call for the production of any document or other exhibit; and

(i) obtain such information, file or other record, upon application to the Judge in Chambers whenever necessary under any law, as may be required for the investigation.

(Amended 08/05)

(3) Following an investigation under subsection (1), the Ombudsperson for Children shall -

(a) act as a mediator to resolve any dispute relating to the rights of the child;

(b) make a report to such person or authority as the Ombudsperson for Children considers appropriate;

(c) make proposals of a general nature to the Minister on any matter which may have arisen in the course of the investigation.
(4) The Ombudsperson for Children shall not investigate any case which is pending before any Court but may refer any child involved in such a case to the Ministry for advice, assistance or counselling.

8. **Protection of witnesses**

Notwithstanding any enactment, no statement made in good faith by any person by way of a written complaint, or by the giving in writing of a statement made in the course of an investigation, to the Ombudsperson for Children, or any member of the staff of the Ombudsperson for Children, shall subject the maker of the statement to, or be used against him in, any civil or criminal proceedings.

9. **Immunity from legal proceedings**

No liability, civil or criminal, shall lie against the Ombudsperson for Children, or any member of the staff of the Ombudsperson for Children, in respect of anything which is done, or purported to be done, in good faith under this Act or in respect of the publication, by or under the authority of the Ombudsperson for Children, of any report, proceedings or other matter under this Act.

10. **Staff of the Ombudsperson for Children**

The Secretary for Public Service Affairs shall make available to the Ombudsperson for Children such administrative and other staff as the Ombudsperson for Children may require.


(1) The Ombudsperson for Children shall, not later that 30 September in each year, submit a report on its activities during the preceding year, to the President.

(2) Notwithstanding subsection (1), the Ombudsperson for Children may at any other time, submit a special report on any matter which, in his opinion, is of such urgency or importance that it should not be delayed until submission of an annual report to the President.

(3) The President shall cause every report sent to him under this section to be laid before the Assembly within one month of its submission.

11A **Offences**

(1) A person shall commit an offence –

(a) where he –

(i) fails to attend before the Ombudsperson;
(ii) refuses to take the oath before the Ombudsperson; or
(iii) wilfully refuses to furnish any information or to produce any document, record, file or exhibit,

when required to do so under section 7.

(b) Where he –

(i) refuses to answer to the best of his knowledge any question lawfully put to him by the Ombudsperson; or

(ii) knowingly gives to the Ombudsperson false evidence or evidence which he knows to be misleading,

in connection with an investigation under section 7.

(c) where at any sitting held for the purposes of an investigation under section 7, he –

(i) insults the Ombudsperson; or

(ii) wilfully interrupts the proceedings.

(2) Any person who commits an offence under this section shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 12 months.

(Amended 08/05)

12. Regulations

The Minister may –

(a) make such regulations as he thinks fit for the purposes of this Act;

(b) after consultation with the Ombudsperson for Children, make regulations for the purpose of regulating the procedure to be applied for the investigation of complaints by the Ombudsperson for Children.

13. Commencement

This Act shall come into operation on a date to be fixed by Proclamation.

Passed by the National Assembly on the twenty first day of October two thousand and three.

André Pompon

Clerk of the National Assembly
SCHEDULE
(section 3)

I ……………… having been appointed to be the Ombudsperson for Children under the Ombudsperson for Children Act 2003 do swear/solemnly affirm that I shall faithfully, impartially and to the best of my ability discharge the trust and perform the duties devolving upon me by such appointment and that I shall not, without reasonable cause, disclose any information imparted to me in the performance of such duties.

(S)………………………..    Before me,

Date:……………………..  (S)…………………………

President of the Republic
THE CODE CIVIL MAURICIEN (AMENDMENT) ACT 2007

Act No. 24 of 2007

I assent

A.V. CHETTIAR

20th December 2007

Acting President of the Republic

ARRANGEMENT OF SECTIONS

Section
1. Short title
   This Act may be cited as the Code Civil Mauricien (Amendment) Act 2007.

