



Ombudsperson for Children

Annual Report



Making rights a reality for every child of the Republic of Mauritius

2017 - 2018

Biro Ombudsperson pou Zanfan
20 NOVAM 2017

ZOURNE INTERNATIONALE ZANFAN



**Ansam nou protez
drwa tou zanfan
Repiblik Moris**

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UBUNTU

UBUNTU is a very nice story from Africa...

The motivation behind the Ubuntu culture in Africa...

An Anthropologist proposed a game to the African tribal children...

He placed a basket of sweets near a tree and made the children stand 100 metres away. He then announced that whoever reaches first would get all the sweets in the basket. When he said 'ready steady go!', do you know what the children did? They all held each other's hands, ran together towards the tree, divided the sweets equally among themselves, ate the sweets and enjoyed it. When the Anthropologist asked them why they did so, they answered, "Ubuntu". "Ubuntu" in their language means, "I am because we are". A strong message for all generations.

The protection and promotion of children's rights cannot be achieved in isolation, they depend on a series of stakeholders.

Let us NOT COMPETE, BUT COLLABORATE for children's rights.

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List of Acronyms

ACRWC	African Charter on the Rights and Welfare of the Child
ACHPR	African Commission on Human and People's Rights
AF	Action Familiale
AOMA	Association des Ombudsmans et Médiateurs Africains
AOMF	Association des Ombudsmans et Médiateurs de la Francophonie
BSH	Brown Sequard Hospital
CDU	Child Development Unit
CHA	Central Housing Authority
CPA	Child Protection Act 1994
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSA	Child Sexual Abuse
CSD	Civil Status Division
CSR	Corporate Social Responsibility
CYC	Correctional Youth Centre
DMHSA	Department of Mental Health and Substance Abuse
EDC	European Development Community
EPO	Emergency Protection Order
GBC	Global Breastfeeding Collective
GIS	Government Information Service
ICMBS	International Code of Marketing of Breast-milk Substitutes
ILO	International Labour Organisation
JADES	Jeunes Ambassadeurs du Défenseur des Enfants
LLB	Bachelor of Laws
LPT	Ledikasyon Pu Travayer
LRC	Law Reform Commission
MAM	Mouvement d'Aide à la Maternité
MDT	Multi-disciplinary Team
MEHR	Ministry of Education and Human Resources
MEHTESR	Ministry of Education and Human Resources, Tertiary Education and Scientific Research
MFPWA	Mauritius Family Planning and Welfare Association
MGECDFW	Ministry of Gender Equality, Child Development and Family Welfare
MGRECW	Ministry of Gender Research, Equality and Child Welfare
MHQL	Ministry of Health and Quality of Life
MIH	Mauritius Institute of Health
NCPCR	National Commission for the Protection of Child Rights
NEF	National Empowerment Foundation

NGO	Non-Governmental Organisation
NHDC	National Housing Development Corporation
OC	Ombudsperson for Children
OCA	Ombudsperson for Children Act 2003
OCO	Ombudsperson for Children's Office
ODPP	Office of the Director of Public Prosecutions
PPS	Pre-Primary School
PRB	Pay Research Bureau
PSAC	Primary School Achievement Certificate
RCI	Residential Care Institution
RYC	Rehabilitation Youth Centre
SADC	Southern African Development Community
SDG	Sustainable Development Goal
SEN	Special Educational Needs
SLO	State Law Office
SSS	State Secondary School
UoM	University of Mauritius
UN	United Nations
UNDP	United Nations Development Programme
UNGEI	United Nations Girls' Education Initiative
UNODC	United Nations Office on Drugs and Crime
w.e.f	with effect from
WHO	World Health Organisation

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GENERAL INTRODUCTION

The annual period from July 2017 to June 2018 had been an incredibly busy one for the Ombudsperson for Children's Office (OCO). There had been numerous handling of complaints, own-motion inquiries, meetings and workshops of different nature involving both children and adults, sensitisation programmes, media interviews, participation at international conferences and trainings, and last but not the least, several initiatives related to children's rights and the forthcoming Children's Bill. In the performance of my duties, I, the Ombudsperson for Children (OC), made it a high priority to network with different stakeholders. Working in isolation is a mistake not to be made by any human rights institution. Thus, to promote and protect children's rights, it is *sine qua non* to seek the support of a maximum of citizens and stakeholders both at national and international levels. I would like to acknowledge the precious support that this Office has had from the 'Association des Ombudsmans et Médiateurs de la Francophonie' (AOMF) and the 'Association des Ombudsmans et Médiateurs Africains' (AOMA), two international organisations that have greatly contributed to the efficiency and improvement of our office's work.

A core function of the OCO is to conduct investigations on matters involving children upon receipt of complaints or on my own motion. Just like a blood sample can allow a medical expert to analyse and diagnose deficiencies or diseases in a human body, the individual complaints that we daily receive at the OCO are often representative of wider systemic shortcomings. In other words, issues identified at the micro-level usually reflect issues that are often present at a macro-level. To be able to efficiently resolve problems faced by a single child, I often have to recommend and advocate for changes at the macro-level of service providers and decision makers. My role as the OC is primarily to positively influence policies and programmes concerning children's rights. This aspect of my work is stipulated in section 6(c) of the Ombudsperson for Children Act (OCA) 2003, as *"in carrying out the duties of his office, the OC shall advise public bodies and other institutions responsible for providing care and other services to children on the protection of the rights of children"*. The OCA 2003 defines 'public body' as

- (a) a Ministry or Government Department;
- (b) a local authority;
- (c) a statutory corporation;
- (d) any other company, partnership or other entity of which 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.

I am mandated to make recommendations to improve the lives of children in the Republic of Mauritius. However, I have noticed with deep concern that, even if our investigations are carried out scientifically and the recommendations made are supported by evidence, there are still some private and public bodies that would either ignore or question them. This is indeed unfortunate because children are deeply affected when there is no motivation to improve the quality of services offered to them.

I would like to remind every citizen of our country that the OCO was set up in 2003 by the Republic of Mauritius to ensure that children's rights are respected in our country. Although the OC has no legal power to enforce her recommendations, she plays the role of a 'watchdog' in all child-related domains. She uses 'smart power' as a tool to ensure that the rights of children are protected and to forcefully condemn the violation of their rights.

I wish to draw attention to paragraph 81 of the Concluding Observations and Recommendations of the African Commission on Human and People's Rights (ACHPR) adopted at its 60th Ordinary Session in May 2017¹ which stated that, *"In spite the establishment of the Office of the Ombudsperson for Children, it is noted in the Report that its recommendations are not implemented, in addition to a lack of awareness on the Office"*. In this regard, the Commission (ACHPR, 2017) recommended to *"establish measures to raise awareness on the Office of the Ombudsperson for Children, in addition to enacting legal requirement to ensure implementation of its recommendations"*.

Moreover, it is important to note that the United Nations Committee on the Rights of the Child (2006)² stated in paragraph 17 of its Concluding Observations for the Republic of Mauritius that:

The Committee recommends that the State party ensure that adequate human and financial resources be allocated to the Ombudsperson for Children's Office. The Committee also recommends that the State party strengthen the OCO by allowing it to recruit qualified and trained staff. It further recommends that the OCO be systematically included in the review of any laws and policies pertaining to children.

This year, my team of investigators and I paid particular attention to children in especially challenging circumstances which include amongst others children deprived of a family, victims of different forms of abuse, children of incarcerated mothers, pregnant teenagers and adolescent mothers, children with disabilities, street children, children in conflict with the law and those deprived of decent housing facilities. We bring to you in the present Annual Report 2017-2018 a breadth of issues in relation to these varied groups of children, an overview of our investigation processes, our findings and analyses based on local realities and international standards, and, most importantly, our recommendations on potential ways to improve the situation of these children at a systemic level.

Twenty-eight years ago, world leaders had agreed *"to ameliorate the plight of millions of children who live under especially difficult circumstances"* (World Summit for Children, 1990)³. The Republic of Mauritius was present at this important gathering which endorsed the Convention on the Rights of the Child (CRC; United Nations [UN], 1989)⁴ and called for global

¹ African Commission on Human and Peoples' Rights (2017). *Concluding Observations and Recommendations on 6th to 8th Combined Report of the Republic of Mauritius on the Implementation of the African Charter on Human and Peoples' Rights*. The Gambia: African Union.

² Committee on the Rights of the Child (2006). *Concluding Observations: Mauritius*. Geneva: United Nations.

³ World Summit for Children (1990). *World Declaration on the Survival, Protection and Development of Children*. Retrieved 05 August 2018 from www.unicef.org/wsc/declare.htm

⁴ United Nations (1989). *Convention on the Rights of the Child*. Geneva: Author.

action for its implementation. This year, as we celebrate our 50th Anniversary of Independence, our children should remain our priority, and as a nation, we still have the duty to fulfil the commitment we took in 1990.

As a ratifying country of the UNCRC, our Republic sends regular reports to the UN Committee on the Rights of the Child. However, it has not yet incorporated the provisions of this international law into our domestic legislation. The forthcoming Children's Bill is of utmost importance and we hope that it will favour a rights-based approach to the development and protection of children. I advocate that our country initiates a review of existing scattered laws on children. We should not adopt a 'piecemeal' approach to the amendments of these laws. This is because a sectoral law reform would be limited in scope, which means that many other rights might be neglected with this approach. In short, we need a **comprehensive and consolidated Children's Bill in line with the provisions of the UNCRC**. To support this process, I am pleased to announce that the current Annual Report 2017-2018 consists of a piece of work that enlists a maximum of local child-related laws which correspond to each of the 40 articles of the UNCRC (refer to section 1.12). **NOW IS THE TIME FOR THE REPUBLIC OF MAURITIUS TO MAKE THIS CONVENTION PART OF OUR LOCAL LEGISLATION.**

Mrs. Rita Venkatasawmy O S K
Ombudsperson for Children
Republic of Mauritius
Annual Report 2017-2018

CHAPTER 1:

THE CHILDREN'S BILL

**The importance of a Children's
Bill in the Republic of Mauritius:
Introduction**

1.1 Introduction

Childhood in the Republic of Mauritius in the 1960s was obviously very different to the one we are experiencing today. With independence came new challenges in building a democracy that is safe and responsive to the complex needs of every child in our country. In the context of a rapidly evolving society, policies and laws that apply to children cannot be made without consulting a host of stakeholders including adult citizens, child specialists from governmental and non-governmental organisations (NGOs), legal representatives and children themselves. There is no doubt that the Mauritian society deeply values the wellbeing of children and young people. According to an African report (Bequele, 2008)⁵, Mauritius scored the highest on a child-friendliness index among all African Governments.

I, the Ombudsperson for Children, believe that the country is ready to welcome a new child-specific law. This new Children's Bill should replace all outdated pieces of legislation concerning children in our country. One of my main mandates is to promote the country's compliance with the Convention on the Rights of the Child (CRC; United Nations, 1989)⁶, which was ratified by our country in July 1990. Along with the need to frame this legislation within our socio-economic and cultural landscape, I attribute high importance to the incorporation of the provisions of the CRC in this long-awaited Bill. I would also like to advance that the thorough revision of this draft Bill would necessitate a public participatory approach.

According to the Ombudsperson for Children Act 2003 (see Appendix A), I have the duty to:

- *make proposals to the Minister on **legislation, policies and practices** regarding services to, or the rights of, children (section 6(a)); and*
- *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 (section 6(k)).*

In this context, I have written this three-part chapter to, firstly, discuss the importance of a law specific to children in our Republic and the need to implement the recommendations made by the United Nations Committee on the Rights of the Child in the review of the draft Children's Bill. Secondly, I illustrate a revision mechanism that can include the public, most importantly children themselves, in reviewing this Bill. Thirdly, I present a compilation of a maximum of our existing local child laws that correspond to each of the 40 articles of the United Nations Convention on the Rights of the Child.

Additionally, in the spirit of contributing to a participatory approach in the review of the draft Children's Bill, my office took several initiatives and organised activities. These included submissions on recommendations on the Children's Bill to the Minister of Gender Equality,

⁵ Bequele, A. (2008). *The African Report on Child Wellbeing 2008: How Child-friendly are African Governments?* Addis Ababa: The African Child Policy Forum.

⁶ United Nations (1989). *Convention on the Rights of the Child*. Geneva: Author.

Child Development and Family Welfare, residential workshops with children and carers from different residential care institutions, consultative meetings with vulnerable children and sensitisation workshops with civil society organisations in Mauritius and Rodrigues. These activities are illustrated in chapter 9 of this report.

Furthermore, I would like to highlight that our country has the privilege of having the Law Reform Commission (LRC), an independent statutory body set up by Parliament under Act No. 26 of 2005. Two of the LRC's missions are to reform and develop laws in Mauritius, and to advise the Attorney General on finding ways of making laws understandable and accessible. The LRC has published many good quality papers including some specific ones on children's matters, for instance, the 2007 report (together with a draft bill) on "Relationship of Children with Grand Parents and other Persons under the Code Civil Mauricien"⁷ and the 2016 review paper on "Criminal Protection of Children's Rights"⁸. The latter document provided a framework on comparing our criminal legislations regarding children with those of other countries and also included law reform recommendations as shown in Appendix B. These guidelines could be very useful when reviewing the Children's Bill.

Referring to the several powers conferred to the LRC⁹, the Commission can among others

- *conduct public hearings, seek comments from the public on its proposals, and consult any person or class of persons; and*
- *request information from any Government department, any organization or person in relation to the review, reform or development of any aspect of the law of Mauritius.*

Initiating a national public consultation process for revising the draft Children's Bill will undoubtedly require a host of expertise, experience and skills, especially in the fields of child welfare and rights and on the technical aspects of drafting bills. Owing to our functions and powers, I believe that relevant Ministries, the Commission of Child Development and Others in Rodrigues, the LRC and my office could collaborate very closely in mobilising and enabling the necessary human, material and financial resources to assess, plan, implement and evaluate this law reform initiative.

⁷ Law Reform Commission (2007). *Report: Relationship of Children with Grand Parents and other Persons under the Code Civil Mauricien*. Mauritius: Author. Retrieved on 05 February 2018 from lrc.govmu.org/English/Documents/Reports%20and%20Papers/54%20rel-071009.pdf

⁸ Law Reform Commission (2016). *Review Paper: Criminal Protection of Children's Rights*. Mauritius: Author. Retrieved on 05 February 2018 from lrc.govmu.org/English/Documents/Reports%20and%20Papers/Review%20Paper%20Criminal%20Protection%20of%20Childrens%20Rights.pdf

⁹ Law Reform Commission (n.d.). About LRC. Retrieved on 05 February 2018 from lrc.govmu.org/English/AboutUs/Pages/Mission-and-Vision.aspx

Part A: Rationale for a Children's Bill

1.2 The importance of laws in any society

Laws establish the basic ground for order and structure in societies. They bring about a sense of discipline, control and uniformity to ways of living among people. Without laws, everyone would do as he/she wishes. This could lead to confusion, anger and riots because people would make their own rules and laws, without respecting one another. Anyone would be at liberty to interfere with the freedoms of another person. Ultimately, this can result into destruction of humanity and natural resources in societies. Hence, laws provide for accepted norms of conduct for a society. They state guidelines to peace, fairness and respect in any society.

Laws which are in line with human rights instruments are important to allow human beings to have an identity and exercise rights; for example, the right to work, the right to education and the right to health. Without rights being enacted, individuals would merely exist. They would not be able to have a sense of use or to employ their skills towards the improvement of society. It has to be understood that humans are the resource of any society and it is through them that a society is able to progress. Without laws providing for rights, people would not be empowered to contribute towards the society they live in. Thus, these laws ensure the survival and betterment of societies.

1.3 Importance of a legal framework to protect children's rights in Mauritius

The Republic of Mauritius is a democratic, sovereign and independent State as provided by section 1 of the Constitution of Mauritius 1968 which is the primary supreme law of our country. The Constitution enables the provision of fundamental constitutional rights in its sections 3-16 afforded to all Mauritian citizens, including children as full individuals with rights and responsibilities. Along with the Constitution, our Republic has enacted various legislations pertaining directly and indirectly to the protection of children's rights, namely, the Mauritian Civil Code, the Mauritian Penal Code, the Juvenile Offenders Act 1935, the Child Protection Act 1994 and the Ombudsperson for Children Act 2003 amongst others.

However, with emerging new social problems, children are becoming more vulnerable. It was clearly stated in the Declaration of the Rights of the Child (United Nations, 1959) that a child *"by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth"*. Children can easily become victims to social ills such as poverty, drugs and family breakdown amongst others. Dominant adults can abuse them in various ways, for example, physically, mentally and emotionally. Children must be protected from all forms of social problems like prostitution, mendicity, ill-treatment and abandonment.

A sound legal framework for children is *sine qua non* to ensuring their development and protection. We need to help children not to become prey to offenders or offenders themselves. Children also merit rights, facilities and services to grow healthily, mentally, physically and psychologically. Rights to life, health care, education, leisure, information and so on, should be provided to them so that they can feel empowered.

1.4 International framework for the protection of children's rights

The Republic of Mauritius has signed and ratified a number of international conventions and protocols which are legally-binding agreements. We are therefore committed to follow international norms and laws so as to keep intact diplomatic relations and to strengthen our law and order systems. In relation to children's rights, our country has signed the following international conventions, some of which are specific to children's rights, while others include components of children's rights:

- The **Universal Declaration of Human Rights**¹⁰ which provides for fundamental human rights like right to life, right to freedom of expression and right to freedom of religion and conscience. These rights target all individuals and it has to be highlighted that individuals include children as well.
- The **International Covenant on Civil and Political Rights**¹¹ which provides for rights like right to liberty and security and right to protection from inhuman and degrading punishment. Again, it is noted that these rights apply to children too.
- The **Hague Convention on the Civil Aspects of International Child Abduction**¹² which has as objectives *"to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in other Contracting States."*¹³
- The **Convention on the Rights of the Child**, ratified by the Republic of Mauritius in 1990, is a treaty specific to children's right. It sets out the civil, political, economic, social, health and cultural rights of children.
- The **Optional Protocol to the Convention on the Rights of the Child** on the involvement of children in armed conflict¹⁴.
- The **Optional Protocol to the Convention on the Rights of the Child** on the sale of children, child prostitution and child pornography¹⁵.
- The **Convention on the Rights of Persons with Disabilities**¹⁶.
- The **Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour**¹⁷ which provides for protection from slavery and child labour.
- The **African (Banjul) Charter on Human and People's Rights**¹⁸ provides for fundamental rights like rights to dignity, health and education. These rights aim at the general African population including children.

¹⁰ Proclaimed by the United Nations General Assembly in their 183rd plenary meeting on 10 December 1948

¹¹ Acceded by Mauritius on 12.12.1973

¹² Acceded by Mauritius on 01.06.1993

¹³ Article 1 of the Hague Convention on the Civil Aspects of International Child Abduction (1980)

¹⁴ Signed in November 2001 and ratified in February 2009

¹⁵ Signed in November 2001 and ratified in June 2011

¹⁶ Ratified in January 2010

¹⁷ Ratified in May 2000

¹⁸ Ratified in March 2003

- The **African Charter on the Rights and Welfare of the Child**¹⁹ which provides for fundamental rights of the African child while catering for specific groups like refugees, children with disabilities and juveniles.

Following the signature and ratification of all these treaties, the Government of the Republic of Mauritius, as a duty bearer, has taken up the commitment to protect and empower all children by enacting a legal framework that integrates these international principles and provisions.

1.5 A note on domestication of public international laws

Even if our country has a legal framework for children's rights, many of the above-mentioned conventions, especially the Convention on the Rights of the Child, has not been domesticated yet. Our child-specific policies and laws are not necessarily consistent with what is required by these international documents. This is because the Republic of Mauritius is a dualist country, that is, any public international law that we have signed and ratified does not automatically enter into force in our domestic law. For this to happen, the international treaty has to be enacted through Mauritian legislation in Parliament so that it bears the force of a law. This process is explained in the next subsection.

1.6 How a Bill becomes an Act of Parliament in the Republic of Mauritius?

On 12 April 2018, the Ombudsperson for Children's Office organised a sensitisation workshop on children's rights for civil society organisations in the context of the forthcoming Children's Bill. On this occasion, we received the visit of Mrs. Maya Hanoomanjee, Speaker of the National Assembly, who delivered a presentation on how a Bill becomes an Act of Parliament in our Republic. Her valuable and elaborate explanations are presented as follows:

¹⁹ Ratified in February 1992

Explanations extracted from the Speech entitled 'How a Bill becomes an Act of Parliament' of Mrs. Maya Hanoomanjee, Speaker of the National Assembly

1) What is a Bill?

- A Bill is a draft legislative proposal which, when passed gives legal effect to a policy decision (Public Bill) or to the promotion of some particular interest of a person, association or body corporate (Private Bill). It is usually the result of protracted discussions among stakeholders. Depending on the subject matter, discussions may be passionate and may address many sensitive issues.
- For a Bill to become an Act, it has to be introduced in the National Assembly, which is the Legislative body. Once introduced, it has to go through certain stages before it is enacted, that is, before it becomes law.

2) Steps to be followed for a Bill to be made into an Act

For the purpose of this speech, we shall deal exclusively with Public Bills. All Public Bills originate from Government (Ministries).

Step 1: At the level of the Ministry

- The Minister responsible for the ministry who wishes to bring a Bill in the House will have consultation with technical experts and other relevant stakeholders to seek their views and hold discussions on the Bill, namely on its bearing on society. In other words, it is important to assess how the Bill will affect the individual in different aspects of his life, whether it will bring about the intended effects, or whether it will cure any mischief.
- Once consensus has been reached, the Bill will be sent to the State Law Office (SLO) for legal vetting and drafting.

Note: The SLO is the Office responsible for giving legal advice to Government.

Step 2: At the State Law Office

- One of the first considerations for the SLO is to examine whether the proposed Bill passes the test of constitutionality. In other words, it must be ascertained that the Bill or part thereof, does not violate any provision of the Constitution. It is a basic tenet that any law should conform to the Constitution which is our supreme law.
- Besides the constitutionality test, other features of the Bill are also examined - for example, the powers given to the Minister, its incidence on other existing laws which, if any, would also require amendments as well. In short, a Bill should not be looked at in isolation. It forms part of the might of the law which regulates society.

Step 3: Bill returned to the Ministry

- The draft Bill is then sent back to the Ministry for its reaction. There may be as many exchanges between the Ministry and the SLO as may be necessary before finalisation.
- When all the legal issues have been cleared, the Minister brings the Bill to the Cabinet.

Step 4: Bill sent to the Cabinet

- The Minister will now seek the approval of the Cabinet. He does so by presenting a Cabinet Paper in which he traces the history of the Bill and sets out its main features. It may happen that the proposed Bill has implications on other matters falling within the responsibility of other ministries. For example, a proposed Bill on the subject of Education by the Minister of Education may have a bearing on Finance, or on a matter pertaining to Culture.
- In that case, both the Minister responsible for Finance and the Minister responsible for Culture will manifest a particular interest in the Bill. They will surely seek clarifications from the Minister of Education. They may also not agree with certain issues. In that case, the Minister of Education will have to consider their comments and suggestions on the proposed Bill and come back to Cabinet to obtain its approval.
- Cabinet will give its green light for the Bill to be introduced in the National Assembly only when all these issues have been cleared. After approval of Cabinet, the Bill will be forwarded to the National Assembly to be placed on the Order Paper (i.e. the agenda of business).

Step 5: In the National Assembly

- In the National Assembly, the stages through which Bills pass generally are ‘**First Reading**’, ‘**Second Reading**’, ‘**Committee Stage**’, and finally ‘**Third Reading**’.
- Administratively, the first step is for the Bill to be registered in the Official Register of the National Assembly. Once this is done, the Bill has to be published in the official gazette known as the Government Gazette. The gazette is the official journal in which all legal documents or other matters having a legal implication are published.
- The purpose of the publication of the Bill in the gazette is for the information of the general public of the decision of the government to present the Bill in question. Publication of the Bill also provides an opportunity to the public to react and make comments on the Bill.

i) First Reading:

After the expiry of a delay of 15 days from the publication in the gazette, the Bill is introduced in the House. This is done by way of a motion made by the appropriate Minister in the following terms –

“Mr/Madam Speaker, I move that the Bill be read the First Time.”

The motion needs to be seconded. There is no debate at this stage. Hence the First Reading.

ii) Second Reading:

The next step is the Second Reading of the Bill, which takes place not less than 7 days after the First Reading. At the Second Reading stage, there is general debate on the Bill. Here the general principles of the Bill and its provisions are debated. The details are not discussed further than is necessary to explain its principles.

The Minister piloting the Bill will open up the debate by presenting to the House the main arguments in its favour. For instance, on a Bill with the subject of Labour Law, the Minister will, for example, give reasons as to how the enactment of this law will, amongst others, improve the lot of the workers. The opposition spokesman will sometimes attempt to demonstrate that the workers will be worse off if the Bill becomes law, but he may also suggest on how to improve the Bill.

In other words, the House will debate on policy issues, generally related to the 'pros' and 'cons' of the Bill to try to convince the House on the benefits of the Bill and to strive to expose the flaws of the Bill respectively. For members who wish to express their views, both from the Government and from the Opposition or independent members, they will be called upon by the Speaker to address the House.

When all the members would have finished with their interventions, the Minister will sum up the debates and move that the Bill be read the Second Time. The Speaker will put the question to the House that the Bill be read a Second Time. That would bring a close to the Second Reading stage. The House will then proceed with the next stage, which is the Committee Stage.

iii) Committee Stage:

As we have seen earlier, Members have so far limited their discussions to the general principles of the Bill and its provisions. For example, on a Bill for the compulsory inclusion of sports activities in the school curriculum, debates may be centred on the benefits or otherwise of such a measure. Members won't debate, for example, on the availability or quality/quantity of pitches. These are what could be described as technicalities which are reserved for discussion in details at Committee stage.

The House will at this stage resolve into a Committee of the House. The Speaker does not chair the Committee as Speaker, but as Chairperson. Sometimes, the Deputy Speaker is also called upon to chair the Committee as Chairperson.

The proceedings in Committee Stage are less formal. The Chairperson will go through each clause of the Bill and entertain any queries, if any, from members. Members will be free to express their views on each clause and propose amendments if necessary.

It may happen that after discussions the Minister responsible for the Bill is convinced of the necessity of bringing some amendments to one or several clauses. In such a case, the mover of the amendment will propose a motion for the amendment which will be debated and put to vote. If agreed, the clause will be amended accordingly.

The debates at the Committee Stage are not subject to the strict rules of the House compared to when in plenary. After the Bill has been examined and all the queries and reservations cleared, it is sent back to the House for the Third Reading.

iv) Third Reading:

After the Bill has gone through the Committee stage, the House will conclude in what is called the Third Reading. Usually, once examination of the Bill is concluded at Committee Stage, the Minister will move that the Bill be read the third time and passed.

In general, the motion for the third reading is, only with very rare exceptions, carried. The exceptional occasions are that a member may, before the vote on third reading is taken, move for certain amendments of the Bill, in which case the member who wants to bring these amendments may move that the Bill be recommitted to the Committee.

At the conclusion of the proceedings of the Committee on the recommitment of the Bill, the Minister in charge of the Bill may move for the third reading. Once the Bill has passed the Third Reading stage, it has to be assented to by the President.

3) Assent by the President

Our Parliament consists of the President and a National Assembly.

Section 46 of the Constitution provides that, *“The power of Parliament to make laws shall be exercisable by Bills passed by the Assembly and assented to by the President.”*

In other words, once the Bill has been voted by the National Assembly, it is forwarded to the President for his/her assent. The President has only two alternatives. He either assents to the Bill or he withholds his assent. In general, the President gives his/her assent. Cases of withholding of assent are unusual. It is also to be noted that there are certain instances where the President has no power to withhold his assent, as stipulated in subsections 46(2)(i), (ii) and (iii) of the Constitution.

If ever the President decides to withhold his assent, he has to convey his decision to the Assembly within a certain delay (21 days) requesting it to reconsider the Bill. He should also propose any amendment which he considers necessary.

The Assembly shall reconsider the Bill and may either -

- i) bring appropriate amendments as requested by the President; or
- ii) may not consider the President's proposal.

In either case, the Assembly shall submit the Bill anew to the President. At this stage, the President is bound to signify his assent. It may happen (indeed it has happened) that the President refuses to assent when the Bill is resubmitted to him/her. In that case, he/she has no alternative but to resign.

4) Coming into force of the law

The Act, which has now become law, comes into operation on the day of its publication in the Government Gazette.

However, there are exceptions as follows –

- i) under certain conditions, an Act can be made to come into force with retrospective effect; or
- ii) an Act can be made to come into force at a future date by Proclamation.

In both cases, the commencement date will be explicitly mentioned in the Bill in a “Commencement Clause”.

1.7 Concluding Observations by the United Nations Committee on the Rights of the Child

The Ministry of Gender Equality, Child Development and Family Welfare (MGECDWF) is drafting the Children's Bill. When reviewing this draft Bill, I encourage the MGECDWF to give special attention to the Concluding Observations made by international experts of the Committee on the Rights of the Child. This Committee issued three reports for Mauritius at different points in time as enlisted below:

- Concluding observations on the initial periodic report (1996)²⁰ ;
- Concluding observations on the second periodic report (2006)²¹ ; and
- Concluding observations on the combined third to fifth periodic reports (2015)²² .

The experts on the Committee made specific recommendations regarding certain issues, which need to be taken into consideration when reviewing the draft Children's Bill. These are listed below:

1.7.1 Legislation

In all the periodic reports (1996, 2006, 2015), the Committee urged the Republic of Mauritius to incorporate the CRC into Mauritian legislation:

- *The Committee is concerned that the Convention is not an integral part of the national legislation and that national law and regulations are not fully consistent with the principles and provisions of the Convention (1996, paragraph 10).*
- *The Committee recommends that the State party strengthens its efforts to continue reviewing its legislation with the aim of **ensuring full compliance with the principles and provisions of the Convention**. Furthermore, the Committee encourages the State party to consider enacting a comprehensive Children's Act to consolidate the various pieces of legislation covering all aspects of child rights (2006, paragraph 11).*
- *The Committee recommends that the State party take measures to ensure **the incorporation of all the provisions of the Convention into the domestic legal order so that they can be fully implemented** (2015, paragraph 8).*
- *The Committee reiterates its previous recommendation (CRC/C/MUS/CO/2, para. 11) that the State party **expedite revision of its legislation with the aim of ensuring full compliance with the principles and provisions of the Convention and uniform application of the legislation on children's rights in all parts of the State party** (2015, paragraph 10).*

²⁰ Committee on the Rights of the Child (1996). *Concluding observations of the Committee on the Rights of the Child: Mauritius*. Geneva: United Nations.

²¹ Committee on the Rights of the Child (2006). *Concluding observations: Mauritius*. Geneva: United Nations.

²² Committee on the Rights of the Child (2015). *Concluding observations on the combined third to fifth periodic reports of Mauritius*. Geneva: United Nations.

1.7.2 General principles of the CRC

The Committee expressed concern in 1996 regarding general principles of the CRC which were not enshrined in current laws:

- *The State party has not yet taken fully into account in its legislation and policies the general principles of the Convention: **non-discrimination (art. 2), the best interests of the child (art. 3) and respect for the views of the child (art. 12)** (1996, paragraph 13).*

The Committee made the following recommendations in relation to this matter:

- *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 (2006, paragraph 30).*
- *In light of article 12 of the Convention, the Committee recommends that the State party continue and strengthen its actions to promote **the rights of the child to express his/her views** fully in all matters affecting him/her, including within the school, in the media, the courts, administrative bodies and in society in general (2006, paragraph 32).*
- *The Committee recommends that the State party take all necessary measures to **eliminate all forms of discrimination**, including by incorporating a general prohibition on direct and indirect discrimination in a children's act (2015, paragraph 28).*
- *In the light of its general comment No. 14 (2013) on **the right of the child to have his or her best interests taken as a primary consideration**, the Committee recommends that the State party ensure that this right is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings and decisions as well as in all policies, programmes and projects that are relevant to and have an impact on children. In this regard, the State party is encouraged to **elaborate the right of the best interests of the child in a comprehensive manner in a children's act**, and to develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving it due weight as a primary consideration (2015, paragraph 30).*
- *In the light of its general comment No. 12 (2009) on **the right of the child to be heard**, the Committee recommends that the State party take measures to ensure the effective implementation of legislation recognizing **the right of the child to be heard** in relevant court and administrative proceedings, in particular on the custody of children, including by establishing systems and/or procedures for social workers and courts to comply with the principle (2015, paragraph 32(a)).*

1.7.3 Rehabilitation of victims

The Committee raised the need for Mauritius to invest in the quality therapeutic rehabilitation of children victim of different forms of abuse:

- *The Committee also recommends that the Penal Code be amended in the light of the Convention. Further measures should be taken with a view to ensuring the physical and psychological recovery and rehabilitation of the victims of abuse, neglect, ill-treatment, violence or exploitation, in accordance with article 39 of the Convention (1996, paragraph 31).*

1.7.4 Right to privacy

The Committee drew attention to the fact that, in some cases, the identity of children who have been victims of abuse or in conflict with the law is not respected by the media:

- *The Committee recommends that the State party take all necessary legislative measures to **fully protect the right of the child to privacy** and to support the initiatives of the Ombudsperson for Children in this domain, including the proposals of drafting a Code of Ethics (2006, paragraph 36).*
- *The Committee recommends that the State party ensure that the child **victim's privacy is protected** in legal proceedings (2006, paragraph 48(b)).*
- *The Committee recommends that the State party take further legislative and policy measures to **protect effectively the right of the child to privacy**, including by encouraging the media to expeditiously adopt a code of ethics and conduct training on the Convention for those working in and with the media (2015, paragraph 36).*

1.7.5 Prohibition of corporal punishment

The Committee urged for stronger legislations to prevent ill-treatment and corporal punishment towards children in multiple settings:

- *In the light of articles 19, 34 and 35 of the Convention, the Committee encourages the State party to take all appropriate measures to **prevent and combat ill-treatment of children**, including child abuse within the family, corporal punishment, child labour and the sexual exploitation of children, including victims of sexual tourism (1996, paragraph 31).*
- *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, in schools, in penal institutions and in alternative care settings (2006, paragraph 38).*
- *The Committee urges the State party to **ensure that its legislation, including a children's act, explicitly prohibits corporal punishment in all settings**. The Committee also urges the State party to promote positive, non-violent and participatory forms of child-rearing and discipline. The State party is further encouraged to establish a clear reporting system for incidents of corporal punishment, notably in schools (2015, paragraph 38).*

1.7.6 Public participation/Revision of the draft Children's Bill

The Committee highlighted the need to involve the public and children in the process of drafting legislations that matter to them. Please also refer to Part B of this chapter for more information on a process of public and child participation for the review of the draft Children's Bill.

- *The Committee encourages the State party to urgently adopt a comprehensive children's act in order to consolidate the legislation covering all aspects of children's rights, **and to ensure the active involvement of children and organizations working on child rights in the drafting process for the act** (2015, paragraph 10).*

1.7.7 Coordinating body

- *The Committee urges the State party to **establish or designate an effective coordination body, such as through a children's act**, at a high inter-ministerial level, with a clear mandate and sufficient authority to coordinate all activities relating to the implementation of the Convention at the cross-sectoral, national, regional and local levels. The State party should ensure that the said coordinating body is provided with the necessary human, technical and financial resources to function effectively (2015, paragraph 14).*

1.7.8 Minimum age of marriage

- *The Committee urges the State party to ensure that **the minimum age of marriage, set at 18 years**, is strictly enforced, in line with the State party's obligations under the African Charter on the Rights and Welfare of the Child (2015, paragraph 26).*

It is important to emphasise here that the Republic of Mauritius has been repeatedly advised on similar issues. In this context, it is essential that the forthcoming Children's Bill covers all aspects of the CRC so as to provide for better and expansive rights of children.

Part B: The importance of public participation in drafting of the Children's Bill

1.8 Rationale for public participation in developing the draft Bill

Public participation within legislative review and reform gives the possibility to citizens to influence the development of laws which affect them. Participatory approaches are known to create an atmosphere of open dialogue and collaboration among different parties who contribute their own resources in view of building a stronger democracy (OSEC, 2010)²³. Within a human rights-based approach, rights and responsibilities need to be co-created by all duty bearers and rights holders including vulnerable groups of children.

A thorough and cost-effective public consultation process can substantially improve the revision of a bill mainly in terms of its appropriateness to its target population. The collation of multiple local and international perspectives from child and adult participants can create a sense of ownership to the formulation of the legislation and responsibility in its implementation. This process may also potentially save time and resources in drafting and tabling the Bill in Parliament.

Some African countries such as Namibia and South Africa have conducted extensive public consultation processes in revising their child legislations. I believe that the country can learn from their approaches and implement a similar initiative within our local context. In the following section, I outline some key ideas on how to coordinate public participation in the potential review of the Draft Children's Bill in the Republic of Mauritius.

For further reference, a summary of the main steps undertaken by the Namibian Government in the successful public revision of their draft Child Care and Protection Bill (Ministry of Gender Research, Equality and Child Welfare (MGRECW et al., 2009)²⁴ can be consulted. The main report was a 256-page detailed document (MGRECW et al., 2010)²⁵, which could serve as a guide to governments who may wish to adapt this process to their respective countries.

1.9 Some key considerations in reforming the Mauritian Draft Children's Bill through public participation

1.9.1 Scope

The consultation process would cover Mauritius (split into a set number of regions), Rodrigues and Agalega. Meetings and consultation activities would be organised at both regional and national levels. Multiple stakeholders including Ministries, NGOs, private institutions, school communities, child specialist groups, international guests, the judiciary and members of the

²³ Organisation for Security and Cooperation in Europe (2010). Transparency and public participation in law making processes: *Comparative overview and assessment of the situation in Macedonia*. Skopje: Author. Retrieved 19 January 2018 from www.ecnl.org/dindocuments/381_Transparency%20in%20Law%20Making%20Eng.pdf

²⁴ Ministry of Gender Research Equality and Child Welfare, Legal Assistance Centre & UNICEF (2009). *Public Participation in Preparing a New Child Protection Law: National Consultation on the Child Care and Protection Bill*. Windhoek: Government of the Republic of Namibia/UNICEF. Retrieved 19 January 2018 from www.lac.org.na/projects/grap/Pdf/ccparevisionprocesssummary.pdf

²⁵ Ministry of Gender Research Equality and Child Welfare, Legal Assistance Centre & UNICEF (2010). *Public Participation in Law Reform: Revision of Namibia's Child Care and Protection Bill*. Windhoek: Government of the Republic of Namibia/UNICEF. Retrieved 19 January 2018 from www.crin.org/en/docs/Namibia_Law%20ReformCCPAFinal%20Report%20-%20minimum%20resolution.pdf

public would be solicited for their input to reviewing the draft Bill. Funding for such an initiative could be fully or partly requested from different national and international partners working in the field of child welfare such as the MGECDFM, the Ministry of Justice, Human Rights and Institutional Reforms and the United Nations Children's Fund among others.

1.9.2 Time frame

The Namibian's consultation process, which included project planning, consultation with the public and incorporation of their input into a revised version of the Bill, was conducted over a period of 12 months (MGRECW et al., 2010). Owing to the extensive geographical area of Namibia, this length of time was required to undertake the different regional consultations. In the context of the Republic of Mauritius, I believe that a period of 2-3 months could suit the scope of such a consultation process within all local regions.

1.9.3 Human Resources

A Steering Committee or Working Group responsible in planning, guiding, supervising and assessing the consultations can be set up. This group may consist of governmental representatives from all relevant ministries, non-governmental professionals in the field of child welfare, other child specialists, scholars and legal advisors, as well as adult and child members of the public. The members could meet on a weekly or fortnightly basis over the term of the project.

1.9.4 Developing materials

Materials such as a summary of the draft Bill, factsheets on topics covered by the Bill, booklets, leaflets, written feedback and, interim and final reports among others are likely to be produced during the consultation process. It will be very important that these are understandable to the lay person and presented in a user-friendly and easy-to-read format. Materials intended for children must be simple, colourful and stimulating. Key documents may also be presented in accessible formats (e.g. audio, large font, sign language, Braille, etc.) and in different languages (English, French and Mauritian Creole) to overcome disability and linguistic barriers.

1.9.5 Engaging the media

It is key that the media is kept engaged throughout this process as a collaborator, a resource and a platform for exchange of information and feedback. To encourage wide public involvement, the messages have to be interesting and relevant to people across ages and walks of life. A media liaison person can be appointed to coordinate all channels of communication during the consultation process. Journalists have to be briefed on the rationale of this initiative. They

also have to be provided with up-to-date material to keep the public informed of the project's progress. It will be to the benefit of this process to use various communication methods, for instance:

- Articles and inserts of factsheets about the Bill in national newspapers and magazines;
- Radio and television programmes;
- Free of charge text messages;
- Social networking sites such as Facebook and Twitter;
- Electronic mail;
- Electronic newsletters;
- A dedicated website on the consultation process and regular updates on partners' websites such as Ministries, NGOs and universities;
- Telephone or fax; and
- Post.

This multi-communication approach can allow for under-represented groups of children and adults and those living in deprived regions to also access information and participate in the consultation.

1.9.6 Consulting with children

Child participation will be an essential ingredient in this law reform, as supported by article 12(1) of the CRC (UN, 1989):

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.

We have to ensure that the design and implementation of children's consultations move beyond tokenism, that is, only a symbolic presence of children with limited or no opportunities to formulate their opinions (Steinitz, 2009)²⁶. The process has to be sensitively planned to include children from all regions of our country and to take into account periods that they may be less able to engage such as during holidays or exam times. The Namibian Government recommended small regional consultations with children rather than those on a national scale (MGRECW et al., 2010).

A group of young leaders could be trained to facilitate children's consultations and feedback to the main Working Group. The consultations have to be creative and lively to encourage children to express themselves freely in a safe and respectful environment. Their participation needs to be voluntary and informed. Their input has to be valued through giving them feedback on the outcomes of their contribution.

²⁶ Steinitz, L.Y. (2009). Guidelines for Promoting Child Participation. Namibia: Family Health International. Retrieved 19 January 2018 from www.lac.org.na/projects/grap/Pdf/CCPA-GuidelinesforChildParticipation.pdf

1.9.7 Consulting with adults

In the review of the draft Bill, adult stakeholders could be engaged within regional and national workshops to discuss and revise different themes of the legislation including foster care, adoption and protection among others. Regional workshops could involve community and local representatives of different organisations and citizens working with and for children. The national workshop could additionally invite international guests and experts to contribute their know-how and experiences. Elected child representatives from regional consultations could also be included in this process.

Workshops of a more technical nature must also be organised, which may include legal representatives, government officials, child specialists and scholars among others. This team could work together in drawing key elements of public input from the regional and national workshops and incorporating these in a formal language in a revised version of the draft Bill. These meetings could also be used to identify topics that are missing in the Bill and to compare it with child-specific legislations of other countries with similar socio-economic profiles.

1.9.8 Budgeting for contingency opportunities

When undertaking such an initiative, it is advisable to allow for a contingency sum to cater for unplanned activities, for example, additional technical training for members of the Working Group and unanticipated participation at local and international events relevant to the revision of the draft Bill.

1.10 Concluding thoughts

I believe that enabling such a law reform process can become a blueprint and an asset to the country in reviewing other current and future bills and laws. Many service evaluation and research opportunities for students, scholars and practitioners can also emerge from this public consultation. This could help us learn further on the pros and cons of this process and improve its mechanisms.

The Namibian's public consultation process was considered to be a best practice model in the African region (MGRECW et al., 2010). I think that adapting their model to our local context could be a starting point to this proposed law reform initiative.

**Part C: The laws of the Republic of
Mauritius and the United Nations
Convention on the Rights of the Child**

1.11 Child legislation of the Republic of Mauritius and the UNCRC: An introduction

According to section 5 of the Ombudsperson for Children Act (OCA) 2003, one of my main roles as the Ombudsperson for Children is to “promote compliance with the Convention”. To draft and propose a new piece of legislation for the promotion and protection of children’s rights in the Republic of Mauritius, it is important to take stock of existing laws and how they relate to the Convention on the Rights of the Child (CRC; UN, 1989). Within this spirit and in the context of the forthcoming Children’s Bill, my office prepared a compilation of a maximum of Mauritian child laws that could be retrieved from local sources and categorised them under each one of the 40 articles of the UNCRC (as shown in the next section). This exercise carried out by my team of investigators can enable all child rights activists to understand the urgency of having a consolidated and comprehensive Children’s Bill and to be in a better position to promote children’s rights. It can also allow policy decision makers to assume their responsibilities in a more informed way.

Last but not the least, I would like to emphasise that we have the appropriate resources in the Republic of Mauritius to conceptualise the Children’s Bill. Civil society organisations must be provided with appropriate training to contribute to the Bill. The expertise of the State Law Office and the Law Reform Commission must be solicited to ensure that the Bill is reviewed in a systematic way and is understandable and accessible. The Ministry of Gender Equality, Child Development and Family Welfare must ensure that all stakeholders work together on this Bill in the best interests of the children of our Republic.

Some key points to remember in relation to the review of the forthcoming Children’s Bill

▪ *How are things currently:*

1. Laws concerning children are scattered throughout the legislation in the Republic of Mauritius.
2. The country has yet to incorporate the UNCRC in its entirety into national law.
3. The Constitution of Mauritius, specific Codes and Acts outline the different rights of children in the Republic of Mauritius, even though the UNCRC is not domesticated in local legislation.
4. Since the country’s ratification of the UNCRC in July 1990, the legislature has aimed at respecting certain articles of this Convention through various local legislative reforms. This however does not mean that we are fully compliant with the UNCRC.
5. Successive governments have expressed their determination to domesticate the UNCRC to better protect children’s rights.

▪ ***What should we avoid:***

1. We should not use a ‘piecemeal approach’ to law reform in child-related matters, which tends to focus on specific areas or categories of children and fails to include all children’s rights.
2. Participation of a critical mass of members of civil society organisations and public bodies would not in itself allow for the proper conceptualisation of the Children’s Bill. If the participants do not have a prior sound knowledge of children’s rights from a United Nations’ perspective and of all local laws related to children, their inputs would be limited and ineffective.

▪ ***What should we hope for in the review of the forthcoming Children’s Bill:***

1. A comprehensive and consolidated Children’s Bill will make children’s rights a reality in the Republic of Mauritius.
2. The forthcoming Bill should incorporate the entire UNCRC.
3. Contributors to the Children’s Bill must be provided with a prior working knowledge on child rights and legislation before their inputs are solicited. This process should be adapted to the specific learning needs of the contributors such as through child-friendly and accessible information and materials.
4. An important part of the Bill must deal with matters that need to be implemented on a practical level, which means that clear regulations will be required to implement the Act.
5. The Bill must deal with principles that are fundamental to the manner in which children are treated and protected.
6. The domestication of this Convention in local legislation will, among others,
 - ensure that concrete actions are taken when children’s rights are violated;
 - increase accountability by creating legal liability for public authorities on the way they deal with children and handle children’s matters;
 - raise awareness of children’s rights; and
 - promote child participation.

1.12 Compilation of existing child-related local laws in correspondence with the articles of the UNCRC

Article 1 of the Convention on the Rights of the Child

▪ *Definition of a Child*

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

▪ *Mauritian laws related to Article 1*

1. The Ombudsperson for Children Act 2003 – “child” means a person under the age of 18.

2. The Juvenile Offenders Act 1935 -

- (i) a “juvenile” means a person under the age of 18.
- (ii) “young person” means a person who has attained the age of 14 and is under the age of 18.

3. The Interpretation and General Clauses Act 1974 – a “child” means any unmarried person under the age of 18.

4. The Child Protection Act 1994 – a “child” means any unmarried person under the age of 18.

5. The Occupational Safety and Health Act 2005 - “young person” means a person who is above the age of 16 but has not attained the age of 18.

6. The Employment Rights Act 2008 -

- (i) a “child” means a person under the age of 16
- (ii) a “young person” means a person other than a child, who is under the age of 18.

7. The Licensing of Recruiting Agents for Overseas Educational and Training Institutions Act 2006 - “Minor”, in relation to a student, means a child or young person under the age of 18.

8. The Probation of Offenders Act 1946 (Amended in June 2009) – “Minor” means a person who is under the age of 18.

9. The Education Act 1957 following amendments, presently provides for compulsory education up to age of 16 years.

10. The Community Service Order Act 2002 - “minor” means a person who has attained the age of 16 and is under the age of 18.

11. The Social Aid Act 1983 - “child”, in relation to a claimant, means (a)

- (i) an unmarried person who is under the age of 20;
- (ii) an unmarried person of the age of 20 but not above the age of 23, who is pursuing a full-time course at a tertiary education institution;

12. The Code Civil Mauricien –

388. Le mineur est l'individu de l'un ou de l'autre sexe qui n'a point encore l'âge de dix huit ans accomplis.

[Art. 388 repealed and replaced by s. 2 of Act 43 of 1975.]

476. Le mineur est émancipé de plein droit par le mariage.

Article 2 of the Convention on the Rights of the Child

▪ ***Non-discrimination***

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.

▪ ***Mauritian laws related to Article 2***

1. The Constitution of Mauritius

Article 3. Fundamental rights and freedoms of individual

It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms –

- a) the right of the individual to life, liberty, security of the person and the protection of the law;
- b) freedom of conscience, of expression, of assembly and association and freedom to establish schools; and
- c) the right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation,

and the provisions of this chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Article 16. Protection from discrimination

- (1) Subject to subsection (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect.
- (2) Subject to subsections (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public authority.
- (3) In this section, "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour, creed or sex whereby persons of one such

description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.