2. Code Civil Mauricien amended
   The Code Civil Mauricien is amended by adding immediately after article 371-3, the following articles –

   371-4 L’enfant a le droit d’entretenir des relations personnelles avec ses ascendants. Seul l’intérêt de l’enfant peut faire obstacle à l’exercice de ce droit. Si tel est l’intérêt de l’enfant, la Cour Suprême fixe les modalités des relations entre l’enfant et un tiers, parent ou non.

   371-5 L’enfant ne doit pas être séparé de ses frères et sœurs, sauf si cela n’est pas possible ou si non intérêt commande une autre solution. S’il y a lieu la Cour Suprême statue sur les relations personnelles entre les frères et sœurs.

Passed by the National Assembly on the eleventh day of December two thousand and seven.

Ram Ramjit Dowlutta

Clerk of the National Assembly
CONVENTION ON THE RIGHTS OF THE CHILD

Article 1: Definition of a child
Everyone under 18 years of age has all the rights in this Convention

Article 2: Non-discrimination
The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say, whatever type of family they come from.

Article 3: Best interests of the child
All organizations concerned with children should work towards what is best for each child.

Article 4: Rights in practice
Government should make these rights available to children.

Article 5: Parents’ guidance and the child’s growing abilities
Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly.

Article 6: Survival and development
All children have the right to life. Governments should ensure that children survive and develop healthily.

Article 7: Name and nationality
All children have the right to a legally registered name, and nationality. Also the right to know and, as far as possible, to be cared for, by their parents.

Article 8: Identity
Governments should respect children’s right to a name, a nationality and family ties.

Article 9: Separation from parents
Children should not be separated from their parents unless it is for their own good. For example, if a parent is mistreating or neglecting a child. Children whose parents have separated have the right to stay in contact with both parents, unless this might hurt the child.

Article 10: Family reunification
Families who live in different countries should be allowed to move between those countries so that parents and children can stay in contact, or get back together as a family.

Article 11: Transfer and non-return of children
Governments should take steps to stop children being taken out of their own country illegally.
Article 12: The child’s opinion
Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.

Article 13: Freedom of expression
Children have the right to get and to share information, as long as the information is not damaging to them or to others.

Article 14: Freedom of thought, conscience and religion
Children have the right to think and believe what they want, and to practice their religion, as long as they are not stopping other people from enjoying their rights. Parents should guide their children on these matters.

Article 15: Freedom of association
Children have the right to meet together and to join groups and organizations, as long as this does not stop other people from enjoying their rights.

Article 16: Protection of privacy
Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.

Article 17: Access to appropriate information
Children have the right to reliable information from the mass media. Television, radio, and newspapers should provide information that children can understand, and should not promote materials that could harm children.

Article 18: Parents’ responsibilities
Both parents share responsibility for bringing up their children, and should always consider what is best for each child. Governments should help parents by providing services to support them, especially if both parents work.

Article 19: Protection from abuse and neglect
Governments should ensure that children are properly cared for, and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them.

Article 20: Protection of a child without a family
Children who cannot be looked after by their own family must be looked after properly, by people who respect their religion, culture and language.

Article 21: Adoption
When children are adopted, the first concern must be what is best for them. The same rules should apply whether the children are adopted in the country where they were born, or if they are taken to live in another country.

Article 22: Refugee children
Children who come into a country as refugees should have the same rights as children born in that country.
Article 23: Disabled children
Children who have any kind of disability should have special care and support, so that they can lead full and independent lives.

Article 24: Health and health services
Children have the right to good quality health care, clean water, nutritious food, and a clean environment, so that they will stay healthy. Rich countries should help poorer countries achieve this.

Article 25: Review of placements
Children who are looked after by their local authority rather than by their parents should have their situation reviewed regularly.

Article 26: Social security
The government should provide extra money for the children of families in need.

Article 27: Standard of living
Children have a right to a standard of living that is good enough to meet their physical and mental needs. The government should help families who cannot afford to provide this.

Article 28: Education
Children have a right to an education. Discipline in schools should respect children’s human dignity. Primary education should be free. Wealthy countries should help poorer countries achieve this.