- (4) Subsection (1) shall not apply to any law so far as that law makes provision –
 - (a) for the appropriation of revenues or other funds of Mauritius
 - (b) with respect to persons who are not citizens of Mauritius; or
 - (c) for the application, in the case of persons of any such description as is mentioned in subsection (3) (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description.
- (5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that it makes provision with respect to standards or qualifications (not bring standards or qualifications specifically relating to race, caste, place of origin, political opinions, colour, creed or sex) to be required by any person who is appointed to any office in the public service, any office in the disciplined force, any office in the service of a local authority or any office in a body corporate established directly by any law for public purposes.
- (6) Subsection (2) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5).
- (7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) may be subjected to any restriction on the rights and freedoms guaranteed by sections 9, 11, 12, 13, 14 and 15, being such a restriction as is authorised by section 9(2), 11(5), 12(2), 13(2), 14(2) or 15(3), as the case may be.
- (8) Subsection (2) shall not affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

[S. 16 amended by Act 23 of 1995; s. 2 of Act 35 of 2011 w.e.f. 12 Dec 2011]

2. The Equal Opportunities Act 2008

PART II – FORMS OF DISCRIMINATION

Section 5. Direct discrimination

(1) A person (“the discriminator”) discriminates directly against another person (“the aggrieved person”) on the ground of the status of the aggrieved person where—

- (a) in the same or similar circumstances, the discriminator treats or proposes to treat the aggrieved person less favourably than he treats or would treat a person of a different status; and

- (b) the discriminator does so by reason of—
 - (i) the status of the aggrieved person; or
 - (ii) a characteristic that generally appertains or is imputed to persons of the status of the aggrieved person.
- (2) In determining whether the discriminator directly discriminates, it is irrelevant—
 - (a) whether or not he is aware of the discrimination or considers the treatment less favourable;
 - (b) whether or not the status of the aggrieved person is the only or dominant reason for the discrimination, as long as it is a substantial reason.
- (3) (a) A discriminator is deemed to discriminate on the ground of sex where he acts as he does because of—
 - (i) the pregnancy, family responsibility or potential pregnancy of the aggrieved person; or
 - (ii) a characteristic of the aggrieved person that generally appertains, or is imputed, to a person who is pregnant, has family responsibility or is potentially pregnant.
- (b) For the purposes of paragraph (a)—

“family responsibility” means the responsibility of a person to care for or support—

 - (i) a dependent child; or
 - (ii) any other immediate family member who is in need of care or support;

“potential pregnancy” means the fact that a woman—

 - (i) is or may be capable of bearing children;
 - (ii) has expressed a desire to become pregnant; or
 - (iii) is likely, or is perceived as being likely, to become pregnant.

Section 6. Indirect discrimination

- (1) A person (“the discriminator”) discriminates indirectly against another person (“the aggrieved person”) on the ground of the status of the aggrieved person where—
 - (a) the discriminator imposes, or proposes to impose, a condition, requirement or practice on the aggrieved person;
 - (b) the condition, requirement or practice is not justifiable in the circumstances; and
 - (c) the condition, requirement or practice has, or is likely to have, the effect of disadvantaging the aggrieved person when compared to other persons of the same status.
- (2) For the purposes of subsection (1) (b), the burden of proving that a condition, requirement or practice is justifiable in the circumstances lies on the discriminator.

- (3) The matters to be taken into account in determining whether or not a condition, requirement or practice is justifiable in the circumstances include—
- (a) the nature and extent of the disadvantage resulting, or likely to result, from the imposition or proposed imposition of the condition, requirement or practice;
 - (b) the likelihood of overcoming or mitigating the disadvantage; and
 - (c) whether the disadvantage is proportionate to the result sought to be achieved by the discriminator.
- (4) In determining whether the discriminator indirectly discriminates, it is irrelevant—
- (a) whether or not he is aware of the discrimination;
 - (b) whether or not the status of the aggrieved person is the only or dominant reason for the discrimination, as long as it is a substantial reason.

Section 7. Discrimination by victimisation

- (1) Subject to subsection (2), a person (“the discriminator”) discriminates by victimisation against another person (“the aggrieved person”) where he subjects or threatens to subject the aggrieved person to any detriment or where he treats the aggrieved person less favourably than in those circumstances he treats or would treat other persons, and does so—
- (a) on the ground that the aggrieved person—
 - (i) has made, or proposes to make, a complaint against the discriminator or any other person under this Act;
 - (ii) has brought, or proposes to bring proceedings under this Act against the discriminator or any other person;
 - (iii) has furnished or proposes to furnish, any information or has produced, or proposes to produce a document to a person exercising or performing any power or function under this Act;
 - (iv) has attended or proposes to attend an inquiry under this Act or to provide evidence or testimony as a witness; or
 - (v) has made in good faith an allegation that the discriminator or any other person has committed an act of discrimination in contravention of this Act; or
 - (b) on the ground that the discriminator believes that the aggrieved person has done or proposes to do any of the things referred to in paragraph (a).
- (2) Subsection (1) does not apply to the treatment of a person by reason of any allegation made by him where the allegation was false and not made in good faith.

Section 8. Motive irrelevant to discrimination

In determining whether or not a person (“the discriminator”) discriminates, the discriminator’s motive is irrelevant.

Section 17. Education

- (1) Subject to subsections (2) and (3), no educational institution shall discriminate—
- (a) against a person—
 - (i) in deciding who should be admitted as a student;
 - (ii) by refusing or failing to accept that person's application for admission as a student;
 - (iii) in the way in which that person's application is processed; or
 - (iv) in the terms or conditions on which it is prepared to admit that person as a student; or
 - (b) against a student by—
 - (i) denying him access, or limiting his access, to any benefit, facility or service provided by the educational institution;
 - (ii) expelling him; or
 - (iii) placing him at a disadvantage in any other manner.
- (2) An educational institution, other than a tertiary education institution, may refuse or fail to accept a person's application for admission as a student where—
- (a) the institution is only open to students of the opposite sex or students of a particular age or age group; or
 - (b) at the level at which the person is seeking admission, the institution only, or mainly, caters for students of the opposite sex.
- (3) An educational institution may discriminate against a person on the basis of impairment where—
- (a) in order to participate or continue to participate in, or to derive or continue to derive substantial benefit from, the educational programme of the institution—
 - (i) the person requires or would require special services or facilities; and
 - (ii) it is not reasonable in the circumstances for those special services or facilities to be provided; or
 - (b) the person could not participate or continue to participate in, or derive or continue to derive substantial benefit from, the educational programme even after the provision of special services or facilities.

3. The HIV and AIDS Act 2006

Section 3. HIV or AIDS not a disability

- (1) Any person who is HIV-positive or has AIDS shall not be considered as having a disability or incapacity by virtue of any enactment and his status or presumed status shall not be used as a ground to discriminate against that person.

Article 3 of the Convention on the Rights of the Child

▪ ***Best interests of the child***

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her wellbeing, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

▪ ***Mauritian laws related to Article 3***

1. The Ombudsperson for Children Act 2003

Section 5. Objects of office of 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 interests of children;
- (c) promote compliance with the Convention.

2. The Code Civil Mauricien

SECTION DEUXIÈME

DES CAS DE DIVORCE

DES MESURES PROVISOIRES

242. 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.

Il peut confier les enfants à l'un quelconque des époux ou ordonner, pour le plus grand avantage des enfants, que tous ou quelques-uns d'entre eux seront confiés à d'autres membres de la famille ou même à une tierce personne ayant accepté cette charge.

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.

[Art. 242 repealed and replaced by s. 2 of Act 21 of 1981 w.e.f. 1 January 1982]

TITRE HUITIÈME

DE LA FILIATION ADOPTIVE

DES CONDITIONS REQUISES POUR L'ADOPTION SIMPLE

353. A la requête de l'adoptant et après instruction de la demande, l'adoption est prononcée par le Juge en Chambre qui vérifie si les conditions de la loi sont remplies et si l'adoption est conforme à l'intérêt de l'enfant.

S'il l'estime nécessaire, le Juge en Chambre peut différer le prononcé de l'adoption en imposant au requérant un délai d'épreuve dont la durée n'excédera pas six mois, pendant lequel celui-ci devra recueillir à son foyer l'enfant qu'il a l'intention d'adopter.

La décision rejetant la demande d'adoption doit être motivée et mentionner expressément le texte des dispositions légales sur lesquelles elle a été fondée ou les raisons pour lesquelles l'adoption n'a pas été jugée conforme à l'intérêt de l'enfant.

[Art. 353 repealed and replaced by s. 2 of Act 7 of 1963; s. 10 of Act 37 of 1980.]

3. The Child Protection Act 1994

Section 6. Discharge of order

- (1) No appeal shall lie against the issue of an emergency protection order.
- (2) (a) Any parent, not earlier than 72 hours after the issue of the order, may apply to the court for the discharge of the order.
(b) The court may discharge the order where it is satisfied that it is in the interests of the child to do so.

Section 8. Committal to place of safety

(1) Where the Permanent Secretary has reasonable ground to believe that a child is ill-treated, neglected, abandoned, destitute or otherwise exposed to harm, and that it is in his interests to be committed to a place of safety, he may apply in writing to the court for a committal order.

[S. 8 amended by Act 15 of 1998]

4. The Divorce and Judicial Separation Act 1981

Section 18. Orders for custody of children

- (1) On granting a decree, the Court shall make such order for the custody of any minor child as it thinks fit.
- (3) In making an order under subsection (1), the Court shall have regard to the interests of the child concerned as the first and paramount consideration.
- (4) In determining the interests of the child under subsection (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.

[S. 18 amended by s.7 of Act 15 of 1998 w.e.f 22 August 1998]

5. The National Children's Council Act 2003

Section 4. Objects of the Council

The objects of the Council shall –

- (a) be the key consultative and coordinating national body on all activities and issues related to children;
- (b) protect the rights of children, promote their interest and well-being and ensure their participation in matters of interest to them; and
- (c) promote activities for the welfare of children in line with the Convention on the Rights of the Child.

Article 4 of the Convention on the Rights of the Child

▪ ***Rights in practice***

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

▪ ***Mauritian laws related to Article 4***

1. The Ombudsperson for Children Act 2003

Section 5. Objects of office of 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 interests of children;
- (c) promote compliance with the Convention.

Section 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.

2. The National Children's Council Act 2003

Section 4. Objects of the Council

The objects of the Council shall –

- (a) be the key consultative and coordinating national body on all activities and issues related to children;
- (b) protect the rights of children, promote their interest and well-being and ensure their participation in matters of interest to them; and
- (c) promote activities for the welfare of children in line with the Convention on the Rights of the Child.

Article 5 of the Convention on the Rights of the Child

▪ **Parental guidance**

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

▪ **Mauritian laws related to Article 5**

1. The Code Civil Mauricien

242. 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.

Il peut confier les enfants à l'un quelconque des époux ou ordonner, pour le plus grand avantage des enfants, que tous ou quelques-uns d'entre eux seront confiés à d'autres membres de la famille ou même à une tierce personne ayant accepté cette charge.

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.

[Art. 242 repealed and replaced by s. 2 of Act 21 of 1981 w.e.f. 1 January 1982]

243. En se prononçant sur la garde des enfants, le Juge en Chambre fixe, s'il y a lieu, la contribution due, pour leur entretien et leur éducation, par l'époux qui n'a pas la garde.

[Art. 243 repealed and replaced by s. 2 of Act 21 of 1981 w.e.f. 1 January 1982.]

V – DES CONSÉQUENCES DU DIVORCE POUR LES ENFANTS

260. Le divorce laisse subsister les droits et les devoirs des père et mère à l'égard de leurs enfants, sous réserve des règles qui suivent.

[Art. 260 repealed and replaced by s. 2 of Act 21 of 1981 w.e.f. 1 January 1982.]

261. La Cour Suprême se prononce sur la garde des enfants, en tenant compte exclusivement de leurs avantages et de leurs intérêts.

Les enfants sont confiés à l'un quelconque des époux, à moins que, le Ministère Public entendu, la Cour Suprême n'ordonne, pour le plus grand avantage des enfants, que tous ou quelques-uns d'entre eux seront confiés aux soins d'un autre membre de la famille ou même d'une tierce personne ayant accepté cette charge.

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.

[Art. 261 repealed and replaced by s. 2 of Act 21 of 1981 w.e.f. 1 January 1982.]

262. Toute personne intéressée, y compris le Ministère Public, peut demander à la Cour Suprême qu'elle se prononce à nouveau sur la garde des enfants lorsque celui à qui elle avait été confiée, à la suite du divorce, est depuis lors décédé ou se trouve désormais dans l'un des cas énumérés par l'article 373 ou, pour toute autre cause, lorsque l'intérêt de l'enfant le requiert.

[Art. 262 repealed and replaced by s. 2 of Act 21 of 1981 w.e.f. 1 January 1982.]

262-1. En cas de divorce par consentement mutuel, les dispositions de la convention homologuée par le juge relatives à l'exercice de l'autorité parentale peuvent être révisées, pour motif grave, à la demande de l'un des époux ou du Ministère Public.

[Art. 262-1 inserted by s. 2 (h) of Act 2 of 2011 w.e.f. 15 May 2011.]

263. L'époux à qui la garde des enfants n'a pas été confiée conserve le droit de surveiller leur entretien et leur éducation. Il y contribue à proportion de ses ressources.

Un droit de visite et d'hébergement ne peut lui être refusé que pour des motifs graves.

[Art. 263 repealed and replaced by s. 2 of Act 21 of 1981.]

264. En se prononçant sur la garde des enfants, la Cour Suprême peut tenir compte—

1° des accords éventuellement passés entre époux;

2° des sentiments exprimés par les enfants mineurs lorsque leur audition a paru nécessaire et qu'elle ne comporte pas d'inconvénients pour eux.

[Art. 264 repealed and replaced by s. 2 of Act 21 of 1981.]

265. La contribution à l'entretien et à l'éducation des enfants prévue à l'article 263 prend la forme d'une pension alimentaire versée à la personne qui en a la garde, à moins que la Cour Suprême n'en décide autrement.

Les modalités et les garanties de cette pension alimentaire sont fixées par la Cour Suprême.

[Art. 265 repealed and replaced by s. 2 of Act 21 of 1981.]

266. Lorsque la consistance des biens du débiteur s'y prête, la pension alimentaire peut être remplacée, en tout ou en partie, par le versement d'une somme d'argent entre les mains d'un organisme accrédité chargé d'accorder en contrepartie à l'enfant une rente indexée, l'abandon de biens en usufruit ou l'affectation de biens productifs de revenus.

[Art. 266 repealed and replaced by s. 2 of Act 21 of 1981.]

267. Si le capital ainsi constitué devient insuffisant pour couvrir les besoins des enfants, la personne qui a la garde peut demander l'attribution d'un complément sous forme de pension alimentaire.

[Art. 267 repealed and replaced by s. 2 of Act 21 of 1981.]

268. Le parent qui assume à titre principal la charge d'enfants majeurs qui ne peuvent eux-mêmes subvenir à leurs besoins peut demander à son conjoint de lui verser une contribution à leur entretien et à leur éducation.

[Art. 268 repealed and replaced by s. 2 of Act 21 of 1981.]

DE L'AUTORITÉ PARENTALE RELATIVEMENT À LA PERSONNE DE L'ENFANT

371-1. Il reste sous leur autorité jusqu'à sa majorité ou son émancipation par mariage.

[Art. 371-1 repealed and replaced by s. 7 of Act 26 of 1980.]

371-2. L'autorité appartient aux père et mère pour protéger l'enfant dans sa sécurité, sa santé, sa moralité. Ils ont à son égard droit et devoir de garde, de surveillance et l'éducation.

[Art. 371-2 repealed and replaced by s. 7 of Act 26 of 1980.]

371-3. Sous réserve de dispositions spéciales contraires aux règles établies par le présent article, l'enfant ne peut sans permission des père et mère, quitter la maison familiale et il ne peut en être retiré que dans les cas de nécessité que détermine la loi. Toutefois le Juge en Chambre peut autoriser l'enfant à quitter la maison familiale, à la requête de l'un des deux parents, lorsque le refus abusif de l'autre n'est pas justifié par l'intérêt de l'enfant.

[Art. 371-3 repealed and replaced by s. 7 of Act 26 of 1980.]

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.

[Art. 371-4 inserted by s. 2 of Act 24 of 2007 w.e.f 22 December 2007.]

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

[Art. 371-5 inserted by s. 2 of Act 24 of 2007 w.e.f 22 December 2007.]

SECTION PREMIÈRE

DE L'EXERCICE DE L'AUTORITÉ PARENTALE

372. Pendant le mariage, les père et mère exercent en commun leur autorité.

Cependant, en cas de séparation de fait des père et mère, le Juge en Chambre saisi par l'un des époux, ou la Cour Suprême à l'occasion d'un litige opposant les deux époux, statue sur la garde de l'enfant, en tenant compte exclusivement de l'avantage et de l'intérêt de celui-ci. L'autorité parentale est alors exercée par celui des père et mère à qui la garde a été confiée, sauf le droit de visite de l'autre.

[Art. 372 repealed and replaced by s. 7 of Act 26 of 1980; s.10 of Act 8 of 1980; s.3 of Act 7 of 1983]

372-1. Si les père et mère ne parvenaient pas à s'accorder sur ce qu'exige l'intérêt de l'enfant, la pratique qu'ils avaient précédemment pu suivre dans des occasions semblables leur tiendrait lieu de règle. A défaut d'une telle pratique ou en cas de contestation sur son existence ou son bienfondé, l'époux le plus diligent pourra saisir le Juge en Chambre qui statuera après avoir tenté de concilier les parties.

[Art. 372-1 repealed and replaced by s. 7 of Act 26 of 1980.]

372-2. A l'égard des tiers de bonne foi, chacun des père et mère est réputé agir avec l'accord de l'autre, quand il fait seul un acte usuel de l'autorité parentale relativement à la personne de l'enfant.

[Art. 372-2 repealed and replaced by s.7 of Act 26 of 1980; amended by s.10 of Act 26 of 1999]

373. Perd l'exercice de l'autorité parentale ou en est provisoirement privé celui des père et mère qui se trouve dans l'un des cas suivants—

- 1° S'il est hors d'état de manifester sa volonté, en raison de son incapacité, de son absence, de son éloignement ou de toute autre cause;
- 2° Si un jugement de déchéance ou de retrait a été prononcé contre lui, pour ceux de ses droits qui lui ont été retirés;
- 3° S'il a fait l'objet d'une condamnation pour abandon d'enfants.

[Art. 373 repealed and replaced by s. 7 of Act 26 of 1980.]

373-1. Si l'un des père et mère décède ou se trouve dans un des cas énumérés par l'article 373, l'exercice de l'autorité parentale est dévolu en entier à l'autre.

[Art. 373-1 repealed and replaced by s. 7 of Act 26 of 1980.]

373-2. Si les père et mère sont divorcés ou séparés de corps, l'autorité parentale est exercée par celui d'entre eux à qui la Cour Suprême confie la garde de l'enfant, sauf le droit de visite de l'autre.

Lorsque la Cour Suprême confie la garde à un autre parent ou à une tierce personne, elle détermine dans sa décision l'étendue des pouvoirs dont disposera celui-ci, tant à l'égard de la personne que des biens de l'enfant ainsi que les conditions, limitations et contrôles auxquels sera soumis l'exercice de ces pouvoirs. En ce cas, les attributs de l'autorité parentale autres que ceux dévolus à celui qui a la garde de l'enfant, continuent d'être exercés par les père et mère.

La Cour Suprême peut aussi décider que l'autre parent ou la tierce personne, à qui la garde de l'enfant a été confiée, disposera des mêmes pouvoirs que ceux d'un tuteur et que leur exercice sera soumis aux mêmes conditions, limitations et contrôles.

[Art. 373-2 repealed and replaced by s. 7 of Act 26 of 1980.]

373-3. S'il ne reste plus ni père ni mère en état d'exercer l'autorité parentale, il y aura lieu à l'ouverture d'une tutelle.

[Art. 373-3 repealed and replaced by s. 7 of Act 26 of 1980.]

374. Sur l'enfant naturel, l'autorité parentale est exercée par celui des père et mère qui l'a volontairement reconnu, s'il n'a été reconnu que par l'un d'eux.

Si les père et mère qui ont, l'un et l'autre, volontairement reconnu l'enfant naturel, mènent une vie commune et logent dans une même résidence, l'autorité parentale est exercée conjointement par les deux, suivant les règles établies par les articles 372 à 373-1.

Si les père et mère qui ont, l'un et l'autre volontairement reconnu l'enfant naturel, ne logent pas dans la même résidence, l'autorité parentale est exercée par celui d'entre eux avec qui l'enfant vit habituellement, sauf le droit de visite de l'autre.

En cas de contestation, notamment à la suite de la séparation des père et mère, la Cour Suprême, à la demande du père ou de la mère, statue sur la garde de l'enfant naturel, en tenant compte exclusivement de l'avantage et de l'intérêt de celui-ci. La Cour Suprême peut notamment pour le plus grand avantage de l'enfant naturel, confier la garde de celui-ci à un autre parent ou à une tierce personne ayant accepté cette charge, dont elle détermine l'étendue des pouvoirs suivant les règles établies par les alinéas 2 et 3 de l'article 373-2.

[Art. 374 repealed and replaced by s. 7 of Act 26 of 1980; s. 11 of Act 8 of 1980.]

374-1. Les mêmes règles sont applicables, à défaut de reconnaissance volontaire, quand la filiation est établie par jugement soit à l'égard des deux parents, soit à l'égard d'un seul d'entre eux.

Toutefois, en statuant sur l'une ou l'autre filiation, la Cour Suprême peut toujours décider de confier la garde à un autre parent ou à une tierce personne ayant accepté cette charge, dont elle détermine l'étendue des pouvoirs suivant les règles établies par les alinéas 2 et 3 de l'article 373-2.

[Art. 374-1 repealed and replaced by s. 7 of Act 26 of 1980.]

SECTION DEUXIÈME

DE LA DÉCHÉANCE ET DU RETRAIT PARTIEL DE L'AUTORITÉ PARENTALE

375. Peuvent être déchus de l'autorité parentale les père et mère qui sont condamnés, soit comme auteurs, co-auteurs ou complices d'un crime ou délit commis sur la personne de leur enfant, soit comme co-auteurs ou complices d'un crime ou délit commis par leur enfant.

[Art. 375 repealed and replaced by s. 7 of Act 26 of 1980.]

376. Peuvent être déchus de l'autorité parentale, en dehors de toute condamnation pénale, les père et mère qui, soit par de mauvais traitements, soit par des exemples pernicieux d'ivrognerie habituelle, d'inconduite notoire ou de délinquance, soit par un défaut de soins ou un manque de direction, mettent manifestement en danger la sécurité, la santé ou la moralité de l'enfant.

L'action en déchéance est portée devant la Cour Suprême soit par le Ministère Public, soit par le père, la mère ou un autre membre de la famille ou le tuteur de l'enfant.

[Art. 376 repealed and replaced by s. 7 of Act 26 of 1980.]

377. La déchéance prononcée en vertu de l'article 375 ou 376 porte de plein droit sur tous les attributs, tant patrimoniaux que personnels, se rattachant à l'autorité parentale; à défaut d'autre détermination, elle s'étend à tous les enfants mineurs déjà nés ou à naître.

Elle emporte, pour l'enfant, dispense de l'obligation alimentaire, par dérogation aux articles 205 à 207, sauf disposition contraire dans la décision de déchéance.

[Art. 377 repealed and replaced by s. 12 of Act 8 of 1980; repealed and replaced by s.7 of Act 26 of 1980.]

378. La décision peut, au lieu de la déchéance totale, se borner à prononcer un retrait partiel de droits, limité aux attributs qu'elle spécifie. Elle peut aussi décider que la déchéance ou le retrait n'auront d'effet qu'à l'égard de certains des enfants déjà nés.

[Art. 378 repealed and replaced by s. 7 of Act 26 of 1980.]

379. En prononçant la déchéance ou le retrait du droit de garde, la Cour Suprême devra, si l'autre parent est décédé ou s'il a perdu l'exercice de l'autorité parentale, désigner un autre parent ou une tierce personne ayant accepté cette charge, qui assumera la garde de l'enfant et dont elle déterminera l'étendue des pouvoirs suivant les règles établies par les alinéas 2 et 3 de l'article 373-2.

[Art. 379 repealed and replaced by s. 7 of Act 26 of 1980.]

380. Le père ou la mère qui a fait l'objet d'une déchéance ou d'un retrait de droits, pourra, par requête, obtenir de la Cour Suprême, en justifiant de circonstances nouvelles, que lui soient restitués, en tout ou partie, les droits dont il avait été privé.

La demande en restitution ne pourra être formée qu'un an plus tôt après que la décision prononçant la déchéance ou le retrait est devenue irrévocable; en cas de rejet, elle ne pourra être renouvelée qu'après une nouvelle période d'un an.

[Art. 380 repealed and replaced by s. 7 of Act 26 of 1980.]

CHAPITRE DEUXIÈME

DE L'AUTORITÉ PARENTALE RELATIVEMENT AUX BIENS DE L'ENFANT

381. Les père et mère ont, sous les distinctions qui suivent, l'administration et la jouissance des biens de leur enfant.

[Art. 381 repealed and replaced by s. 7 of Act 26 of 1980.]

382. L'administration légale est exercée conjointement par le père et la mère lorsqu'ils exercent en commun l'autorité parentale et, dans les autres cas, soit par le père, soit par la mère, selon les dispositions du chapitre précédent.

[Art. 382 repealed and replaced by s. 7 of Act 26 of 1980; s.11 of Act 26 of 1999.]

383. La jouissance légale est attachée à l'administration légale: elle appartient soit aux deux parents conjointement, soit à celui des père et mère qui a la charge de l'administration.

[Art. 383 repealed and replaced by s. 7 of Act 26 of 1980; s.12 of Act 26 of 1999.]

384. Le droit de jouissance cesse—

- 1° Dès que l'enfant a seize ans accomplis;
- 2° Par les causes qui mettent fin à l'autorité parentale, ou même plus spécialement par celles qui mettent fin à l'administration légale;
- 3° Par les causes qui emportent l'extinction de tout usufruit.

[Art. 384 amended by s.4 of Act 43 of 1975; repealed and replaced by s. 13 of Act 8 of 1980; s.7 of Act 26 of 1980.]

385. Les charges de cette jouissance sont—

- 1° Celles auxquelles sont tenus en général les usufruitiers;
- 2° La nourriture, l'entretien et l'éducation de l'enfant selon sa fortune;
- 3° Les dettes grevant la succession recueillie par l'enfant, en tant qu'elles auraient dû être acquittées sur les revenus.

[Art. 385 repealed and replaced by s. 7 of Act 26 of 1980.]

386. Cette jouissance n'aura pas lieu au profit de l'époux survivant qui aurait omis de faire inventaire authentique ou sous seing privé, des biens échus au mineur.

[Art. 386 repealed and replaced by s. 7 of Act 26 of 1980.]

387. La jouissance légale ne s'étend pas aux biens que l'enfant peut acquérir par son travail, ni à ceux qui lui sont donnés ou légués sous la condition expresse que les père et mère n'en jouiront pas.

[Art. 387 repealed and replaced by s. 7 of Act 26 of 1980.]

DE L'ORGANISATION DE LA TUTELLE

I – DU JUGE EN CHAMBRE

397. Indépendamment des fonctions et des pouvoirs spéciaux qui lui sont expressément conférés par les dispositions du présent chapitre, le Juge en Chambre exerce une surveillance générale sur les administrations légales et les tutelles.

S'il l'estime nécessaire, il fait appel au service du Ministère Public.

Il peut convoquer les administrateurs légaux, tuteurs et autres organes tutélaires, leur réclamer des éclaircissements, leur adresser des observations, prononcer contre eux des injonctions.

Ceux qui, sans excuses légitimes, n'auront pas déféré à ses injonctions, pourront être poursuivis et condamnés conformément au droit commun.

[Art. 397 repealed and replaced by s. 13 of Act 37 of 1980.]

398. Les décisions du Juge en Chambre, prises en application du présent chapitre, sont immédiatement exécutoires.

Elles peuvent toutefois, à la diligence du tuteur, du subrogé tuteur ou d'un membre de la famille du mineur, faire à tout moment, l'objet d'un recours par voie de motion devant la Cour Suprême.

[Art. 398 repealed and replaced by s. 13 of Act 37 of 1980.]

399. Le Juge en Chambre peut, avec l'autorisation du Chef juge, déléguer ses fonctions au Master ou à un officier public exerçant les fonctions de Chief Registrar.

En ce qui concerne les territoires mauriciens autres que l'île Maurice, notamment Rodrigues, les fonctions et les pouvoirs conférés par le présent chapitre au Juge en Chambre seront exécutés par les magistrats ayant juridiction sur ces territoires.

[Art. 399 repealed and replaced by s. 13 of Act 37 of 1980; amended by s. 71 (3) of Act 9 of 1983.]

II – DU TUTEUR

400. Le droit individuel de choisir un tuteur, parent ou non, n'appartient qu'au dernier mourant des père et mère, s'il a conservé, au jour de sa mort, l'exercice de l'administration légale.

[Art. 400 repealed and replaced by s. 13 of Act 37 of 1980.]

401. Cette nomination ne peut être faite que dans la forme d'un testament ou d'une déclaration spéciale devant notaire.

[Art. 401 repealed and replaced by s. 13 of Act 37 of 1980.]

402. Lorsqu'il n'a pas été choisi de tuteur par le dernier mourant des père et mère, la tutelle est déferée à celui des ascendants qui est du degré le plus rapproché.

[Art. 402 repealed and replaced by s. 13 of Act 37 of 1980.]

403. En cas de concours entre ascendants du même degré, le Juge en Chambre désigne celui d'entre eux qui sera tuteur.

[Art. 403 repealed and replaced by s. 13 of Act 37 of 1980.]

404. Lorsqu'il n'y a ni tuteur testamentaire ni ascendant tuteur ou lorsque celui qui avait été désigné en cette qualité vient à cesser ses fonctions, le Juge en Chambre nomme un tuteur après avis, s'il y a lieu, du Ministère Public.

[Art. 404 repealed and replaced by s. 13 of Act 37 of 1980.]

405. Le tuteur est désigné pour la durée de la tutelle. Néanmoins le Juge en Chambre peut d'office ou à la requête de toute personne, pourvoir au remplacement du tuteur en cours de tutelle, si des circonstances graves le requièrent ou s'il apparaît, après enquête et avoir entendu celui-ci ainsi que le subrogé tuteur, que cette mesure est souhaitable ou nécessaire dans l'intérêt du mineur.

[Art. 405 repealed and replaced by s. 16 of Act 8 of 1980; repealed and replaced by s. 13 of Act 37 of 1980.]

406. Le tuteur élu ou désigné en application des articles 400 à 403 n'est pas tenu d'accepter la tutelle. Cependant, les ascendants du mineur ne peuvent refuser la tutelle qu'avec l'assentiment du Juge en Chambre.

[Art. 406 repealed and replaced by s. 13 of Act 37 of 1980.]

407. Au cas où personne n'accepterait la tutelle, elle sera déferée de plein droit au Curateur aux biens vacants.

En ce cas, il n'y aura lieu ni à la nomination d'un subrogé tuteur ni à l'inscription d'une hypothèque légale.

[Art. 407 repealed and replaced by s. 13 of Act 37 of 1980; amended by s. 71 (4) of Act 9 of 1983.]

408. Les différentes charges de la tutelle peuvent être remplies par toutes personnes, sans distinction de sexe, mais sous réserve des causes d'incapacité, exclusion, destitution ou récusation exprimées ci-dessous.

[Art. 408 repealed and replaced by s. 13 of Act 37 of 1980.]

409. Sont incapables des différentes charges de la tutelle—

1° Les mineurs;

2° Les majeurs en tutelle, les aliénés et les majeurs en curatelle.

[Art. 409 repealed and replaced by s. 13 of Act 37 of 1980; amended by s. 71 (10) of Act 9 of 1983.]

410. Sont exclus ou destitués de plein droit des différentes charges de la tutelle—

1° Ceux qui ont été condamnés à une peine afflictive ou infamante;

2° Ceux qui ont été déchus de l'autorité parentale.

[Art. 410 repealed and replaced by s. 13 of Act 37 of 1980.]

411. Peuvent être déchus ou destitués des différentes charges de la tutelle, les gens d'une inconduite notoire et ceux dont l'improbité, la négligence habituelle ou l'inaptitude aux affaires aurait été constatée.

[Art. 411 repealed and replaced by s. 13 of Act 37 of 1980.]

412. Ceux qui ont ou dont les père et mère ont avec le mineur un litige mettant en cause l'état de celui-ci ou une partie notable de ses biens, doivent se récuser, et peuvent être récusés, des différentes charges tutélaires.

[Art. 412 repealed and replaced by s. 13 of Act 37 of 1980.]

III – DES AUTRES ORGANES DE LA TUTELLE

413. Le Juge en Chambre peut, en considérant les aptitudes des intéressés et la consistance du patrimoine à administrer, décider que la tutelle sera divisée entre un tuteur à la personne et un tuteur aux biens.

Les tuteurs ainsi nommés seront indépendants, et non responsables l'un envers l'autre, dans leurs fonctions respectives, à moins qu'il n'en ait été autrement ordonné par le Juge en Chambre.

[Art. 413 repealed and replaced by s. 13 of Act 37 of 1980.]

414. La tutelle est une charge personnelle.

Elle ne se communique point au conjoint du tuteur, Si, pourtant, ce conjoint s'immisce dans la gestion du patrimoine pupillaire, il devient responsable solidairement avec le tuteur de toute la gestion postérieure à son immixtion.

[Art. 414 repealed and replaced by s. 13 of Act 37 of 1980.]

415. La tutelle ne passe point aux héritiers du tuteur. Ceux-ci seront seulement responsables de la gestion de leur auteur; et, s'il sont majeurs, ils seront tenus à la continuer jusqu'à la nomination d'un nouveau tuteur.

[Art. 415 repealed and replaced by s. 13 of Act 37 of 1980.]

416. Dans toute tutelle, il y aura un subrogé tuteur, nommé par le Juge en Chambre.

[Art. 416 repealed and replaced by s. 13 of Act 37 of 1980.]

417. Le Juge en Chambre choisit le subrogé tuteur en considération de ses seules aptitudes et peut nommer un membre quelconque de la famille du mineur ou même une tierce personne ayant accepté cette charge.

Cependant si le tuteur n'est parent ou allié du mineur que dans une ligne, le subrogé tuteur est pris autant que possible, dans l'autre ligne.

[Art. 417 repealed and replaced by s. 13 of Act 37 of 1980.]

418. Les fonctions du subrogé tuteur consisteront à surveiller la gestion tutélaire et à représenter le mineur lorsque ses intérêts seront en opposition avec ceux du tuteur.

S'il constate des fautes dans la gestion du tuteur, il doit, à peine d'engager sa responsabilité personnelle, en informer immédiatement le Juge en Chambre.

[Art. 418 repealed and replaced by s. 13 of Act 37 of 1980.]

419. Le subrogé tuteur ne remplace pas de plein droit le tuteur qui est mort ou est devenu incapable, ou qui abandonne la tutelle; mais il doit alors, sous peine des dommages- intérêts qui pourraient en résulter pour le mineur, provoquer la nomination d'un nouveau tuteur.

[Art. 419 repealed and replaced by s. 13 of Act 37 of 1980.]

420. La charge du subrogé tuteur cessera à la même époque que celle du tuteur.

Cependant le Juge en Chambre pourra d'office ou à la requête de toute personne, pourvoir au remplacement du subrogé tuteur en cours de tutelle, si des circonstances graves les requièrent ou s'il apparaît, après enquête et après avoir entendu celui-ci, que cette mesure est souhaitable ou nécessaire dans l'intérêt du mineur.

[Art. 420 repealed and replaced by s. 13 of Act 37 of 1980.]

421. Indépendamment des fonctions et des pouvoirs spéciaux qui lui sont expressément conférés par les dispositions des articles 407 et 444, le Curateur aux biens vacants, peut exercer un contrôle sur la gestion tutélaire, dans les conditions et selon les règles établies par les articles 422 et 423.

[Art. 421 repealed and replaced by s. 13 of Act 37 of 1980.]

422. Nonobstant toutes dispositions contraires, lorsque le patrimoine immobilier du tuteur n'est pas suffisant pour garantir le mineur ou lorsque l'inscription d'une hypothèque légale sur les biens du tuteur risque de porter atteinte aux intérêts de celui-ci, le Juge en Chambre peut accepter toutes autres garanties ou, à défaut, décider de soumettre la gestion tutélaire au contrôle du Curateur aux biens vacants.

En ce cas, il n'y aura pas lieu à l'inscription d'une hypothèque légale sur les biens du tuteur.
[Art. 422 repealed and replaced by s. 13 of Act 37 of 1980.]

423. Nonobstant toutes dispositions contraires, lorsque le Juge en Chambre décide, conformément à l'article 422, de soumettre la gestion tutélaire au contrôle du Curateur aux biens vacants, cette décision est immédiatement exécutoire et ne peut faire l'objet d'aucun recours.

En application de celle-ci, le tuteur doit aussitôt se dessaisir de toutes sommes d'argent qui appartiennent au mineur et les remettre au Curateur aux biens vacants qui aura la charge de créditer un compte ouvert au nom du mineur dans une banque quelconque y compris une banque d'Etat.

Le Curateur aux biens vacants aura le pouvoir d'ordonner aux banques de mettre à la disposition du tuteur les sommes ainsi déposées dont il fixera le montant nécessaire à la subsistance, à l'entretien et à l'éducation du mineur.

Cependant, lorsque les sommes déposées seront destinées à l'investissement, le Curateur aux biens vacants n'ordonnera leur versement au tuteur qu'après que celui-ci ait obtenu l'autorisation du Juge en Chambre.

[Art. 423 repealed and replaced by s. 13 of Act 37 of 1980.]

SECTION TROISIÈME

[Section Troisième repealed and replaced by s. 13 of Act 37 of 1980.]

DU FONCTIONNEMENT DE LA TUTELLE

424. Le Juge en Chambre règle les conditions générales de l'entretien et de l'éducation de l'enfant, en ayant égard à la volonté que les père et mère avaient pu exprimer à ce sujet.

[Art. 424 repealed and replaced by s. 13 of Act 37 of 1980.]

425. Le tuteur prendra soin de la personne du mineur et le représentera dans tous les actes civils, sauf les cas dans lesquels la loi ou l'usage autorise les mineurs à agir eux-mêmes.

Il administrera ses biens en bon père de famille et répondra des dommages et intérêts qui pourraient résulter d'une mauvaise gestion.

Il ne peut ni accepter la cession d'aucun droit ou créance contre son pupille, ni acheter les biens du mineur, ni les prendre à loyer, à moins que le Juge en Chambre n'ait autorisé le subrogé tuteur à lui en passer bail.

[Art. 425 repealed and replaced by s. 13 of Act 37 of 1980.]

426. Le tuteur administre et agit en cette qualité du jour de sa nomination, si elle a été faite en sa présence; sinon, du jour qu'elle lui a été notifiée.

Dans les dix jours qui suivront, il requerra la levée des scellés, s'ils ont été apposés, et fera procéder immédiatement à l'inventaire des biens du mineur en présence du subrogé tuteur.

Expédition de cet inventaire sera transmise au Juge en Chambre.

A défaut d'inventaire dans le délai prescrit, le Juge en Chambre pourra y faire procéder, à la requête du subrogé tuteur ou de toute autre personne.

Le défaut d'inventaire autorisera le pupille à faire la preuve de la valeur et de la consistance de ses biens par tous les moyens, y compris la commune renommée.

Si le mineur doit quelque chose au tuteur, celui-ci devra le déclarer dans l'inventaire à peine de déchéance, et ce, sur la réquisition que l'officier public sera tenu de lui en faire, et dont mention sera portée au procès-verbal.

[Art. 426 repealed and replaced by s. 13 of Act 37 of 1980.]

427. Lors de l'entrée en exercice de toute tutelle, le Juge en Chambre réglera par aperçu, et selon l'importance des biens régis, la somme annuellement disponible pour l'entretien et l'éducation du pupille, les dépenses d'administration de ses biens, ainsi qu'éventuellement les indemnités qui pourront être allouées au tuteur.

Il ordonnera au tuteur, s'il y a lieu, de procéder à la vente aux enchères reçues par un officier public, et après des affiches ou publications dont le procès-verbal de vente fera mention, de tous les meubles du mineur qu'il désignera.

Il pourra aussi autoriser le tuteur à porter en compte les salaires des administrateurs particuliers ou agents dont celui-ci demandera le concours, sous sa propre responsabilité.

[Art. 427 repealed and replaced by s. 13 of Act 37 of 1980.]

428. Le Juge en Chambre détermine la somme à laquelle commencera, pour le tuteur, l'obligation d'employer les capitaux liquides du mineur, ainsi que l'excédent de ses revenus. Cet emploi devra être fait dans le délai de six mois, sauf prorogation par le Juge en Chambre. Passé ce délai, le tuteur est de plein droit comptable des intérêts.

[Art. 428 repealed and replaced by s. 13 of Act 37 of 1980.]

429. Le tuteur accomplit seul, comme représentant du mineur, tous les actes d'administration. Il peut ainsi aliéner, à titre onéreux, les meubles d'usage courant et les biens ayant le caractère de fruits.

[Art. 429 repealed and replaced by s. 13 of Act 37 of 1980.]

430. Le tuteur ne peut donner quittance des capitaux qu'il reçoit pour le compte du pupille qu'avec le contreseing du subrogé tuteur.

Ces capitaux seront déposés par lui à un compte ouvert, au nom du mineur et portant mention de sa minorité, dans une banque quelconque y compris une banque d'Etat.

Le dépôt doit être fait dans le délai d'un mois à dater de la réception des capitaux; ce délai passé, le tuteur est de plein droit débiteur des intérêts.

[Art. 430 repealed and replaced by s. 13 of Act 37 of 1980.]

431. Le tuteur ne peut, sans y être autorisé par le Juge en Chambre, faire des actes de disposition au nom du mineur.

Sans cette autorisation, il ne peut, notamment, emprunter pour le pupille, ni aliéner ou grever de droits réels les immeubles, les fonds de commerce, les valeurs mobilières et autres droits incorporels, non plus que les meubles précieux ou qui constitueraient une part importante du patrimoine pupillaire.

[Art. 431 repealed and replaced by s. 13 of Act 37 of 1980.]

432. Le Juge en Chambre, en donnant son autorisation, considère la nécessité de l'acte de disposition ou l'avantage qui en résulte pour le mineur et tient compte de l'intérêt des tiers, Il prescrit toutes les mesures qu'il juge utiles, en particulier quant au emploi des fonds.

[Art. 432 repealed and replaced by s. 13 of Act 37 of 1980.]

433. La vente d'un immeuble appartenant à un mineur, ou d'actions ou de parts sociales lui appartenant dans un immeuble, ne peut se faire que par acte notarié, aux prix et stipulations autorisés ou déterminés par le Juge en Chambre.

[Art. 433 repealed and replaced by s. 13 of Act 37 of 1980.]

434. L'autorisation exigée par l'article 431 pour l'aliénation des biens du mineur ne s'applique point au cas où un jugement aurait ordonné la l'incitation à la demande d'un copropriétaire par Indivis.

[Art. 434 repealed and replaced by s. 13 of Act 37 of 1980.]

435. Le tuteur ne peut accepter une succession échue au mineur que sous bénéfice d'inventaire. Toutefois, le Juge en Chambre pourra l'autoriser à accepter purement et simplement, si l'actif dépasse manifestement le passif.

Le tuteur ne peut répudier une succession échue au mineur sans une autorisation du Juge en Chambre.

[Art. 435 repealed and replaced by s. 13 of Act 37 of 1980.]

436. Dans le cas où la succession répudiée au nom du mineur n'aurait pas été acceptée par un autre, elle pourra être reprise, soit par le tuteur autorisé à cet effet par le Juge en Chambre, soit par le mineur devenu majeur, mais dans l'état où elle se trouvera lors de la reprise et sans pouvoir attaquer les ventes et autres actes qui auraient été légalement faits durant la vacance.

[Art. 436 repealed and replaced by s. 13 of Act 37 of 1980.]

437. Le tuteur peut accepter sans autorisation du Juge en Chambre, les donations et les legs particuliers advenus au pupille, à moins qu'ils ne soient grevés de charges.

[Art. 437 repealed and replaced by s. 13 of Act 37 of 1980.]

438. Le tuteur peut, sans autorisation, introduire en justice une action relative aux droits patrimoniaux du mineur, il peut de même se désister de cette instance. Le Juge en Chambre peut lui enjoindre d'introduire une action, de s'en désister ou de faire des offres aux fins de désistement, à peine d'engager sa responsabilité.

Le tuteur peut défendre seul à une action introduite contre le mineur, mais il ne peut y acquiescer qu'avec l'autorisation du Juge en Chambre.

L'autorisation du Juge en Chambre est toujours requise pour les actions relatives à des droits qui ne sont point patrimoniaux.

[Art. 438 repealed and replaced by s. 13 of Act 37 of 1980.]

2. The Divorce and Judicial Separation Act 1981

Section 11. Restrictions on provisional decree

The Court shall not grant a provisional decree unless the Court is satisfied –

- a) that there is no child in relation to whom financial arrangements ought to be made;
- b) that financial arrangements have been made for every child in relation to whom such arrangements should be made and that the arrangements made are satisfactory or the best that can be devised in the circumstances; or
- c) that it is impracticable for the party or parties appearing before the Court to make such arrangements.

[S. 11 reprinted by Reprint 1 of 1982; amended by s. 3 (g) of Act 2 of 2011 w.e.f. 15 May 2011.]

Section 11A. Conversion into permanent decree

- (1) Subject to section 10 (2), the Court shall, upon expiry of the 3 months specified in section 10 (1), order that the provisional decree be made permanent.
- (2) Where the Court makes an order under subsection (1), the Registrar shall issue a rule to that effect and notify the Registrar of Civil Status accordingly.
- (3) Any interested party may, on application to the Registrar, obtain a certified true copy of the rule issued under subsection (2), which shall be evidence of the matters specified therein.

[S. 11 inserted by s. 3 (h) of Act 2 of 2011 w.e.f. 15 May 2011]

Section 13. Periodical payments orders

- (1) On granting a decree or at any time thereafter, the Court may make one or both of the following orders-
 - (a) an order that either party shall make to the other party periodical payments;
 - (b) an order that either party shall make to any person for the benefit of any child periodical payments,
 for such term and on such conditions as the Court may specify.
- (2) An order for periodical payments under subsection (1) (a) shall lapse on the remarriage of the party in whose favour the order was made.

- (3) Subject to subsection (4), no order shall be made under subsection (1) (b) –
 - (a) in favour of a child who has attained the age of 18;
 - (b) so as to extend beyond the eighteenth birthday of a child.
- (4) Notwithstanding any other enactment, the Court may make an order under subsection (1) (b) in favour of a child who has attained the age of 18 or make an order extending beyond a child's eighteenth birthday, if the Court is satisfied that –
 - (a) the child is or will be receiving instruction at an educational establishment; or
 - (b) there are special circumstances which justify the making of the order.
- (5) Any party against whom an order to make any periodical payment has been made and who, without lawful excuse or justification, fails to comply with the order, shall, without prejudice to any other proceedings which may be instituted against him, commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000 rupees and to imprisonment for a term not exceeding one year.

Section 19. Provisional orders

On a petition for a decree, any party may apply to the Court for one or more of the following orders –

- (a) an order for maintenance pending the hearing of the petition requiring any party to make to the other such periodical payments for his maintenance for such term beginning not earlier than the date of the presentation of the petition and ending with the final determination of the petition, as the Court thinks reasonable;
- (b) an order for provisional custody of any minor child for such term beginning with the date of the making of the order and ending with the date of the final determination of the petition, as the Court thinks reasonable; or
- (c) an order for payment of litigation money, requiring any party to pay to the other such sum of money as is specified in the order to cover the reasonable costs incurred or likely to be incurred in connection with any proceedings under this Act.

3. The Criminal Code Act 1838

Section 260. Family abandonment

- (1) Any father or mother who, without any serious reason, abandons for more than 2 months the family residence and eludes all or part of his or her moral or material obligations resulting from parental authority shall commit an offence.
- (2) Any husband who without serious reason, voluntarily abandons for more than 2 months his wife whom he knows to be pregnant shall commit an offence.
- (3) Any father or mother who, through ill-treatment, pernicious examples of habitual drunkenness or notorious ill-conduct, lack of care or direction, seriously endangers the health, security or morality of any of his minor children shall commit an offence.

- (4) A partner of any father or mother who, through any means specified in subsection (3), seriously endangers the health, security or morality of any of his partner's minor children shall commit an offence.
- (5) Any person who commits an offence under this section shall, on conviction, be liable to imprisonment for a term not exceeding 5 years and to a fine not exceeding 100,000 rupees.

[s.260 added by Act 13 of 1998; amended by s.8 of Act 36 of 2008 w.e.f 6 December 2008]

Section 261. Failure to pay alimony

- (1) Any person who, having been judicially ordered to pay alimony to his spouse or children, voluntarily fails, during 2 months, to pay the full amount of alimony so ordered to his spouse or children, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 2 years.
- (2) Any default in the payment of alimony shall, until the contrary is proved, be presumed to be voluntary.
- (3) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under subsection (1).
- (4) A prosecution for an offence under this section shall take place in the district in which the person entitled to the payment of the alimony is ordinarily resident.