Article 29: Aims of education
Education should develop each child’s personality and talents to the full. It should encourage children to respect their parents, and their own and other cultures.

Article 30: Children of minorities or indigenous populations
Children have a right to learn and use the language and customs of their families, whether these are shared by the majority of people in the country or not.

Article 31: Leisure, recreation and cultural activities
All children have a right to relax and play, and to join in a wide range of activities.

Article 32: Child labour
The government should protect children from work that is dangerous, or that might harm their health or their education.

Article 33: Drug abuse
The government should provide ways of protecting children from dangerous drugs.

Article 34: Sexual exploitation
The government should protect children from sexual abuse.

Article 35: Sale, trafficking and abduction
The government should make sure that children are not abducted or sold.
Article 36: Other forms of exploitation
Children should be protected from any activities that could harm their development.

Article 37: Torture and deprivation of liberty
Children who break the law should not be treated cruelly. They should not be put in prison with adults and should be able to keep in contact with their families.

Article 38: Armed conflicts
Governments should not allow children under 15 to join the army. Children in war zones should receive special protection.

Article 39: Rehabilitation care
Children who have been neglected or abused should receive special help to restore their self respect.

Article 40: Children in conflict with the law
Children who are accused of breaking the law should receive legal help. Prison sentences for children should only be used for the most serious offences.

Article 41: Respect for higher standards
If the laws of a particular country protect children better than the articles of the Convention, then those laws should stay.

Article 42: Putting the CRC into practice
The government should make the Convention known to all parents and children.

STATEMENT OF INDEPENDENT HUMAN RIGHTS INSTITUTIONS FOR CHILDREN

Mid-Term Review of the UN Special Session on Children
New York, 11 – 12 Dec 2007

In May 2002, the United Nations Special Session on Children brought together 69 Summit-level participants and 190 national level delegations, who agreed on a solemn declaration and plan of action to change the world for and with children. Despite these strong commitments, many challenges continue to hamper the full realization of the rights of the child. We, Independent Human Rights Institutions for Children, call upon all those present at the Special Session mid decade review to urgently address the key issues that continue to threaten the development of children and the enjoyment of their rights.

We welcome progress achieved, particularly at normal level, but also recognize how much remains to be done. We must recommit ourselves to the achievement of the goals agreed in 2002. Five years later, we face significant new issues which must be addressed to protect children’s rights.

Over the past five years, the world has witnessed widespread poverty and increased inequity between the wealthiest and the poorest, a growing insecurity, an increase in fundamentalism, neglected environment imperatives with a serious impact on children especially due to climate change, and the advent of new technologies and their misuse. These issues call for joint efforts and urgent action. There are cross-border issues affecting children, including as a result of growing mobility of children and their families, trafficking of children, and child victimization through labour and sexual exploitation. These challenges to children’s rights cannot be addressed in isolation and require international cooperation and assistance.

As independent Human Rights Institutions for Children, it is our duty to remind States of the importance of positive investment for children. We call on all governments to prioritize budgetary resources to the maximum extent of their own available resources to ensure implementation of the rights of children. The Convention on the Rights of the Child, which has been ratified by almost every state, clearly imposes a duty on all States to enact the principles of universality, protection from discrimination, child participation in the best interests of the child. This obligation also demands commitment by international agencies and others, including private sector organizations, all of whom have a stake in ensuring respect for the rights of children now and preparing for the future.

In the past five years there has been an increase in the number of Independent Human Rights Institutions for Children worldwide. Existing networks like the European Network of Ombudspersons for Children (ENOC), Australasian Asia Pacific Association of Children’s Commissioners (AAPACC), and the recently formed Ibero-American Network of Ombuds for Children demonstrates institutional collaboration at the regional level. We encourage the development of similar networks in other regions to enable independent institutions to act as an interlocutor to regional and international organisations.
Independent Human Rights Institutions for Children promote, protect and monitor progress in the realisation of the rights of the child (World Fit For Children 31 (b, c & d)). Moreover, they represent the agents that translate children’s experiences, perspectives and concerns into policy change.