[s.261 added by Act 13 of 1998; amended by s.8 of Act 36 of 2008 w.e.f 6 December 2008]

Section 262. Change of domicile

Any person who, having the custody of a minor, fails to notify to any person who, by virtue of a judgment, has a right of visit or lodging in respect of the said minor, any change of his domicile or of the residence of the minor, shall commit an offence and shall, on conviction be liable to imprisonment for a term not exceeding one year and to a fine not exceeding 50,000 rupees.

[s.262 added by Act 13 of 1998; amended by s.8 of Act 36 of 2008 w.e.f 6 December 2008]

Article 6 of the Convention on the Rights of the Child

▪ *Survival and development*

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

▪ *Mauritian laws related to Article 6*

1. The Constitution of Mauritius

Section 3. Fundamental rights and freedoms of individual

It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms –

- (a) the right of the individual to life, liberty, security of the person and the protection of the law.

Section 4. Protection of right to life

- (1) No person shall be deprived of his life intentionally save in execution of the sentence of a Court in respect of a criminal offence of which he has been convicted.
- (2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable -
 - (a) for the defence of any person from violence or for the defence of property;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) for the purpose of suppressing a riot, insurrection or mutiny; or
 - (d) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

2. The Criminal Code Act 1838

Section 220. Murder of newly born child and infanticide

- (1) Any person who by a wilful act of commission or omission, done with intent to cause the death of a newly born child, causes the death of such newly born child, shall be guilty of the crime of murder of a newly born child.
- (2) Where such crime is committed by a woman in respect of her newly born child but at the time of the act of commission or omission she had not fully recovered from the effect of giving birth to such child and by reason thereof the balance of her mind was

then disturbed, she shall, notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder of a newly born child, be guilty of the crime of infanticide, and may be dealt with and punished as if guilty of infanticide.

- (3) Where on the trial of a woman for the murder of her newly born child, the jury is of the opinion that she by any wilful act of commission or omission caused its death, but that at the time of such act of commission or omission she had not fully recovered from the effect of giving birth to such child, and that by reason thereof the balance of her mind was then disturbed, the jury may, notwithstanding that the circumstances were such that but for this section it might have returned a verdict of murder of a newly born child, return a verdict of infanticide instead.
- (4) A jury on a criminal information for the murder of a newly born child or for infanticide may return a verdict of manslaughter or a verdict of involuntary homicide, or a verdict of guilty but insane or a verdict of concealment of birth under section 70 of the Civil Status Act.

[Amended 23/81]

Section 222. Penalty for murder and infanticide

(1) Any person who is convicted of –

- (a) murder or murder of a newly born child, shall be sentenced to penal servitude for life or, where the Court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence and has entered those circumstances on the record of the proceedings, for a term not exceeding 60 years;
- (b) attempt at murder or attempt at murder of a newly born child, shall be liable to penal servitude for life or, where the Court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence and has entered those circumstances on the record of the proceedings, for a term not exceeding 60 years.

(2) Any woman guilty of infanticide shall be liable to penal servitude for a term not exceeding 35 years.

(3) Any woman guilty of attempt at infanticide shall be liable to penal servitude.

[Reprint No. 2 of 1983]; Amended by [Act No. 31 of 1995]; [Act No. 6 of 2007]

Section 235. Unlawful termination of pregnancy

- (1) Except in the cases provided for in section 235A, any person who, by any food, drink, medicine, or by violence, or by any other means, procures the miscarriage of any pregnant woman, or supplies the means of procuring such miscarriage, whether the woman consents or not, shall be punished by penal servitude for a term not exceeding 10 years.

- (2) The like punishment shall be pronounced against any woman who procures her own miscarriage, or who consents to make use of the means pointed out or administered to her with that intent, if such miscarriage ensues.
- (3) Except in the cases provided for in section 235A, any medical practitioner or pharmacist who points out, facilitates or administers the means of miscarriage shall, where miscarriage has ensued, be liable, on conviction, to penal servitude.

Amended by [Act No. 11 of 2012]

Section 235A. Authorised termination of pregnancy

- (1) No person shall provide treatment to terminate a pregnancy unless he —
 - (a) is a specialist in obstetrics and gynaecology who is registered as such under the Medical Council Act;
 - (b) provides the treatment in a prescribed institution; and
 - (c) complies with all the requirements of this section.
- (2) The specialist referred to in subsection (1)(a) may only provide treatment to terminate a pregnancy where another specialist in obstetrics and gynaecology and another specialist in the relevant field share his opinion, formed in good faith, that —
 - (a) the continued pregnancy will endanger the pregnant person's life;
 - (b) the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant person;
 - (c) there is a substantial risk that the continued pregnancy will result in a severe malformation, or severe physical or mental abnormality, of the foetus which will affect its viability and compatibility with life; or
 - (d) the pregnancy has not exceeded its fourteenth week and results from a case of rape, sexual intercourse with a female under the age of 16 or sexual intercourse with a specified person which has been reported to the police.
- (3) Notwithstanding sections 297 and 298, any person who, for the purpose of procuring treatment to terminate pregnancy, knowingly makes a false declaration of rape, sexual intercourse with a female under 16 or sexual intercourse with a specified person to the police shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.
- (4) (a) Subject to subsections (5) and (6), the specialist referred to in subsection (1)(a) shall not carry out a termination of pregnancy under this section except with the informed consent of the pregnant person.
 - (b) (i) Subject to subparagraph (ii), consent under paragraph (a) shall be given in writing.
 - (ii) Where the pregnant person is unable to read or write, she may give her consent by affixing her thumbprint to a written statement which is read out to her.

- (5) Where a request for treatment to terminate a pregnancy under this section is made by a pregnant person who is under the age of 18, no treatment shall be provided to terminate the pregnancy except with the written informed consent of one of her parents or her legal guardian, as the case may be.
- (6) Where a woman is, in the opinion of the specialists referred to in subsection (2)
 - (a) severely mentally disabled to such an extent that she is incapable of understanding the nature of, or the consequences of undergoing, the treatment to terminate her pregnancy; or
 - (b) in a state of continuous unconsciousness and there is no reasonable prospect that she will regain consciousness in time to request, and to consent to, treatment to terminate her pregnancy,
 the specialist referred to in subsection (1)(a) may terminate her pregnancy upon the request and with the written informed consent of her partner, spouse, parents or legal guardian, as the case may be.
- (7) Counseling shall be provided to a pregnant person before and after a termination of pregnancy.
- (8) No person shall, by means of coercion or intimidation, compel or induce a pregnant person to undergo treatment to terminate a pregnancy against her will.
- (9) Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 5 years and to a fine not exceeding 100,000 rupees.
- (10) In this section—

“informed consent” means consent, obtained freely and without threat or improper inducement, to receive treatment to terminate a pregnancy after the risks, benefits and alternatives have been adequately explained to the person concerned;

“prescribed institution” has the same meaning as in section 38A of the Medical Council Act;

“specified person” has the same meaning as in section 249(5).

Section 260. Family abandonment

- (1) Any father or mother who, without any serious reason, abandons for more than 2 months the family residence and eludes all or part of his or her moral or material obligations resulting from parental authority shall commit an offence.
- (2) Any husband who without serious reason, voluntarily abandons for more than 2 months his wife whom he knows to be pregnant shall commit an offence.
- (3) Any father or mother who, through ill-treatment, pernicious examples of habitual drunkenness or notorious ill-conduct, lack of care or direction, seriously endangers the health, security or morality of any of his minor children shall commit an offence.
- (4) A partner of any father or mother who, through any means specified in subsection

(3), seriously endangers the health, security or morality of any of his partner's minor children shall commit an offence.

- (5) Any person who commits an offence under this section shall, on conviction, be liable to imprisonment for a term not exceeding 5 years and to a fine not exceeding 100,000 rupees.

[S.260 added by Act 13 of 1998, amended by s. 8 of Act 2008 w.e.f. 6 December 2008]

3. The Child Protection Act 1994

Section 13B. Abandonment of child

- (1) Any person who, for pecuniary gain or by gifts, promises, threats or abuse of authority, incites a parent to abandon a child or a child to be born shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 20 years.
- (2) Any person who, for pecuniary or other gain, acts as an intermediary between a person wishing to adopt a child and a parent willing to abandon a child or a child to be born, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 700,000 rupees and to penal servitude for a term not exceeding 30 years.
- (3) Any person who exposes and abandons in a secluded spot any child, and any person who orders the child to be exposed, where such order has been executed, shall, for such act alone, be liable, on conviction, to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 10 years.
- (4) Where, in consequence of the exposure and abandonment specified in subsection (3), the child becomes mutilated or lame, the offence shall be deemed to a wound wilfully inflicted on such child by the person who has so exposed and abandoned the child, and where death has ensued, the offence shall be deemed to be manslaughter, and in the former case, the offender shall suffer the punishment ordained for a wilful wound, and in the latter case, that for manslaughter.
- (5) Any person who exposes and abandons a child in a spot that is not secluded, shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.
- (6) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section.

[S.13B inserted by S.3 of Act 34 of 2005 w.e.f 17 December 2005; amended by S.8 of Act 36 of 2008 w.e.f 6 December 2008]

Article 7 of the Convention on the Rights of the Child

▪ ***Registration, name, nationality and care***

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

▪ ***Mauritian laws related to Article 7***

1. The Constitution of Mauritius

Section 20. Persons who became citizens on 12 March 1968

- (1) Every person who, having been born in Mauritius, was on 11 March 1968 a citizen of the United Kingdom and Colonies became a citizen of Mauritius on 12 March 1968.
- (2) Every person who, on 11 March 1968, was a citizen of the United Kingdom and Colonies –
 - (a) having become such a citizen under the British Nationality Act 1948, by virtue of his having been naturalised by the Governor of the former Colony of Mauritius as a British subject before that Act came into force; or
 - (b) having become such a citizen by virtue of his having been naturalised or registered by the Governor of the former Colony of Mauritius under that Act,
 became a citizen of Mauritius on 12 March 1968.
- (3) Every person who, having been born outside Mauritius, was on 11 March 1968 a citizen of the United Kingdom and Colonies, either of his parent became, or would but for his death have become, a citizen of Mauritius by virtue of subsection (1) or subsection (2), became a citizen of Mauritius on 12 March 1968.
- (4) For the purposes of this section, a person shall be regarded as having been born in Mauritius if he was born in the territories which were comprised in the former Colony of Mauritius immediately before 8 November 1965 but were not so comprised immediately before 12 March 1968 unless either of his parents was born in the territories which were comprised in the Colony of Seychelles immediately before 8 November 1965.

[S. 20 amended by Act 23 of 1995]

Section 21. Persons entitled to be registered as citizens

- (1) Any person who, on 12 March 1968, was or had been married to another person -
 - (a) who became a citizen of Mauritius by virtue of section 20; or

- (b) who, having died before 12 March 1968 would, but for his death; have become a citizen of Mauritius by virtue of section 20, shall be entitled, upon making application and, if he is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Mauritius:

Provided that, in the case of any person who, on 12 March 1968 was not a citizen of the United Kingdom and Colonies, the right to be registered as a citizen of Mauritius under this section shall be subject to such exceptions or qualifications as may be prescribed in the interest of national security or public policy.

- (2) Any application for registration under this section shall be made in such manner as may be prescribed as respects that application.

[S. 20 amended by Act 23 of 1995]

Section 22. Persons born in Mauritius after 11 March 1968

Every person born in Mauritius after 11 March 1968 shall become a citizen of Mauritius at the date of his birth:

Provided that a person shall not become a citizen of Mauritius by virtue of this section if at the time of birth -

- (a) neither of his parents is a citizen of Mauritius; or
(b) either of his parents is an enemy alien and the birth occurs in a place then under occupation by the enemy.

[S. 20 amended by Act 23 of 1995]

Section 23. Persons born outside Mauritius after 11 March 1968

A person born outside Mauritius after 11 March 1968 shall become a citizen of Mauritius at the date of his birth if at that date either of his parents is a citizen of Mauritius otherwise than by virtue of this section or section 20(3).

[S. 20 amended by Act 23 of 1995]

Section 24. Marriage to a citizen of Mauritius

Any person who, after 11 March 1968, marries another person who is or becomes a citizen of Mauritius shall be entitled, upon making application in such manner as may be prescribed and, if he is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Mauritius:

Provided that the right to be registered as a citizen of Mauritius under this section shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

[S. 20 amended by Act 23 of 1995]

Section 25. Commonwealth citizens

- (1) Every person who under this Constitution or any other law is a citizen of Mauritius or under any enactment for the time being in force in any country to which this section applies is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.
- (2) Every person who is a British subject without citizenship under the British nationality Act 1948, or continues to be a British subject under section 2 of that Act or is a British subject under the British Nationality Act 1965 shall, by virtue of that status, have the status of a Commonwealth citizen.

[S. 25 amended by Act 48 of 1991]

2. The Civil Status Act 1981**Section 12. Declaration of birth**

- (1) Subject to subsections (2) and (3) and sections 15, 16 and 17, a declaration of birth shall be made –
 - (a) before an officer of the district in which the birth took place or in which the parents resided at the time of the birth;
 - (b) within 45 days of the birth,

and shall be registered in the appropriate register.

- (2) (a) Subject to subsection (3), where a birth has not been declared within 45 days, the birth shall not be registered except upon an order of a District Magistrate or of the Registrar of Civil Status.
 - (b) The District Magistrate or Registrar of Civil Status may require such evidence as he thinks necessary to satisfy himself of the exact date of birth which is sought to be registered.
- (3) Where the birth to be registered is that of a person more than 3 months old -
 - (a) no order under subsection (2)(a) may be made by the Registrar of Civil Status;
 - (b) no order shall be made by the District Magistrate, except –
 - (i) on the conclusions of the Ministère Public; and
 - (ii) save where the declaration is made under section 14(3), on payment of such fee not exceeding 500 rupees as may be determined by the Magistrate.

Amended by [Act No. 9 of 1984]; [Act No. 7 of 1992]; [Act No. 30 of 1994]

Section 13. Contents of entry

- (1) In the entry registering a birth, the officer shall record -
 - (a) the date, time and place of the birth;
 - (b) the sex and the names of the child;

- (c) the names and addresses of the informant;
 - (d) subject to subsection (2), the names, nationality, profession and address of each parent;
 - (e) the national identity card number of each parent;
 - (f) any other particulars the officer may require.
- (2) The name of a parent of a child shall be mentioned in an entry only –
- (a) where the parent is married to the other parent of the child;
 - (b) where that parent is not married to the other parent of the child but –
 - (i) appears before the officer and signs the entry; or
 - (ii) has appointed an agent to appear and sign on his behalf.
- (3) Where an agent has signed an entry, the officer shall keep the original or a copy of the power of attorney authorising the agent to sign and shall annotate the entry accordingly.
- (4) For the purposes of section 3(3)(f), the Registrar of Civil Status shall in respect of any birth declared to him ascertain from the declarant –
- (a) the age of the mother;
 - (b) the number of children born to the mother; and
 - (c) the duration of the marriage.

Amended by [Act No. 9 of 1984]; [Act No. 8 of 1997]; [Act No. 40 of 2001]

Section 14. Responsibility for declaration of birth

- (1) (a) Subject to paragraph (b), the father or mother of a child shall declare the birth of the child.
 - (b) Where a child is born in a prison, asylum, quarantine area or station, orphanage or other institution and the father is unknown or untraceable and the mother has passed away, is insane or otherwise incapable on medical grounds of declaring the birth, the person in charge of that place shall declare the birth.
- (3) Where the birth of a child more than 45 days old has not been registered, the Permanent Secretary of the Ministry of Women, Family Welfare and Child Development may cause the birth to be registered under section 12(2) or (3).

Amended by [Act No. 30 of 1994]; [Act No. 15 of 1998]; [Act No. 22 of 2004]

Section 15. Birth on Mauritian ship or aircraft

- (1) Where a birth takes place on board any ship or aircraft registered in Mauritius while the ship is at sea or the aircraft is in the air, the master of the ship or aircraft shall draw up and sign a memorandum of the birth, and shall cause it to be signed by the witnesses.

- (2) The memorandum shall contain -
 - (a) the names, the date of the birth and the sex of the child;
 - (b) the names and address of his mother and of his father, if known;
 - (c) the place from which the mother has been embarked; and
 - (d) such other information as the master considers necessary.
- (3) On the arrival of the ship in any harbour of Mauritius or the landing of the aircraft in Mauritius, the master shall deliver the memorandum to the Director of Shipping or the Director of Civil Aviation, as the case may be, for transmission to the Registrar of Civil Status who shall cause the birth to be registered in a separate register.
- (4) Any child whose birth is registered under this section shall be deemed to have, been born in Mauritius.

Amended by [Act No. 9 of 1984]; [Act No. 28 of 1986]

Section 17. Finding of newborn child

- (1) Any person who finds a newborn child shall within 24 hours of the finding give notice of the fact to the nearest police station.
- (2) (a) Upon a notification under subsection (1), the police officer in charge of the police station shall examine the child and take possession of the clothing and any effects found with the child.
- (b) He shall draw up a report indicating -
 - (i) the names, profession and residence of the person who found the child;
 - (ii) the place where the child was exhibited to him;
 - (iii) the sex and probable age of the child;
 - (iv) the time and place where the child was found;
 - (v) the nature of all clothing and effects found with the child; and
 - (vi) any other particulars which in his opinion may assist in the identification of the child.
- (3) The report made under subsection (2) shall be signed by the police officer, the person who found the child and any witnesses.
- (4) The police officer shall forthwith send the report to the Permanent Secretary, Ministry of Women, Family Welfare and Child Development, who shall take all necessary steps for the declaration of the birth of the child and for his upbringing in an orphanage or institution.
- (5) The child shall bear the names given to him by the Permanent Secretary, Ministry of Women, Family Welfare and Child Development.

Amended by [Act No. 15 of 1998]

3. The Mauritius Citizenship Act 1968

Section 3. Citizenship on adoption

Where under any enactment relating to the adoption of children, an adoption order is made in respect of a minor who is not a citizen of Mauritius, and the adoptor, or in the case of a joint adoption the male adoptor, is a citizen of Mauritius, the minor shall become a citizen of Mauritius as from the date of the order.

Section 6. Registration of minor children

- (1) The Minister may cause the minor child of a citizen of Mauritius to be registered as a citizen of Mauritius upon application made in the prescribed manner by the parent or guardian of the child.
- (2) The Minister may, in such special circumstances as he thinks fit, cause any minor to be registered as a citizen of Mauritius.

4. The Code Civil Mauricien

DU NOM

- 23.** Toute personne doit posséder un nom servant à la désigner dans la vie sociale et juridique en vue de l'exercice de ses droits et de l'accomplissement de ses devoirs.

[Art. 23 inserted by s. 3 of Act 25 of 1981.]

- 24.** Le nom patronymique doit être précédé d'un ou de plusieurs prénoms.

[Art. 24 inserted by s. 3 of Act 25 of 1981.]

DU NOM PATRONYMIQUE

- 25.** Le nom patronymique d'une personne est celui de la famille à laquelle elle appartient par la filiation ou à laquelle elle est liée par le mariage.

Le nom patronymique peut aussi s'acquérir par une décision de l'autorité administrative.

[Art. 25 inserted by s. 3 of Act 25 of 1981.]

SECTION PREMIÈRE

DE L'ACQUISITION DU NOM PATRONYMIQUE PAR LA FILIATION

- 26.** En application des dispositions de la présente section et sous réserve de dispositions légales dérogatoires, nul ne doit porter d'autre nom patronymique que celui qu'il acquiert par la filiation.

[Art. 26 inserted by s. 3 of Act 25 of 1981.]

- 27.** L'enfant légitime prend le nom patronymique de son père.

[Art. 27 inserted by s. 3 of Act 25 of 1981.]

- 28.** L'enfant né d'un mariage religieux enregistré conformément aux dispositions du Civil Status Act prend le nom patronymique de son père.

[Art. 28 inserted by s. 3 of Act 25 of 1981.]

- 29.** A dater de sa légitimation, l'enfant légitimé en application de l'article 331, prend le nom patronymique de son père, alors même qu'il aurait auparavant porté le nom patronymique de sa mère.

[Art. 29 inserted by s. 3 of Act 25 of 1981.]

- 30.** L'enfant naturel acquiert le nom patronymique de celui de ses deux parents à l'égard de qui sa filiation est établie; le nom patronymique de son père, si sa filiation est établie simultanément à l'égard de l'un et de l'autre.

[Art. 30 inserted by s. 3 of Act 25 of 1981.]

- 31.** Lors même que sa filiation n'aurait été établie qu'en second lieu à l'égard du père, l'enfant naturel pourra prendre le nom de celui-ci par substitution, si, pendant sa minorité, ses deux parents en font la déclaration conjointe devant l'officier d'état civil. Si l'enfant a plus de quinze ans, son consentement personnel est nécessaire.

[Art. 31 inserted by s. 3 of Act 25 of 1981.]

- 32.** La substitution de nom s'étend de plein droit aux enfants mineurs de l'intéressé. Elle ne s'étend aux enfants majeurs qu'avec leur consentement.

[Art. 32 inserted by s. 3 of Act 25 of 1981.]

- 33.** Les règles d'attribution du nom patronymique de l'enfant adopté sont édictées par les articles 357, 368 et 370-4 du présent Code.

[Art. 33 inserted by s. 3 of Act 25 of 1981.]

- 34.** A la suite d'un désaveu admis en justice, en application des articles 312 ou 314, l'enfant prend le nom patronymique de sa mère.

De même, prend le nom patronymique de sa mère, l'enfant dont la légitimité a été contestée, en application des articles 315 ou 317.

Les actes de l'état civil devront être rectifiés, s'il y a lieu dès que la décision admettant le désaveu ou la contestation sera passée en force de chose jugée.

[Art. 34 inserted by s. 3 of Act 25 of 1981.]

- 35.** Lorsque la filiation n'est juridiquement établie à l'égard d'aucun des deux parents, l'enfant prend le nom patronymique de la personne désignée, dans l'acte de naissance, comme étant sa mère.

L'application des dispositions de l'alinéa 1, ne préjuge en rien du droit de la personne, ainsi désignée dans l'acte de naissance, de contester en justice l'usage abusif de son nom, ni des modifications éventuelles du nom de l'enfant résultant de l'établissement ultérieur de sa filiation.

[Art. 35 inserted by s. 3 of Act 25 of 1981.]

SECTION TROISIÈME

DE L'ACQUISITION DU NOM PATRONYMIQUE PAR DECISION

DE L'AUTORITÉ ADMINISTRATIVE

- 43.** En application des dispositions de la section 17 du Civil Status Act, l'administration doit attribuer d'office un nom patronymique à l'enfant dont la filiation n'est juridiquement

établie à l'égard d'aucun des deux parents et dont la mère n'a pas été désignée, dans l'acte de naissance, par le déclarant.

[Art. 43 inserted by s. 3 of Act 25 of 1981.]

CHAPITRE DEUXIÈME

DU PRÉNOM

44. Le choix du ou des prénoms appartient conjointement aux deux parents s'ils exercent en commun l'autorité parentale.

Il appartient au père ou à la mère, lorsque l'exercice de l'autorité parentale lui est exclusivement dévolu.

[Art. 44 inserted by s. 3 of Act 25 of 1981.]

45. La personne qui déclare la naissance de l'enfant indique le ou les prénoms choisis par le ou les parents.

[Art. 45 inserted by s. 3 of Act 25 of 1981.]

46. Lorsque le ou les parents n'entendent pas exercer leur choix ou lorsqu'ils sont inconnus, décédés ou dans l'impossibilité de manifester leur volonté, le choix du ou des prénoms appartient à celui qui déclare la naissance de l'enfant.

[Art. 46 inserted by s. 3 of Act 25 of 1981.]

47. En cas de refus par le déclarant d'indiquer le ou les prénoms, le choix sera fait par l'officier d'état civil.

[Art. 47 inserted by s. 3 of Act 25 of 1981.]

CHAPITRE TROISIÈME

DU CHANGEMENT DE NOM PATRONYMIQUE ET DU CHANGEMENT DE PRÉNOM

48. Sous réserve des conséquences résultant d'un changement d'état, tout changement de nom patronymique et tout changement de prénoms seront soumis aux conditions édictées par les sections 55 à 59 du Civil Status Act.

[Art. 48 inserted by s. 3 of Act 25 of 1981.]

249. A la suite du divorce, chacun des époux reprend l'usage de son nom.

Toutefois, dans le cas prévu à l'article 235, la femme a le droit de conserver l'usage du nom du mari lorsque le divorce a été demandé par celui-ci.

Dans les autres cas, la femme pourra conserver l'usage du nom du mari soit avec l'accord de celui-ci, soit avec l'autorisation du juge, si elle justifie qu'un intérêt particulier s'y attache pour elle-même ou pour les enfants.

[Art. 249 repealed and replaced by s. 2 of Act 21 of 1981 w.e.f. 1 January 1982.]

357. L'adoption simple confère le nom de l'adoptant à l'adopté. Le Juge en Chambre peut toutefois décider que l'adopté ne portera pas le nom de l'adoptant ou que le nom de l'adoptant sera ajouté au nom de l'adopté.

L'adopté reste dans sa famille d'origine et y conserve tous ses droits, notamment ses droits héréditaires.

Les prohibitions au mariage prévues par la loi s'appliquent entre l'adopté et sa famille d'origine.

[Art. 357 repealed and replaced by s. 2 of Act 7 of 1963; s. 10 of Act 37 of 1980.]

368. L'adoption confère à l'enfant une filiation qui se substitue à sa filiation d'origine : l'adopté cesse d'appartenir à sa famille par le sang, sous réserve des prohibitions au mariage.

L'adoption confère à l'enfant le nom du mari.

Nonobstant toutes dispositions contraires, le Juge en Chambre peut, à la demande des adoptants, modifier les prénoms de l'enfant.

L'adopté a, dans la famille de l'adoptant, les mêmes droits et les mêmes obligations qu'un enfant légitime.

[Art. 368 repealed and replaced by s. 2 of Act 7 of 1963; s. 10 of Act 37 of 1980.]

DES EFFETS DE LA LÉGITIMATION PAR ADOPTION

370-2. La légitimation par adoption ne produit ses effets entre les parties qu'à partir de la décision qui la prononce.

La légitimation par adoption n'est opposable aux tiers qu'à partir de la date à laquelle la décision aura été affichée conformément aux dispositions de l'alinéa 1 de l'article 355.

A dater du jour de son dépôt et sauf rejet de celle-ci, la requête en légitimation par adoption fait échec à toute déclaration de filiation et à toute reconnaissance.

[Art. 370-2 inserted by s. 10 of Act 37 of 1980.]

370-3. Lorsqu'elle est conforme aux dispositions des articles 370 et 370-1, l'adoption par un conjoint de l'enfant naturel de l'autre conjoint a pour effet de conférer à cet enfant le statut d'un enfant légitime des deux conjoints.

[Art. 370-3 inserted by s. 10 of Act 37 of 1980.]

370-4. En application de l'article 370-3; l'enfant adopté porte toujours le nom du mari.

[Art. 370-4 inserted by s. 10 of Act 37 of 1980.]

370-5. La légitimation par adoption est irrévocable.

[Art. 370-5 inserted by s. 10 of Act 37 of 1980.]

Article 8 of the Convention on the Rights of the Child

▪ *Preservation of identity*

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

▪ *Mauritian laws related to Article 8*

1. The Civil Status Act 1981

Section 17A. Use of NIC number for minors

- (1) Where a transaction is made in the name of a minor, the document witnessing the transaction shall contain the NIC number of the minor.
- (2) (a) The NIC number of a minor used by him or by a public sector agency shall be the unique identification number of that minor.
- (b) The unique identification number of a minor shall be the minor's official identification number whenever reference is made to him.
- (c) Any number of identification, other than the NIC number of a minor, which is used by a public sector agency with which a transaction is made –
 - (i) shall be used by the public sector agency solely for internal purposes; and
 - (ii) shall not appear on any document relating to that minor.

Added by [Act No. 9 of 2015]

2. The Deportation Act 1968

Section 3. Application

- (1) This Act shall not apply to persons who belong to Mauritius.
- (2) For the purposes of subsection (1) a person shall belong to Mauritius where -
 - (a) he is a citizen of Mauritius;
 - (b) he is a Commonwealth citizen and has, before 14 December 1968, been ordinarily resident in Mauritius continuously for a period of 7 years or more and, since the completion of such period of residence, has not been ordinarily resident continuously for a period of 7 years or more in any other country;
 - (c) he is the spouse of a citizen;
 - (d) is a child, stepchild or lawfully adopted child, under the age of 18 years, of a person to whom any paragraphs (a) to (c) applies.

- (3) For the purposes of subsection (1), a person specified in subsection (2) (b), (c), or (d), who, by virtue of section 6(5) of the Immigration Act, is deemed to be a prohibited immigrant shall not be deemed to belong to Mauritius.

[Amended 6/83]

Section 4. Deportation orders

Subject to this Act, the Minister may, if he thinks fit, make a deportation order in such form as may be prescribed in respect of -

- (a) a convicted person;
- (b) an undesirable person;
- (c) a destitute person; or
- (d) a prohibited immigrant.

3. The Immigration Act 1970

Section 5. Persons who are residents of Mauritius

- (1) Subject to section 6, any person, not being a citizen, shall have the status of a resident for the purposes of this Act where -
- (a) in the case of a Commonwealth citizen, he has, before 14 December 1968, been ordinarily resident in Mauritius continuously for a period of 7 years or more and since the completion of that period of residence has not been ordinarily resident continuously for a period of 7 years or more, in any other country;
 - (b) in the case of an alien, he has, before 10 December 1966, been ordinarily resident in Mauritius continuously for a period of 7 years or more and has since the completion of that period of residence not been absent from Mauritius for a period of 3 years or more;
 - (c) he is the spouse of a citizen;
 - (d) he is a dependent child of a person to whom any of paragraphs (a) to (c) applies

[S.5 amended by Act 5 of 1983; S.13(a) of Act 20 of 2002 w.e.f 1 September 2002; S.5(b) of Act 21 of 2006 w.e.f 1 October 2006; S.16(b) of Act 17 of 2007 w.e.f 22 August 2007; S.14(a) of Act 18 of 2008 w.e.f 19 July 2008; S.7(a) of Act 1 of 2009 w.e.f 1 January 2009; S.23(b) of Act 9 of 2015 w.e.f 14 May 2015]

Section 6. Loss of Status of resident

- (3) Where a person has acquired his status of resident under section 5(1)(d), he shall cease to be a resident on reaching the age of 18.

Section 11. Persons landing with minors

- (1) Where a minor is admitted to Mauritius under the charge of any person and, at any

later time the presence of that minor in Mauritius becomes unlawful by virtue of this Act, the immigration officer may require that person to make such arrangements as the immigration officer may determine to ensure the departure of the minor from Mauritius within such time as the immigration officer may determine.

- (2) Where a minor is admitted to Mauritius under the charge of any person and, at any later time, the immigration officer is informed that such person is about to leave Mauritius without the minor, the immigration officer may, by Order, require that person to make such arrangements as the immigration officer may determine to ensure the departure of the minor from Mauritius within such time as the immigration officer may determine, and to provide for the care and maintenance of the minor until his departure from Mauritius.
- (3) The immigration officer may take such measures as may be necessary to prevent the person to whom an order made under subsection (2) is directed from leaving Mauritius until the order is complied with.

4. The Mauritius Citizenship Act 1968

Section 3. Citizenship on adoption

Where under any enactment relating to the adoption of children, an adoption order is made in respect of a minor who is not a citizen of Mauritius, and the adoptor, or in the case of a joint adoption the male adoptor, is a citizen of Mauritius, the minor shall become a citizen of Mauritius as from the date of the order.

Section 5. Registration of Commonwealth citizens

- (1) Subject to this section, the Minister may cause any Commonwealth citizen, being a person of full age and capacity, to be registered as a citizen of Mauritius where he makes application in the prescribed manner and satisfies the Minister that—
 - (a) he is of good character;
 - (b) he has an adequate knowledge of the English language, or any other language current in Mauritius, and of the responsibilities of a citizen of Mauritius;
 - (c) he has resided in Mauritius for a continuous period of 5 years, or such shorter period (not being less than 12 months) as the Minister may in the special circumstances of any particular case accept, immediately preceding the date of his application; and
 - (d) he intends, if registered, to continue to reside in Mauritius.
- (2) A person to whom this section applies shall not be registered under this section unless he first renounces any other citizenship which he may possess.
- (3) Notwithstanding subsection (1), the Minister may cause any Commonwealth citizen to be registered as a citizen of Mauritius if he is satisfied that it is in the public interest so to do.

Section 6. Registration of minor children

- (1) The Minister may cause the minor child of a citizen of Mauritius to be registered as a citizen of Mauritius upon application made in the prescribed manner by the parent or guardian of the child.
- (2) The Minister may, in such special circumstances as he thinks fit, cause any minor to be registered as a citizen of Mauritius.

Section 11. Deprivation of citizenship

- (1) A citizen of Mauritius who has acquired citizenship by registration or naturalisation under this Act shall cease to be a citizen of Mauritius if he is deprived of that citizenship by an Order of the Minister made under this section.
- (2) Subject to this section, the Minister may, by Order, deprive of his citizenship a citizen of Mauritius who has acquired citizenship by registration or naturalisation where he is satisfied that the registration or certificate of naturalisation in relation to that citizen, was obtained by means of fraud, false representation or the concealment of any material fact.
- (3)
 - (a) Subject to paragraphs (b) and (c), the Minister may, by Order, deprive of his citizenship a citizen of Mauritius who has acquired citizenship by registration or naturalisation under this Act where he is satisfied that the citizen—
 - (i) has shown himself by act or speech to be disloyal or disaffected towards the State or is, or has been declared, a suspected international terrorist under the Prevention of Terrorism Act;
 - (ii) has, during any war in which Mauritius was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his knowledge carried on in such manner as to assist an enemy in that war; or
 - (iii) has within 7 years after his registration or naturalisation under this Act been sentenced in any country to imprisonment for a term of not less than 12 months.
 - (b) The Minister shall not deprive any person of his citizenship where it appears to him that the person would become stateless.
 - (c) In the case of a person who is declared a suspected international terrorist as specified in subparagraph (a) (i)—
 - (i) the Minister may, subject to paragraph (b), deprive him of his citizenship irrespective of the manner in which he acquired both the citizenship of Mauritius and that of another State;
 - (ii) subsections 5, 6 and 7 shall not apply.

Section 14. Dual nationality and resumption of citizenship

(1) (a) Subject to paragraph (b), where a citizen of Mauritius of full age and capacity who is also—

- (i) a national of a foreign country; or
- (ii) a citizen of any country specified in the First Schedule,

makes a declaration of renunciation of his citizenship of Mauritius in the prescribed manner, the Minister shall cause the declaration to be registered and that person shall cease to be a citizen of Mauritius.

(b) The Minister may withhold registration of a declaration under paragraph (a) if it is made during any war in which Mauritius is engaged by a person who is a national of a foreign country.

(2) A person of full age and capacity who has ceased to be a citizen of Mauritius upon his marriage and upon making a declaration of renunciation under subsection (1) may resume his citizenship of Mauritius and may be registered as a citizen of Mauritius if he makes an application to that effect in the prescribed manner and satisfies the Minister that—

- (a) his marriage has been dissolved, or he has been separated from or abandoned by his spouse or his spouse has died; and
- (b) he intends to reside in Mauritius.

(3) A person to whom subsection (2) applies may not resume his citizenship of Mauritius unless he first renounces any nationality or citizenship which he may possess.

(4) For the purposes of subsections (1) and (2), any woman who is or has been married shall be deemed to be of full age.

[S. 14 amended by Act 46 of 1992; Act 24 of 1995.]

Section 15. Resumption of Mauritian citizenship

(1) Any person who—

- (a) was a citizen of Mauritius and also a national or citizen of some other country;
- (b) attained the age of 21 on or after 12 March 1968 and before 1 October 1995; and
- (c) ceased to be a citizen of Mauritius by virtue of his failure to renounce the nationality or citizenship of that other country,

shall, if he is ordinarily resident in Mauritius, become a citizen of Mauritius as from 1 May 1995.

(2) Where a person referred to in subsection (1) is not ordinarily resident in Mauritius, he may make an application for registration to the Minister and the Minister may, in his discretion, grant the application.

Amended by [Act 24 of 1995]

5. The Code Civil Mauricien

TITRE SEPTIÈME

DE LA PATERNITÉ ET DE LA FILIATION

CHAPITRE PREMIER

DE LA FILIATION DE ENFANTS LÉGITIMES OU NÉS DANS LE MARIAGE

312. L'enfant conçu pendant le mariage a pour père le mari.

Néanmoins celui-ci pourra désavouer l'enfant en justice, s'il justifie de faits propres à démontrer qu'il ne peut pas en être le père et notamment s'il prouve que pendant le temps qui a couru depuis le trois-centième jusqu'au cent-quatre-vingtième jour avant la naissance de cet enfant, il était, soit pour cause d'éloignement soit par l'effet de quelque accident, dans l'impossibilité physique de cohabiter avec sa femme.

[Art. 312 repealed and replaced by s. 4 of Act 37 of 1980 w.e.f. 6 December 1980.]

314. L'enfant né avant le cent-quatre-vingtième jour du mariage, ne pourra être désavoué par le mari, dans les cas suivants—

- 1° s'il a eu connaissance de la grossesse avant le mariage;
- 2° s'il a assisté à l'acte de naissance, et si cet acte est signé de lui, ou contient sa déclaration qu'il ne sait signer;
- 3° si l'enfant n'est pas déclaré viable.

315. La légitimité de l'enfant né trois cents jours après la dissolution du mariage pourra être contestée.

316. Dans les divers cas où le mari est autorisé à réclamer, il devra le faire,
dans le mois, s'il se trouve sur les lieux de la naissance de l'enfant;
dans les deux mois après son retour, si, à la même époque, il est absent;
dans les deux mois après la découverte de la fraude, si on lui avait caché la naissance de l'enfant.

317. Si le mari est mort avant d'avoir fait sa réclamation, mais étant encore dans le délai utile pour la faire, les héritiers auront deux mois pour contester la légitimité de l'enfant, à compter de l'époque où cet enfant se serait mis en possession des biens du mari, ou de l'époque où les héritiers seraient troublés par l'enfant dans cette possession.

318. Tout acte extrajudiciaire contenant le désaveu de la part du mari ou de ses héritiers, sera comme non avenu, s'il n'est suivi, dans le délai d'un mois, d'une action en justice, dirigée contre un tuteur ad hoc donné à l'enfant, et en présence de sa mère.

CHAPITRE DEUXIÈME

DES PREUVES DE LA FILIATION DES ENFANTS LÉGITIMES

319. La filiation des enfants légitimes se prouve par les actes de naissance inscrits sur le registre de l'état civil.

320. A défaut de ce titre, la possession constante de l'état d'enfant légitime suffit.

321. La possession d'état s'établit par une réunion suffisante de faits qui indiquent le rapport de filiation et de parenté entre un individu et la famille à laquelle il prétend appartenir.

Les principaux de ces faits sont—

que l'individu a toujours porté le nom du père auquel il prétend appartenir;

que le père l'a traité comme son enfant, et a pourvu, en cette qualité, à son éducation, à son entretien et à son établissement;

qu'il a été reconnu constamment pour tel dans la société;

qu'il a été reconnu pour tel par la famille.

322. Nul ne peut réclamer un état contraire à celui que lui donnent son titre de naissance et la possession conforme à ce titre.

Et réciproquement, nul ne peut contester l'état de celui qui a une possession conforme à son titre de naissance.

323. A défaut de titre et de possession constante, ou si l'enfant a été inscrit, soit sous de faux noms, soit comme né de père et mère inconnus, la preuve de filiation peut se faire par témoins.

Néanmoins, cette preuve ne peut être admise que lorsqu'il y a commencement de preuve par écrit, ou lorsque les présomptions ou indices résultant de faits dès lors constants, sont assez graves pour déterminer l'admission.

324. Le commencement de preuve par écrit résulte des titres de famille, des registres et papiers domestiques du père ou de la mère, des actes publics et même privés émanés d'une partie engagée dans la contestation, ou qui y aurait intérêt si elle était vivante.

325. La preuve contraire pourra se faire par tous les moyens propres à établir que le réclamant n'est pas l'enfant de la mère qu'il prétend avoir, ou même, la maternité prouvée, qu'il n'est pas l'enfant du mari de la mère.

326. Les tribunaux civils seront seuls compétents pour statuer sur les réclamations d'état.

327. L'action criminelle contre un délit de suppression d'état, ne pourra commencer qu'après le jugement définitif sur la question d'état.

328. L'action en réclamation d'état est imprescriptible à l'égard de l'enfant.

329. L'action ne peut être intentée par les héritiers de l'enfant qui n'a pas réclamé, qu'autant qu'il est décédé mineur, ou dans les cinq années après sa majorité.

330. Les héritiers peuvent suivre cette action lorsqu'elle a été commencée par l'enfant, à moins qu'il ne s'en fût désisté formellement, ou qu'il n'eût laissé passer trois années sans poursuites, à compter du dernier acte de la procédure.

CHAPITRE TROISIÈME

DES ENFANTS NATURELS

SECTION PREMIÈRE

DE LA LÉGITIMATION DES ENFANTS NATURELS

331. Tous les enfants nés hors mariage sont légitimés de plein droit par le mariage subséquent de leur père et mère.

Si leur filiation n'était pas déjà établie, ces enfants font l'objet d'une reconnaissance au moment de la célébration du mariage. En ce cas, l'officier d'état civil qui procède à la célébration constate la reconnaissance et la légitimation dans un acte séparé.

De même, sont légitimés de plein droit, les enfants naturels dont la filiation n'a été établie à l'égard de leurs père et mère ou de l'un d'eux que postérieurement au mariage de leurs parents.

[Art. 331 repealed and replaced by s. 5 of Act 37 of 1980.]

332. La légitimation peut avoir lieu, même en faveur des enfants décédés qui ont laissé des descendants, et, dans ce cas, elle profite à ces descendants.

333. Les enfants légitimés par le mariage subséquent, auront les mêmes droits que s'ils étaient nés de ce mariage.

SECTION DEUXIÈME

DE LA RECONNAISSANCE DES ENFANTS NATURELS

334. La reconnaissance d'un enfant naturel sera faite par un acte authentique, lorsqu'elle ne l'aura pas été dans son acte de naissance.

335. Lorsque cette reconnaissance révèle une filiation incestueuse, elle doit être considérée comme nulle et non écrite.

En application des dispositions de l'alinéa 1—

1° —

2° La reconnaissance d'un enfant né d'un commerce incestueux ne peut être faite que par l'un des deux parents seulement et la seconde reconnaissance faite en violation de cette interdiction doit être considérée comme nulle et non écrite;

3° Les reconnaissances conjointes faites par les père et mère d'un enfant né d'un commerce incestueux n'établissent la filiation qu'à l'égard de la mère seulement.

[Art. 335 repealed and replaced by s. 6 of Act 37 of 1980; amended by s. 7 of Act 45 of 1990.]

336. La reconnaissance du père, sans l'indication et l'aveu de la mère, n'a d'effet qu'à l'égard du père.

338. L'enfant naturel reconnu a les mêmes droits et les mêmes devoirs que l'enfant légitime dans les rapports avec ses père et mère. Il entre dans la famille de son auteur.

[Art. 338 repealed and replaced by s. 7 of Act 8 of 1980.]

339. Toute reconnaissance de la part du père ou de la mère, de même que toute réclamation de la part de l'enfant, pourra être contestée par tous ceux qui y auront intérêt.

340. La paternité hors mariage peut être judiciairement déclarée—

- 1° Dans le cas d'enlèvement ou de viol, lorsque l'époque de l'enlèvement ou du viol se rapportera à celle de la conception;
- 2° Dans le cas de séduction accomplie à l'aide de manœuvres dolosives, abus d'autorité, promesse de mariage ou fiançailles;
- 3° Dans le cas où il existe des lettres ou quelque autre écrit privé émanant du père prétendu et desquels il résulte un aveu non équivoque de paternité;
- 4° Dans le cas où le père prétendu et la mère ont vécu en état de concubinage notoire pendant la période légale de la conception;
- 5° Dans le cas où le père prétendu a pourvu ou participé à l'entretien et à l'éducation de l'enfant en qualité de père.

L'action en reconnaissance de paternité ne sera pas recevable—

- 1° S'il est établi que, pendant la période légale de la conception, la mère était d'une inconduite notoire ou a eu commerce avec un autre individu;
- 2° Si le père prétendu était, pendant la même période, soit par suite d'éloignement, soit par l'effet de quelque accident, dans l'impossibilité physique d'être le père de l'enfant;
- 3° Si le père prétendu établit par l'examen des sangs qu'il ne peut être le père de l'enfant.

L'action n'appartient qu'à l'enfant. Pendant la minorité de l'enfant, la mère, même mineure, a seule qualité pour l'intenter.

Elle devra, à peine de déchéance, être intentée dans les deux années qui suivront l'accouchement. Toutefois, dans les cas prévus aux paragraphes 4 et 5 ci-dessus, l'action pourra être intentée jusqu'à l'expiration des deux années qui suivront la cessation, soit du concubinage, soit de la participation du prétendu père à l'entretien et à l'éducation de l'enfant.

A défaut de reconnaissance par la mère, ou si elle est décédée ou dans l'impossibilité de manifester sa volonté, l'action sera intentée par le tuteur avec l'autorisation du Juge en Chambre conformément aux dispositions de l'article 438 alinéa 3.

Si l'action n'a pas été intentée pendant la minorité de l'enfant, celui-ci pourra l'intenter pendant les deux années qui suivront sa majorité.

[Art. 340 repealed by Ord. 46 of 1941; inserted by s. 7 of Act 37 of 1980.]

341. La recherche de la maternité est admise.

L'enfant, qui réclamera sa mère sera tenu de prouver qu'il est identiquement le même que l'enfant dont elle est accouchée.

Il sera reçu à faire cette preuve en établissant sa possession constante d'état d'enfant naturel à l'égard de la mère prétendue. A défaut, la preuve de la filiation pourra être établie par témoins, s'il existe des présomptions ou indices graves, ou un commencement de preuve par écrit au sens de l'article 324 du présent Code.

[Art. 341 repealed and replaced by s. 8 of Act 37 of 1980.]

342. Un enfant ne sera jamais admis à la recherche soit de la paternité soit de la maternité, dans le cas où, suivant l'article 335, la reconnaissance n'est pas admise.

Les enfants nés d'un commerce incestueux peuvent néanmoins réclamer des aliments sans que l'action ait pour effet de proclamer l'existence d'un lien de filiation dont l'établissement demeure prohibé.

L'action pourra être intentée pendant toute la minorité de l'enfant et, si elle n'a pas été intentée pendant la minorité de l'enfant, celui-ci pourra l'intenter pendant les deux années qui suivront sa majorité.

L'action est intentée devant la Cour Suprême qui instruit la cause et statue en la forme ordinaire, le Ministère Public entendu.

[Art. 342 repealed and replaced by s. 8 of Act 37 of 1980; amended by s. 7 of Act 45 of 1990.]

342-1. Les actions intentées en application des articles 340 à 342 ne peuvent faire l'objet d'aucune publicité dans la presse. La Cour Suprême peut, en outre, ordonner que les débats se dérouleront à huis clos.

[Art. 342-1 inserted by s. 9 of Act 37 of 1990]

Article 9 of the Convention on the Rights of the Child

▪ *Separation from parents*

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

▪ *Mauritian laws related to Article 9*

1. The Child Protection Act 1994

Section 2. Interpretation

In this Act –

“child” means any unmarried person under the age of 18;

“foster home” means a home registered under regulations made under this Act or approved by the Minister;

“harm” includes physical, sexual, psychological, emotional or moral injury, neglect, ill-treatment, impairment of health or development;

“Minister” means the Minister to whom responsibility for the subject of child development and family welfare is assigned;

“parent” means the father, mother or legal guardian of a child and includes any person in charge of a child;

“Permanent Secretary” means the Permanent Secretary of the Ministry or any public officer designated by him to act on his behalf;

“place of safety” means any place designated by the Minister, and includes a foster home, a convent, a charitable institution, an institution for children and a hospital.

[S. 2 amended by Ac 15 of 1998; s. 22 (1) (a) of Act 22 of 2003 w.e.f. 9 August 2003; s. 3 of Act 40 of 2008 w.e.f. 20 December 2008]

Section 3. Enquiry

Where the Permanent Secretary has reasonable cause to suspect that a child is being exposed to harm and is in need of assistance, he may summon any person, with or without the child, to give evidence for the purpose of enquiring into the matter.

Section 4. Emergency protection order

- (1) Where a District Magistrate is satisfied by information on oath that the Permanent Secretary has reasonable cause to believe that a child is suffering or likely to suffer significant harm, the District Magistrate shall issue an emergency protection order.
- (2) An information on oath and an emergency protection order shall be in the form set out in the Second Schedule.
- (3) Notwithstanding any other enactment, an emergency protection order shall, while it is in force, confer on the Permanent Secretary authority to –
 - (a) summon any person with or without the child to give evidence for the purpose of verifying whether the child is suffering or likely to suffer significant harm;
 - (b) enter any premises specified in the order, where necessary by force, and search for the child, provided that the order or a copy thereof shall be produced to the occupier of the premises on request;
 - (c) remove or return the child to, or to prevent the child’s removal from, any place of safety;
 - (d) where necessary for the welfare of the child, cause him to be submitted to medical examination or to urgent treatment;
 - (e) request police or medical assistance for the exercise of any power under the order.
- (4) The owner, occupier or person in charge of any premises which the Permanent Secretary or any person lawfully assisting him enters under an emergency protection order shall provide the Permanent Secretary or the person lawfully assisting him with all reasonable facilities and assistance for the effective exercise of his powers under the order.