Our institutional strength lies in our independence and our delivery of evidence, sound information and strategic advice to Parliaments and Governments. Independent Human Rights Institutions for Children also have access to knowledge and information on children and are uniquely positioned to conduct an objective assessment of children’s situations. Our powers include access to educational, health and independent submission to the Committee on the Rights of the Child and have a separate dialogue with the Committee. Our impact has been demonstrated at national level where our activities have contributed to changes in law, policy and practice aimed at the implementation of “A World Fit for Children”. Children are often a low political priority. Our commitment is to ensure that children are central to the national and international agendas and to planning for the future.

We strongly believe that there is a need to promote worldwide that establishment of structures and mechanisms, at national level, that will contribute to the development and constant monitoring of effective national policies and action plans to fulfil and protect children’s right.

We welcome the research carried out by UNICEF Innocenti Research Centre in this area. This research has been used to strengthen our role at national level, guide the establishment of new and effective institutions, and promote the development of regional networks of independent child rights institutions.

Independent Human rights Institutions for Children, being close to children’s needs and voices, and holding a high standard of scientific knowledge in the field, can play a crucial role in advising Parliaments and Governments on the process and content of this task. To fully perform their task these institutions need to benefit from the support and resources they are entitled to. Independent Human Rights Institutions for Children need to have means to make a difference.

This Special Session five year review of “A World Fit for Children” provides an opportunity to evaluate where we are now and what kind of world we want to build for the future. Children continue to suffer from failures to secure their rights to safety, health, education, participation and dignity. This was highlighted in the UN Secretary General’s World Report on Violence Against Children (2006).

We welcome the General Assembly decision to establish a Special Representative on Violence against Children. We urge you to accept and implement the recommendations included in the UN Report and especially the obligation to implement the right of children both as victims and witnesses to be free from all forms of violence, including corporal punishment in all settings.

We call on States to meet their obligations and implement in full the rights of the child. We need to act to ensure that children of today can access the rights to which they are entitled. We also need to act to influence our world. Children are integral to any agenda of sustainability and how we involve them now will steer our development here and now.
We need to breathe life into an agenda on full implementation of children’s rights which will require States and the international community to think and behave differently. It will require an understanding of the impact of our decisions on children and ability to listen to and hear the voice of children. **We can assist in this task.**

We, the Independent Human Rights Institutions for Children from around the world, gathered together for the first time in 2002 to encourage the world to take children seriously. Five years later, what has happened is clearly not enough. **With our knowledge, experience and evidence-based work, we can support governments to undertake a renewed effort to make the world fit for children, with full respect for their rights.**

We call upon all of you present in the Special Session Review to redouble your efforts, and make use of our expertise, to decisively improve the situation of children over the next five years. **The enormity of the task we are confronted with and the obligations we have to children demands that we increase our efforts to achieve A World Fit for Children.**

United Nations Children’s Fund
Innocenti Research Centre
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50122 Florence, Italy

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<th>Acronyms</th>
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<tr>
<td>ANFEN</td>
<td>Adolescent Non-Formal Education Network</td>
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<td>BPM</td>
<td>Brigade pour la Protection des Mineurs</td>
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<tr>
<td>CDU</td>
<td>Child Development Unit</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of all Forms of Violence against Women</td>
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<td>CEDEM</td>
<td>Centre d’éducation et de développement pour les enfants Mauriciens</td>
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<td>CP</td>
<td>Commissioner of Police</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CSEC</td>
<td>Commercial Sexual Exploitation of Children</td>
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<td>CSO</td>
<td>Central Statistical Office</td>
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<td>CWO</td>
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<td>CYC</td>
<td>Correctional Youth Centre</td>
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<td>DNA</td>
<td>Deoxyribonucleic Acid</td>
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<tr>
<td>ECCE</td>
<td>Early Childhood Care and Education</td>
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<td>ECD</td>
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<td>Ministry of Women’s Rights, Child Development, Family Welfare and Consumer Protection</td>
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