[S. 4 amended by s. 5 of Act 40 of 2008 w.e.f. 20 December 2008]

Section 5. Duration of order

- (1) An emergency protection order shall have effect for a period of 14 days.
- (2) The District Magistrate may extend the order for a further period of 14 days where he considers it necessary for the protection of the child.

[Amended 15/98]

Section 6. Discharge of order

- (1) No appeal shall lie against the issue of an emergency protection order.
- (2) (a) Any parent, not earlier than 72 hours after the issue of the order, may apply to the Court for the discharge of the order.
(b) The Court may discharge the order where it is satisfied that it is in the interests of the child to do so.

Section 7. Follow-up action

Where an emergency protection order has been made in respect of a child, the Permanent Secretary may at any time within a period of 12 months after the order has lapsed –

- (a) summon any person and the child;
- (b) enter the premises where the child is living,

for the purpose of ascertaining whether the child is suffering or likely to suffer significant harm.

Section 8. Committal to place of safety

- (1) Where the Permanent Secretary has reasonable ground to believe that a child is ill-treated, neglected, abandoned, destitute or otherwise exposed to harm, and that it is in his interests to be committed to a place of safety, he may apply in writing to the Court for a committal order.
- (2) Upon an application under subsection (1), the Court –
 - (a) may make an interim order for the child to be put in a place of safety for a period not exceeding 14 days and may extend such interim order for further periods of 14 days until the final determination of the application;
 - (b) shall order an urgent enquiry and report by the Probation Service as to the child's family background, general conduct, home surroundings and school record as may enable it to deal with the case in the best interests of the child;
 - (c) may request that the child be medically examined.
- (3) Where after hearing evidence including that of any parent, wherever possible and practicable, the Court considers it necessary in the interests of the child, it shall order that the child be committed to a place of safety until the child reaches the age of 18 or for such shorter period as the court may deem fit.
- (4) An order made under subsection (3) may be varied in the interests of the child at the instance of any interested party.

- (5) Any expenses incurred for the care and protection of a child who has been committed under subsection (3) may be recovered from any parent of the child.

[Amended 15/98]

Section 9. Removal from place of safety

Where a child is placed in a place of safety any person who knowingly and without lawful authority or reasonable excuse –

- (a) takes or keeps a child away;
- (b) does any act for the purpose of enabling the child to stay or run away,

shall commit an offence.

Section 10. Appeal

- (1) Notwithstanding any other enactment, the Permanent Secretary or any parent of the child or a guardian ad hoc appointed for the purpose may appeal to a Judge in Chambers against any order made under section 8(3) or any variation made under section 8(4).
- (2) Notwithstanding any other enactment, the Court may, upon the application in writing of any interested party, appoint a guardian ad hoc to appeal on behalf of the child.
- (3) Subject to subsection (4), an appeal under subsection (1) shall be lodged within a period of 21 days of the making of the order.
- (4) Where a guardian ad hoc has been appointed to appeal on behalf of the child, the Judge in Chambers may entertain an appeal lodged outside the time limit specified in subsection (3).

[S. 10 amended by Act 15 of 1998]

Section 11. Duty to report

Notwithstanding any other enactment, where a person exercising any medical or paramedical profession or a member of the staff of a school has reason to suspect that a child he is examining or who is frequenting the school as the case may be, has been ill-treated, neglected, abandoned or otherwise exposed to harm, he shall immediately notify the Permanent Secretary.

[S. 11 amended by Act 15 of 1998]

Section 12. Recording of statement

Notwithstanding any other enactment or rule of law, where the Permanent Secretary has reasonable ground to believe that the interests of a child so require, a statement may, in the presence of the Permanent Secretary, be recorded from him in the absence or without the consent of his parent.

Section 13. Ill-treatment

- (1) Any person who ill-treats a child or otherwise exposes a child to harm shall commit an offence.
- (2) For the purposes of this section, any person who in an advertisement exploits a child by using him in such a way as is likely to cause in him or in any child watching him reactions which are contrary to morality or detrimental to psychological development shall be deemed to expose a child to harm.

[Amended 15/98]

2. The Divorce and Judicial Separation Act 1981

Section 18. Orders for custody of children

- (1) On granting a decree, the Court shall make such order for the custody of any minor child as it thinks fit.
- (2) An order made under subsection (1) may be made in favour of either party or of any other person (whether or not related to the child) who consents to the order being made in his favour.
- (3) In making an order under subsection (1), the Court shall have regard to the interests of the child concerned as the first and paramount consideration.
- (4) In determining the interests of the child under subsection (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.
- (5) The party to whom custody of a child has not been granted shall be granted a right of visit to the child on such conditions as the Court thinks fit.

3. The Criminal Code Act 1838

Section 252. Interdiction from guardianship

- (1) Any person convicted of an offence specified in section 251 shall be interdicted from any guardianship and curatorship –
 - (a) for a period not exceeding 5 years in the case of a person specified in section 251(1);
 - (b) for a period not exceeding 20 years in the case of a person specified in section 251(2).
- (2) Where such offence has been committed by the father or mother, the offender shall also be deprived of the rights and advantages which are granted to him or her, upon the person and property of the child, by articles 371 to 387 of the Code Civil Mauricien.

4. The Code Civil Mauricien

SECTION DEUXIÈME

DES CAS DE DIVORCE

DES MESURES PROVISOIRES

242. 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.

Il peut confier les enfants à l'un quelconque des époux ou ordonner, pour le plus grand avantage des enfants, que tous ou quelques-uns d'entre eux seront confiés à d'autres membres de la famille ou même à une tierce personne ayant accepté cette charge.

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.

[Art. 242 repealed and replaced by s. 2 of Act 21 of 1981 w.e.f. 1 January 1982]

V – DES CONSÉQUENCES DU DIVORCE POUR LES ENFANTS

261. La Cour Suprême se prononce sur la garde des enfants, en tenant compte exclusivement de leurs avantages et de leurs intérêts.

Les enfants sont confiés à l'un quelconque des époux, à moins que, le Ministère Public entendu, la Cour Suprême n'ordonne, pour le plus grand avantage des enfants, que tous ou quelques-uns d'entre eux seront confiés aux soins d'un autre membre de la famille ou même tierce personne ayant accepté cette charge.

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.

[Art 261 repealed and replaced by s. 2 of Act 21 of 1981 w.e.f. 1 January 1982]

SECTION PREMIÈRE

DE L'EXERCICE DE L'AUTORITÉ PARENTALE

372. Pendant le mariage, les père et mère exercent en commun leur autorité.

Cependant, en cas de séparation de fait des père et mère, le Juge en Chambre saisi par l'un des époux, ou la Cour Suprême à l'occasion d'un litige opposant les deux époux, statue sur la garde de l'enfant, en tenant compte exclusivement de l'avantage et de l'intérêt de celui-ci. L'autorité parentale est alors exercée par celui des père et mère à qui la garde a été confiée, sauf le droit de visite de l'autre.

[Art 372 repealed and replaced by s. 7 of Act 26 of 1980; s. 10 of Act 8 of 1980; s. 3 of Act 7 of 1983]

373. Perd l'exercice de l'autorité parentale ou en est provisoirement privé celui des père et mère qui se trouve dans l'un des cas suivants -

1. S'il est hors d'état de manifester sa volonté, en raison de son incapacité, de son absence, de son éloignement ou de toute autre cause,
2. Si un jugement de déchéance ou de retrait a été prononcé contre lui, pour ceux de ses droits qui lui ont été retirés;
3. S'il a fait l'objet d'une condamnation pour abandon d'enfants.

[Art 373 repealed and replaced by s. 7 of Act 26 of 1980]

373-1. Si l'un des père et mère décède ou se trouve dans un des cas énumérés par l'article 373, l'exercice de l'autorité parentale est dévolu en entier à l'autre.

[Art 373-1 repealed and replaced by s. 7 of Act 26 of 1980]

373-2. Si les père et mère sont divorcés ou séparés de corps, l'autorité parentale est exercée par celui d'entre eux à qui la Cour Suprême confie la garde de l'enfant, sauf le droit de visite de l'autre.

[Art 373-2 repealed and replaced by s. 7 of Act 26 of 1980]

SECTION DEUXIÈME

DE LA DÉCHÉANCE ET DU RETRAIT PARTIEL DE L'AUTORITÉ PARENTALE

375. Peuvent être déchus de l'autorité parentale les père et mère qui sont condamnés, soit comme auteurs, co-auteurs ou complices d'un crime ou délit commis sur la personne de leur enfant, soit comme co-auteurs ou complices d'un crime ou délit commis par leur enfant.

[Art 375 repealed and replaced by s. 7 of Act 26 of 1980]

376. Peuvent être déchus de l'autorité parentale, en dehors de toute condamnation pénale, les père et mère qui, soit par de mauvais traitements, soit par des exemples pernicioseux d'ivrognerie habituelle, d'inconduite notoire ou de délinquance, soit par un défaut de soins ou un manque de direction, mettent manifestement en danger la sécurité, la santé ou la moralité de l'enfant.

[Art 376 repealed and replaced by s. 7 of Act 26 of 1980]

377. La déchéance prononcée en vertu de l'article 375 ou 376 porte de plein droit sur tous les attributs, tant patrimoniaux que personnels, se rattachant à l'autorité parentale; à défaut d'autre détermination, elle s'étend à tous les enfants mineurs déjà nés ou à naître.

Elle emporte, pour l'enfant, dispense de l'obligation alimentaire, par dérogation aux articles 205 à 207, sauf disposition contraire dans la décision de déchéance.

[Art 377 repealed and replaced by s. 7 of Act 26 of 1980; repealed and replaced by s. & of Act 26 of 1980]

378. La décision peut, au lieu de la déchéance totale, se borner à prononcer un retrait partiel de droits, limité aux attributs qu'elle spécifie. Elle peut aussi décider que la déchéance ou le retrait n'auront d'effet qu'à l'égard de certains des enfants déjà nés.

[Art 378 repealed and replaced by s. 7 of Act 26 of 1980]

379. En prononçant la déchéance ou le retrait du droit de garde de la Cour Suprême devra, si l'autre parent est décédé ou s'il a perdu l'exercice de l'autorité parentale, désigner un autre parent ou une tierce personne ayant accepté cette charge, qui assumera la garde de l'enfant et dont elle déterminera l'étendue des pouvoirs suivant les règles établies par les alinéas 2 et 3 de l'article 373-2.

[Art 379 repealed and replaced by s. 7 of Act 26 of 1980]

Article 10 of the Convention on the Rights of the Child

▪ Family reunification

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

▪ Mauritian laws related to Article 10

1. The Constitution of Mauritius

Section 3. Fundamental rights and freedoms of individual

It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms -

- (a) the right of the individual to life, liberty, security of the person and the protection of the law.

2. The Convention on the Civil Aspects of International Child Abduction Act 2000

Section 12 –

First Schedule

CHAPTER I – SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are –

- (a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- (b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 3

The removal or the retention of a child is to be considered wrongful where –

- (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Conventions shall cease to apply when the child attains the age of 16 years.

Article 7

Central Authorities shall co-operate with each other and promote cooperation amongst the competent authorities in their respective State to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures –

- (a) to discover the whereabouts of a child who has been wrongfully removed or retained;
- (b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisions measures;
- (c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- (d) to exchange, where desirable, information relating to the social background of the child;
- (e) to provide information of a general character as to the law of their State in connection with the application of the Convention;
- (f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;
- (g) where the circumstances so required, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- (h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- (i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

3. The Deportation Act 1968

Section 3. Application

- (1) This Act shall not apply to persons who belong to Mauritius.
- (2) For the purposes of subsection (1) a person shall belong to Mauritius where –
 - (a) he is a citizen of Mauritius;
 - (b) he is a Commonwealth citizen and has, before 14 December 1968, been ordinarily resident in Mauritius continuously for a period of 7 years or more and since the completion of such period of residence has not been ordinarily resident continuously for a period of 7 years or more in any other country;
 - (c) he is the spouse of a citizen of Mauritius;
 - (d) he is a child, stepchild or lawfully adopted child, under the age of 18 years, of a person to whom any of paragraphs (a) to (c) applies.

[S.3 amended by Act 6 of 1983]

Article 11 of the Convention on the Rights of the Child

▪ ***Transfer and non-return of children***

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

▪ ***Mauritian laws related to Article 11***

1. The Child Protection Act 1994

Section 13A. Child trafficking

- (1) Any person who wilfully and unlawfully recruits, transports, transfers, harbours or receives a child for the purpose of exploitation shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.
- (2) Any person who wilfully and unlawfully recruits, transports, transfers, harbours or receives a child –
 - (a) outside Mauritius for the purpose of exploitation in Mauritius;
 - (b) in Mauritius for the purpose of exploitation outside Mauritius,
 shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.
- (3) Any person, who, in any place outside Mauritius, does an act preparatory to, or in furtherance of, the commission of an offence under subsection (1), shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.
- (4)
 - (a) Any person who takes part in any transaction the object or one of the objects of which is to transfer or confer, wholly or partly, temporarily or permanently, the possession, custody or control of a child in return for any valuable consideration shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.
 - (b) Any person who, without lawful authority or reasonable excuse, harbours or has in his possession, custody or control of any child in respect of whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by any other person in or outside Mauritius, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.
- (5)
 - (a) No press report of any Court proceedings relating to an offence under this section shall include any particulars calculated to lead to the identification of any child who is the victim of that offence, nor shall any photograph or picture be published in any newspaper or broadcast as being or including a photograph or picture of that child.

(b) Any person who contravenes paragraph (a) shall commit an offence and shall, on conviction, be liable in respect of each offence to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 2 years.

(6) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section.

(7) Where the Court finds that a person who has parental responsibility and rights in respect of a minor has committed an offence under this section in relation to that minor, it may –

(a) suspend the parental responsibilities and rights of that person; and

(b) order the minor to be admitted to a place of safety, for such period as it thinks fit.

(8) In this section, “exploitation” has the same meaning as in the Combating of Trafficking in Persons Act.

[S.13A inserted by s.3 of Act 34 of 2005 w.e.f 17 December 2005; amended by s.8 of Act 36 of 2008 w.e.f 6 December 2008; s.21 of Act 2 of 2009 w.e.f 30 July 2009]

Section 13C. Abducting child

(1) Any person who, by force or fraud, without the consent of the legal custodian -

(a) takes away or causes to be taken away a child; or

(b) leads away, decoys, entices or causes to be led away, decoyed or enticed, a child out of the keeping of the custodian or from any place where the child has been placed or is with the consent of the custodian,

shall commit the offence of abduction, and shall, on conviction, be liable to penal servitude for a term not exceeding 25 years.

(2) Any person who unduly fails to present a child to the person who has the right to claim the child, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

(3) In the case specified in subsection (1), where the abduction is committed without fraud or violence, the offender shall be liable to penal servitude for a term not exceeding 20 years.

(4) Where an offender who has committed an offence under subsection (1) has civilly married the child whom he has so taken away, he shall not be prosecuted, except upon the complaint of the parties who have the right, under the Code Civil Mauricien, of suing for the nullity of such marriage, and he shall not be convicted until after the nullity of the marriage has been pronounced.

(5) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section.

[S.13C inserted by s.3 of Act 34 of 2005 w.e.f 17 December 2005; amended by s.8 of Act 36 of 2008 w.e.f 6 December 2008]

2. The Convention on the Civil Aspects of International Child Abduction Act 2000

Section 12 -

FIRST SCHEDULE

CHAPTER I – SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are –

- (a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- (b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 3

The removal or the retention of a child is to be considered wrongful where –

- (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Conventions shall cease to apply when the child attains the age of 16 years.

Article 7

Central Authorities shall co-operate with each other and promote cooperation amongst the competent authorities in their respective State to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures –

- (a) to discover the whereabouts of a child who has been wrongfully removed or retained;
- (b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisions measures;
- (c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- (d) to exchange, where desirable, information relating to the social background of the child;

- (e) to provide information of a general character as to the law of their State in connection with the application of the Convention;
- (f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;
- (g) where the circumstances so required, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- (h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- (i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

Article 12 of the Convention on the Rights of the Child

▪ ***Respect for the views of the child***

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.

▪ ***Mauritian laws related to Article 12***

1. The Ombudsperson for Children Act 2003

Section 6. Functions of Ombudsperson for Children

In carrying out the duties of his office, the Ombudsperson for Children shall—

- (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;

2. The Criminal Procedure Act 1853

Section 109. Child victim as witness

In every trial of an offence charged as having been committed, or attempted to be committed, upon a child of tender years, the child, if under the age of 9, shall be admissible as a witness, where the Judge or Magistrate by or before whom the case is tried, is satisfied that he has sufficient intelligence to make a correct statement on the subject of the trial, although he may not understand the nature of an oath or of a solemn affirmation.

Section 110. Child witness not to be sworn

A child who is heard as a witness under section 109, shall –

- (a) not be examined on oath or solemn affirmation;
- (b) before giving evidence, make, in presence of the Judge or Magistrate, a promise to speak the truth in terms of the First Schedule.

Section 111. Evidence of child

The evidence given by a child under sections 109 and 110 shall be regarded in all respects as that of a witness lawfully admitted in the cause, and it is for the Judge, Magistrate, or jury, as the case may be, by whom the truth of the charge is to be decided to determine what credit, if any, should be given to that evidence.

3. The Divorce and Judicial Separation Act 1981

Section 18. Orders for custody of children

- (1) On granting a decree, the Court shall make such order for the custody of any minor child as it thinks fit.
- (2) An order made under subsection (1) may be made in favour of either party or of any other person, whether or not related to the child, who consents to the order being made in his favour.
- (3) In making an order under subsection (1), the Court shall have regard to the interests of the child concerned as the first and paramount consideration.
- (4) In determining the interests of the child under subsection (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.
- (5) The party to whom custody of a child has not been granted shall be granted a right of visit to the child on such conditions as the Court thinks fit.

[S. 18 amended by s. 7 of Act 15 of 1998 w.e.f. 22 August 1998]

4. The Juvenile Offenders Act 1935

Section 9. Bail or detention

- (3) Where any person apparently below the age of 18 is apprehended, the police officer in charge of the station to which that person is brought shall, immediately, take all reasonable steps to inform his parent or guardian of his apprehension and the place where he may be seen by the parent or guardian.
- (4) No statement shall be recorded from an apprehended person below the age of 18 outside the presence of his parent or guardian unless the parent or guardian cannot be contacted within a reasonable time or the parent or guardian, after being contacted, fails to call at the police station where the statement is to be recorded within a reasonable time fixed by the police officer in charge of the station.

[S.9 amended by Act 15 of 1998]

5. The Code Civil Mauricien

31. Lors même que sa filiation n'aurait été établie qu'en second lieu à l'égard du père, l'enfant naturel pourra prendre le nom de celui-ci par substitution, si, pendant sa minorité, ses deux parents en font la déclaration conjointe devant l'officier d'état civil.

Si l'enfant a plus de quinze ans, son consentement personnel est nécessaire.

[Art.31 inserted by s.3 of Act 25 of 1981]

264. En se prononçant sur la garde des enfants, la Cour Suprême peut tenir compte—

1° des accords éventuellement passés entre époux;

2° des sentiments exprimés par les enfants mineurs lorsque leur audition a paru nécessaire et qu'elle ne comporte pas d'inconvénients pour eux.

[Art.264 repealed and replaced by s.2 of Act 21 of 1981]

6. The National Children's Council Act 2003

Section 4. Objects of the Council

The objects of the Council shall –

- (a) be the key consultative and coordinating national body on all activities and issues related to children;
- (b) protect the rights of children, promote their interest and well-being and ensure their participation in matters of interest to them; and
- (c) promote activities for the welfare of children in line with the Convention on the Rights of the Child.

Article 13 of the Convention on the Rights of the Child

▪ Freedom of expression

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

▪ Mauritian laws related to Article 13

1. The Constitution of Mauritius

Article 12. Protection of freedom of expression

- (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –
 - (a) in the interest of defence, public safety, public order, public morality or public health;
 - (b) for the purpose of protecting the reputations, rights or freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the Courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or
 - (c) for the imposition of restrictions upon public officers,
except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

2. The Ombudsperson for Children Act 2003

Section 5. Objects of office of 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 interests of children;
- (c) promote compliance with the Convention.

Article 14 of the Convention on the Rights of the Child

▪ ***Freedom of thought, conscience and religion***

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

▪ ***Mauritian laws related to Article 14***

1. The Constitution of Mauritius

Article 11. Protection of freedom of conscience

- (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section, that freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.
- (2) Except with his own consent (or, if he is minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion that he does not profess.
- (3) No religious community or denomination shall be prevented from making provision for the giving, by persons lawfully in Mauritius, of religious instruction to persons of that community or denomination in the course of any education provided by that community or denomination.
- (4) No person shall be compelled to take any oath that is contrary to his religion or belief or to take any oath in a manner that is contrary to his religion or belief.
- (5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –
 - (a) in the interests of defence, public safety, public order, public morality or public health; or
 - (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited intervention of persons professing any other religion or belief,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

2. The Code Civil Mauricien

371-2. L'autorité appartient aux père et mère pour protéger l'enfant dans sa sécurité, sa santé, sa moralité.

Ils ont à son égard droit et devoir de garde, de surveillance et d'éducation.

[Art 371-2 repealed and replaced by s. 7 of Act 26 of 1980]

Article 15 of the Convention on the Rights of the Child

▪ ***Freedom of association***

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

▪ ***Mauritian laws related to Article 15***

1. The Constitution of Mauritius

Article 13. Protection of freedom of assembly and association

- (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and, in particular, to form or belong to trade unions or other associations for the protection of his interests.
- (2) Nothing contained in or done under the authority of any law shall be held inconsistent with or in contravention of this section to the extent that the law in question makes provision -
 - (a) in the interests of defence, public safety, public order, public morality or public health;
 - (b) for the purpose of protecting the rights or freedoms of other persons; or
 - (c) for the imposition of restrictions upon public officers,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

Article 16 of the Convention on the Rights of the Child

▪ ***Right to privacy***

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

▪ ***Mauritian laws related to Article 16***

1. The Constitution of Mauritius

Article 9. Protection for privacy of home and other property

- (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -
 - (a) in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilisation of mineral resources or the development or utilisation of any other property in such a manner as to promote the public benefit;
 - (b) for the purpose of protecting the rights or freedoms of other persons;
 - (c) to enable an officer or agent of the Government or a local authority, or a body corporate established by law for public purpose, to enter on the premises of any person in order to value those premises for the purpose of any tax, rate or due, or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government, the local authority or that body corporate, as the case may be; or
 - (d) to authorise, for the purpose of enforcing the judgment or order of a Court in any civil proceedings, the search of any person or property by order of a Court or the entry upon any premises by such order,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

2. The Code Civil Mauricien

22. Chacun a droit au respect de sa vie privée.

Les juridictions compétentes peuvent, sans préjudice de la réparation du dommage subi, prescrire toutes mesures, telles que séquestre, saisie et autres, propres à empêcher ou faire cesser une atteinte à l'intimité de la vie privée.

Ces mesures peuvent, s'il y a urgence, être ordonnées par le Juge en Chambre.

[Art 22 repealed and replaced by s. 2 of Act 25 of 1981]

3. The Information and Communication Technologies Act 2001

Section 46. Offences

Any person who -

- (d) steals, secretes or destroys a message,
- (o) except as expressly permitted by this Act or as authorized by a Judge, intercepts, authorises or permits another person to intercept, or does any act or thing that will enable him or another person to intercept, a message passing over a network,

shall commit an offence.

[S.46 came into operation on 1 June 2002]

4. The Independent Broadcasting Authority Act 2000

SECOND SCHEDULE

(sections 21, 24, 25)

CODE OF CONDUCT FOR BROADCASTING SERVICES

Section 3. News

- (7) The identity of rape victims and other victims of sexual violence shall not be divulged in any broadcast without the prior consent of the victim concerned.

Article 17 of the Convention on the Rights of the Child

▪ Access to appropriate information

States Parties recognize the important function performed by the mass media and shall ensure that 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.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

▪ Mauritian laws related to Article 17

1. The Independent Broadcasting Authority Act 2000

Section 4. Objects of Authority

The Authority shall –

- (a) promote the provision of a diverse range of radio and television broadcasting services throughout Mauritius;
- (b) promote the development of broadcasting services which are responsive to the needs of the Mauritian audience;
- (c) preserve and promote the pluralist nature of Mauritian culture by ensuring that licensees include, in their services, programmes reflecting the linguistic and cultural diversity of Mauritius;
- (d) ensure that licensees include, in their services, regular locally produced programmes;
- (e) ensure that broadcasting services are not controlled by foreign nationals;
- (f) impose limitations on cross media control of private broadcasting services;
- (g) ensure fair competition between broadcasting licensees;
- (h) set acceptable standards for programmes and advertising and monitor compliance with those standards;

- (i) ensure that broadcasting services –
 - (i) are of such a nature as not to encourage or incite crime or racial hatred leading to disorder or offending public feeling;
 - (ii) give adequate coverage to information, education, culture, entertainment and recreation; and
 - (iii) are impartial and accurate;
- (j) be the sole authority empowered to issue licences for broadcasting;
- (k) levy fees in respect of licences issued;
- (l) inquire into public complaints against a licensee and take any action it may determine;
- (m) promote together with the ICT Authority, the most efficient use of the broadcasting frequency bands; and
- (n) monitor, after consultation with the ICT Authority, the availability of segments of broadcasting frequency bands and make recommendations for the allocation of frequencies to licensees of broadcasting services.

SECOND SCHEDULE

(sections 21, 24, 25)

CODE OF CONDUCT FOR BROADCASTING SERVICES

Section 1. Preamble

The fundamental principle to be upheld is that the freedom of all broadcasting licensees is indivisible from, and subject to, the same restraints as those relevant to the individual person, and is founded on the individual's right to be informed and to freely receive and disseminate opinions.

Section 2. General

Broadcasting licensees shall -

- (a) not broadcast any material which is indecent, obscene or offensive to public morals or offensive to the religious convictions or feelings of any section of the population or likely to prejudice the safety of the State or the public order or relations between sections of the population;
- (b) not, without due care and sensitivity, present material which depicts or relates to brutality, violence, atrocities, drug abuse and obscenity; and
- (c) exercise due care and responsibility in the presentation of programmes where a large number of children are likely to be part of the audience.

Section 3. News

- (1) Broadcasting licensees shall report news truthfully, accurately and objectively.
- (2) News shall be presented in the correct context and in a balanced manner, without intentional or negligent departure from the facts, whether by -
 - (a) distortion, exaggeration or misrepresentation;
 - (b) material omission; or
 - (c) summarisation.
- (3) Only that which may reasonably be true, having due regard to the source of the news, may be presented as fact, and such facts shall be broadcast fairly with due regard to context and importance. Where a report is not based on fact or is founded on opinion, supposition, rumors or allegations, it shall be presented in such manner as to indicate clearly that such is the case.
- (4) Where there is reason to doubt the correctness of a report and it is practicable to verify the correctness thereof, it shall be verified. Where such verification is not practicable, that fact shall be mentioned in the report.
- (5) Where it subsequently appears that a broadcast report was incorrect in a material respect, it shall be rectified forthwith, without reservation or delay. The rectification shall be presented with such a degree of prominence and timing as may be adequate and fair so as to readily attract attention.
- (6) Reports, photograph or video material relating to matters involving indecency or obscenity shall be presented with due sensitivity, due regard being had to the prevailing moral climate. In particular, broadcasting licensees shall avoid the broadcasting of obscene and lascivious matter.
- (7) The identity of rape victims and other victims of sexual violence shall not be divulged in any broadcast without the prior consent of the victim concerned.

Article 18 of the Convention on the Rights of the Child

▪ ***Parental responsibilities***

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. 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.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

▪ ***Mauritian laws related to Article 18***

1. The Code Civil Mauricien

SECTION DEUXIÈME

DES CAS DE DIVORCE

DES MESURES PROVISOIRES

242. 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.

Il peut confier les enfants à l'un quelconque des époux ou ordonner, pour le plus grand avantage des enfants, que tous ou quelques-uns d'entre eux seront confiés à d'autres membres de la famille ou même à une tierce personne ayant accepté cette charge.

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.

[Art. 242 repealed and replaced by s. 2 of Act 21 of 1981 w.e.f 1 January 1982.]

243. En se prononçant sur la garde des enfants, le Juge en Chambre fixe, s'il y a lieu, la contribution due, pour leur entretien et leur éducation, par l'époux qui n'a pas la garde.

[Art. 243 repealed and replaced by s. 2 of Act 21 of 1981 w.e.f. 1 January 1982.]

V – DES CONSÉQUENCES DU DIVORCE POUR LES ENFANTS

260. Le divorce laisse subsister les droits et les devoirs des père et mère à l'égard de leurs enfants, sous réserve des règles qui suivent.

[Art. 260 repealed and replaced by s. 2 of Act 21 of 1981 w.e.f. 1 January 1982.]

261. La Cour Suprême se prononce sur la garde des enfants, en tenant compte exclusivement de leurs avantages et de leurs intérêts.

Les enfants sont confiés à l'un quelconque des époux, à moins que, le Ministère Public entendu, la Cour Suprême n'ordonne, pour le plus grand avantage des enfants, que tous ou quelques-uns d'entre eux seront confiés aux soins d'un autre membre de la famille ou même d'une tierce personne ayant accepté cette charge.

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.

[Art. 261 repealed and replaced by s. 2 of Act 21 of 1981 w.e.f. 1 January 1982.]

262. Toute personne intéressée, y compris le Ministère Public, peut demander à la Cour Suprême qu'elle se prononce à nouveau sur la garde des enfants lorsque celui à qui elle avait été confiée, à la suite du divorce, est depuis lors décédé ou se trouve désormais dans l'un des cas énumérés par l'article 373 ou, pour toute autre cause, lorsque l'intérêt de l'enfant le requiert.

[Art. 262 repealed and replaced by s. 2 of Act 21 of 1981 w.e.f. 1 January 1982.]

262-1. En cas de divorce par consentement mutuel, les dispositions de la convention homologuée par la juge relatives à l'exercice de l'autorité parentale peuvent être révisées, pour motif grave, à la demande de l'un des époux ou du Ministère Public.

[Art. 262-1 inserted by s. 2 (h) of Act 2 of 2011 w.e.f. 15 May 2011.]

263. L'époux à qui la garde des enfants n'a pas été confiée conserve le droit de surveiller leur entretien et leur éducation. Il y contribue à proportion de ses ressources.

Un droit de visite et d'hébergement ne peut lui être refusé que pour des motifs graves.

[Art. 263 repealed and replaced by s. 2 of Act 21 of 1981.]

264. En se prononçant sur la garde des enfants, la Cour Suprême peut tenir compte—

1° des accords éventuellement passés entre époux;

2° des sentiments exprimés par les enfants mineurs lorsque leur audition a paru nécessaire et qu'elle ne comporte pas d'inconvénients pour eux.

[Art. 264 repealed and replaced by s. 2 of Act 21 of 1981.]

265. La contribution à l'entretien et à l'éducation des enfants prévue à l'article 263 prend la forme d'une pension alimentaire versée à la personne qui en a la garde, à moins que la Cour Suprême n'en décide autrement.

Les modalités et les garanties de cette pension alimentaire sont fixées par la Cour Suprême.

[Art. 265 repealed and replaced by s. 2 of Act 21 of 1981.]

266. Lorsque la consistance des biens du débiteur s'y prête, la pension alimentaire peut être remplacée, en tout ou en partie, par le versement d'une somme d'argent entre les mains d'un organisme accrédité chargé d'accorder en contrepartie à l'enfant une rente indexée, l'abandon de biens en usufruit ou l'affectation de biens productifs de revenus.

[Art. 266 repealed and replaced by s. 2 of Act 21 of 1981.]

267. Si le capital ainsi constitué devient insuffisant pour couvrir les besoins des enfants, la personne qui a la garde peut demander l'attribution d'un complément sous forme de pension alimentaire.

[Art. 267 repealed and replaced by s. 2 of Act 21 of 1981.]

268. Le parent qui assume à titre principal la charge d'enfants majeurs qui ne peuvent eux-mêmes subvenir à leur besoin peut demander à son conjoint de lui verser une contribution à leur entretien et à leur éducation.

[Art. 268 repealed and replaced by s. 2 of Act 21 of 1981.]

DE L'AUTORITÉ PARENTALE

CHAPITRE PREMIER

DE L'AUTORITÉ PARENTALE RELATIVEMENT À LA PERSONNE DE L'ENFANT

371. L'enfant, à tout âge, doit honneur et respect à ses père et mère.

[Art. 371 repealed and replaced by s. 7 of Act 26 of 1980.]

371-1. Il reste sous leur autorité jusqu'à sa majorité ou son émancipation par mariage.

[Art. 371-1 repealed and replaced by s. 7 of Act 26 of 1980.]

371-2. L'autorité appartient aux père et mère pour protéger l'enfant dans sa sécurité, sa santé, sa moralité.

Ils ont à son égard droit et devoir de garde, de surveillance et l'éducation.

[Art. 371-2 repealed and replaced by s. 7 of Act 26 of 1980.]

371-3. Sous réserve de dispositions spéciales contraires aux règles établies par le présent article, l'enfant ne peut sans permission des père et mère, quitter la maison familiale et il ne peut en être retiré que dans les cas de nécessité que détermine la loi.

Toutefois le Juge en Chambre peut autoriser l'enfant à quitter la maison familiale, à la requête de l'un des deux parents, lorsque le refus abusif de l'autre n'est pas justifié par l'intérêt de l'enfant.

[Art. 371-3 repealed and replaced by s. 7 of Act 26 of 1980.]

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.

[Art. 371-4 inserted by s. 2 of Act 24 of 2007 w.e.f. 22 December 2007.]

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

[Art. 371-5 inserted by s. 2 of Act 24 of 2007 w.e.f. 22 December 2007.]

SECTION PREMIÈRE

DE L'EXERCICE DE L'AUTORITÉ PARENTALE

372. Pendant le mariage, les père et mère exercent en commun leur autorité.

Cependant, en cas de séparation de fait des père et mère, le Juge en Chambre saisi par l'un des époux, ou la Cour Suprême à l'occasion d'un litige opposant les deux époux, statue sur la garde de l'enfant, en tenant compte exclusivement de l'avantage et de l'intérêt de celui-ci. L'autorité parentale est alors exercée par celui des père et mère à qui la garde a été confiée, sauf le droit de visite de l'autre.

[Art. 372 repealed and replaced by s. 7 of Act 26 of 1980; s. 10 of Act 8 of 1980; s. 3 of Act 7 of 1983.]

372-1. Si les père et mère ne parvenaient pas à s'accorder sur ce qu'exige l'intérêt de l'enfant, la pratique qu'ils avaient précédemment pu suivre dans des occasions semblables leur tiendrait lieu de règle. A défaut d'une telle pratique ou en cas de contestation sur son existence ou son bien fondé, l'époux le plus diligent pourra saisir le Juge en Chambre qui statuera après avoir tenté de concilier les parties.

[Art. 372-1 repealed and replaced by s. 7 of Act 26 of 1980.]

372-2. A l'égard des tiers de bonne foi, chacun des père et mère est réputé agir avec l'accord de l'autre, quand il fait seul un acte usuel de l'autorité parentale relativement à la personne de l'enfant.

[Art. 372-2 repealed and replaced by s. 7 of Act 26 of 1980; amended by s. 10 of Act 26 of 1999.]

373. Perd l'exercice de l'autorité parentale ou en est provisoirement privé celui des père et mère qui se trouve dans l'un des cas suivants—

- 1° S'il est hors d'état de manifester sa volonté, en raison de son incapacité, de son absence, de son éloignement ou de toute autre cause;
- 2° Si un jugement de déchéance ou de retrait a été prononcé contre lui, pour ceux de ses droits qui lui ont été retirés;
- 3° S'il a fait l'objet d'une condamnation pour abandon d'enfants.

[Art. 373 repealed and replaced by s. 7 of Act 26 of 1980.]

373-1. Si l'un des père et mère décède ou se trouve dans un des cas énumérés par l'article 373, l'exercice de l'autorité parentale est dévolu en entier à l'autre.

[Art. 373-1 repealed and replaced by s. 7 of Act 26 of 1980.]

373-2. Si les père et mère sont divorcés ou séparés de corps, l'autorité parentale est exercée par celui d'entre eux à qui la Cour Suprême confie la garde de l'enfant, sauf le droit de visite de l'autre.

Lorsque la Cour Suprême confie la garde à un autre parent ou à une tierce personne, elle détermine dans sa décision l'étendue des pouvoirs dont disposera celui-ci, tant à l'égard de la personne que des biens de l'enfant ainsi que les conditions, limitations et contrôles auxquels sera soumis l'exercice de ces pouvoirs. En ce cas, les attributs de l'autorité parentale autres que ceux dévolus à celui qui a la garde de l'enfant, continuent d'être exercés par les père et mère.

La Cour Suprême peut aussi décider que l'autre parent ou la tierce personne, à qui la garde de l'enfant a été confiée, disposera des mêmes pouvoirs que ceux d'un tuteur et que leur exercice sera soumis aux mêmes conditions, limitations et contrôles.

[Art. 373-2 repealed and replaced by s. 7 of Act 26 of 1980.]

373-3. S'il ne reste plus ni père ni mère en état d'exercer l'autorité parentale, il y aura lieu à l'ouverture d'une tutelle.

[Art. 373-3 repealed and replaced by s. 7 of Act 26 of 1980.]

374. Sur l'enfant naturel, l'autorité parentale est exercée par celui des père et mère qui l'a volontairement reconnu, s'il n'a été reconnu que par l'un d'eux.

Si les père et mère qui ont, l'un et l'autre, volontairement reconnu l'enfant naturel, mènent une vie commune et logent dans une même résidence, l'autorité parentale est exercée conjointement par les deux, suivant les règles établies par les articles 372 à 373-1.

Si les père et mère qui ont, l'un et l'autre volontairement reconnu l'enfant naturel, ne logent pas dans la même résidence, l'autorité parentale est exercée par celui d'entre eux avec qui l'enfant vit habituellement, sauf le droit de visite de l'autre.

En cas de contestation, notamment à la suite de la séparation des père et mère, la Cour Suprême, à la demande du père ou de la mère, statue sur la garde de l'enfant naturel, en tenant compte exclusivement de l'avantage et de l'intérêt de celui-ci. La Cour Suprême peut notamment pour le plus grand avantage de l'enfant naturel, confier la garde de celui-ci à un autre parent ou à une tierce personne ayant accepté cette charge, dont elle détermine l'étendue des pouvoirs suivant les règles établies par les alinéas 2 et 3 de l'article 373-2.

[Art. 374 repealed and replaced by s. 7 of Act 26 of 1980; s. 11 of Act 8 of 1980.]

374-1. Les mêmes règles sont applicables, à défaut de reconnaissance volontaire, quand la filiation est établie par jugement soit à l'égard des deux parents, soit à l'égard d'un seul d'entre eux.

Toutefois, en statuant sur l'une ou l'autre filiation, la Cour Suprême peut toujours décider de confier la garde à un autre parent ou à une tierce personne ayant accepté cette charge, dont elle détermine l'étendue des pouvoirs suivant les règles établies par les alinéas 2 et 3 de l'article 373-2.

[Art. 374-1 repealed and replaced by s. 7 of Act 26 of 1980.]

SECTION DEUXIÈME

DE LA DÉCHÉANCE ET DU RETRAIT PARTIEL DE L'AUTORITÉ PARENTALE

375. Peuvent être déchus de l'autorité parentale les père et mère qui sont condamnés, soit comme auteurs, co-auteurs ou complices d'un crime ou délit commis sur la personne de leur enfant, soit comme co-auteurs ou complices d'un crime ou délit commis par leur enfant.

[Art. 375 repealed and replaced by s. 7 of Act 26 of 1980.]

376. Peuvent être déchus de l'autorité parentale, en dehors de toute condamnation pénale, les père et mère qui, soit par de mauvais traitements, soit par des exemples pernicieux d'ivrognerie habituelle, d'inconduite notoire ou de délinquance, soit par un défaut de soins ou un manque de direction, mettent manifestement en danger la sécurité, la santé ou la moralité de l'enfant.

L'action en déchéance est portée devant la Cour Suprême soit par le Ministère Public, soit par le père, la mère ou un autre membre de la famille ou le tuteur de l'enfant.

[Art. 376 repealed and replaced by s. 7 of Act 26 of 1980.]

377. La déchéance prononcée en vertu de l'article 375 ou 376 porte de plein droit sur tous les attributs, tant patrimoniaux que personnels, se rattachant à l'autorité parentale; à défaut d'autre détermination, elle s'étend à tous les enfants mineurs déjà nés ou à naître.

Elle emporte, pour l'enfant, dispense de l'obligation alimentaire, par dérogation aux articles 205 à 207, sauf disposition contraire dans la décision de déchéance.

[Art. 377 repealed by s. 12 of Act 8 of 1980; repealed and replaced by s. 7 of Act 26 of 1980.]

378. La décision peut, au lieu de la déchéance totale, se borner à prononcer un retrait partiel de droits, limité aux attributs qu'elle spécifie. Elle peut aussi décider que la déchéance ou le retrait n'auront d'effet qu'à l'égard de certains des enfants déjà nés.

[Art. 378 repealed and replaced by s. 7 of Act 26 of 1980.]

379. En prononçant la déchéance ou le retrait du droit de garde, la Cour Suprême devra, si l'autre parent est décédé ou s'il a perdu l'exercice de l'autorité parentale, désigner un autre parent ou une tierce personne ayant accepté cette charge, qui assumera la garde de l'enfant et dont elle déterminera l'étendue des pouvoirs suivant les règles établies par les alinéas 2 et 3 de l'article 373-2.

[Art. 379 repealed and replaced by s. 7 of Act 26 of 1980.]

380. Le père ou la mère qui a fait l'objet d'une déchéance ou d'un retrait de droits, pourra, par requête, obtenir de la Cour Suprême, en justifiant de circonstances nouvelles, que lui soient restitués, en tout ou partie, les droits dont il avait été privé.

La demande en restitution ne pourra être formée qu'un an plus tôt après que la décision prononçant la déchéance ou le retrait est devenue irrévocable; en cas de rejet, elle ne pourra être renouvelée qu'après une nouvelle période d'un an.

[Art. 380 repealed and replaced by s. 7 of Act 26 of 1980.]

CHAPITRE DEUXIÈME

DE L'AUTORITÉ PARENTALE RELATIVEMENT AUX BIENS DE L'ENFANT

381. Les père et mère ont, sous les distinctions qui suivent, l'administration et la jouissance des biens de leur enfant.

[Art. 381 repealed and replaced by s. 7 of Act 26 of 1980.]

382. L'administration légale est exercée conjointement par le père et la mère lorsqu'ils exercent en commun l'autorité parentale et, dans les autres cas, soit par le père, soit par la mère, selon les dispositions du chapitre précédent.

[Art. 382 repealed and replaced by s. 7 of Act 26 of 1980; s. 11 of Act 26 of 1999.]

383. La jouissance légale est attachée à l'administration légale: elle appartient soit aux deux parents conjointement, soit à celui des père et mère qui à la charge de l'administration.

[Art. 383 repealed and replaced by s. 7 of Act 26 of 1980; s. 12 of Act 26 of 1999.]

384. Le droit de jouissance cesse—

- 1° Dès que l'enfant a seize ans accomplis;
- 2° Par les causes qui mettent fin à l'autorité parentale, ou même plus spécialement par celles qui mettent fin à l'administration légale;
- 3° Par les causes qui emportent l'extinction de tout usufruit.

[Art. 384 amended by s. 4 of Act 43 of 1975; repealed and replaced by s. 13 of Act 8 of 1980; s. 7 of Act 26 of 1980.]

385. Les charges de cette jouissance sont—

- 1° Celles auxquelles sont tenus en général les usufruitiers;
- 2° La nourriture, l'entretien et l'éducation de l'enfant selon sa fortune;
- 3° Les dettes grevant la succession recueillie par l'enfant, en tant qu'elles auraient dû être acquittées sur les revenus.

[Art. 385 repealed and replaced by s. 7 of Act 26 of 1980.]

386. Cette jouissance n'aura pas lieu au profit de l'époux survivant qui aurait omis de faire inventaire authentique ou sous seing privé, des biens échus au mineur.

[Art. 386 repealed and replaced by s. 7 of Act 26 of 1980.]

387. La jouissance légale ne s'étend pas aux biens que l'enfant peut acquérir par son travail, ni à ceux qui lui sont donnés ou légués sous la condition expresse que les père et mère n'en jouiront pas.

[Art. 387 repealed and replaced by s. 7 of Act 26 of 1980.]

DE L'ORGANISATION DE LA TUTELLE

I – DU JUGE EN CHAMBRE

397. Indépendamment des fonctions et des pouvoirs spéciaux qui lui sont expressément conférés par les dispositions du présent chapitre, le Juge en Chambre exerce une surveillance générale sur les administrations légales et les tutelles.

S'il l'estime nécessaire, il fait appel au service du Ministère Public.

Il peut convoquer les administrateurs légaux, tuteurs et autres organes tutélaires, leur réclamer des éclaircissements, leur adresser des observations, prononcer contre eux des injonctions.

Ceux qui, sans excuses légitimes, n'auront pas déféré à ses injonctions, pourront être poursuivis et condamnés conformément au droit commun.

[Art. 397 repealed and replaced by s. 13 of Act 37 of 1980.]

398. Les décisions du Juge en Chambre, prises en application du présent chapitre, sont immédiatement exécutoires.

Elles peuvent toutefois, à la diligence du tuteur, du subrogé tuteur ou d'un membre de la famille du mineur, faire à tout moment, l'objet d'un recours par voie de motion devant la Cour Suprême.

[Art. 398 repealed and replaced by s. 13 of Act 37 of 1980.]

399. Le Juge en Chambre peut, avec l'autorisation du Chef juge, déléguer ses fonctions au Master ou à un officier public exerçant les fonctions de Chief Registrar.

En ce qui concerne les territoires mauriciens autres que l'île Maurice, notamment Rodrigues, les fonctions et les pouvoirs conférés par le présent chapitre au Juge en Chambre seront exécutés par les magistrats ayant juridiction sur ces territoires.

[Art. 399 repealed and replaced by s. 13 of Act 37 of 1980; amended by s. 71 (3) of Act 9 of 1983.]

II – DU TUTEUR

400. Le droit individuel de choisir un tuteur, parent ou non, n'appartient qu'au dernier mourant des père et mère, s'il a conservé, au jour de sa mort, l'exercice de l'administration légale.

[Art. 400 repealed and replaced by s. 13 of Act 37 of 1980.]

401. Cette nomination ne peut être faite que dans la forme d'un testament ou d'une déclaration spéciale devant notaire.

[Art. 401 repealed and replaced by s. 13 of Act 37 of 1980.]

402. Lorsqu'il n'a pas été choisi de tuteur par le dernier mourant des père et mère, la tutelle est déferée à celui des ascendants qui est du degré le plus rapproché.

[Art. 402 repealed and replaced by s. 13 of Act 37 of 1980.]

403. En cas de concours entre ascendants du même degré, i.e Juge en Chambre désigne celui d'entre eux qui sera tuteur.

[Art. 403 repealed and replaced by s. 13 of Act 37 of 1980.]

404. Lorsqu'il n'y a ni tuteur testamentaire ni ascendant tuteur ou lorsque celui qui avait été désigné en cette qualité vient à cesser ses fonctions, le Juge en Chambre nomme un tuteur après avis, s'il y a lieu, du Ministère Public.

[Art. 404 repealed and replaced by s. 13 of Act 37 of 1980.]

405. Le tuteur est désigné pour la durée de la tutelle. Néanmoins le Juge en Chambre peut d'office ou à la requête de toute personne, pourvoir au remplacement du tuteur en cours de tutelle, si des circonstances graves le requièrent ou s'il apparaît, après enquête et avoir entendu celui-ci ainsi que le subrogé tuteur, que cette mesure est souhaitable ou nécessaire dans l'intérêt du mineur.

[Art. 405 repealed and replaced by s. 16 of Act 8 of 1980; repealed and replaced by s. 13 of Act 37 of 1980.]

406. Le tuteur élu ou désigné en application des articles 400 à 403 n'est pas tenu d'accepter la tutelle. Cependant, les ascendants du mineur ne peuvent refuser la tutelle qu'avec l'assentiment du Juge en Chambre.

[Art. 406 repealed and replaced by s. 13 of Act 37 of 1980.]

407. Au cas où personne n'accepterait la tutelle, elle sera déferée de plein droit au Curateur aux biens vacants.

En ce cas, il n'y aura lieu ni à la nomination d'un subrogé tuteur ni à l'inscription d'une hypothèque légale.

[Art. 407 repealed and replaced by s. 13 of Act 37 of 1980; amended by s. 71 (4) of Act 9 of 1983.]

408. Les différentes charges de la tutelle peuvent être remplies par toutes personnes, sans distinction de sexe, mais sous réserve des causes d'incapacité, exclusion, destitution ou récusation exprimées ci-dessous.

[Art. 408 repealed and replaced by s. 13 of Act 37 of 1980.]

409. Sont incapables des différentes charges de la tutelle—

1° Les mineurs;

2° Les majeurs en tutelle, les aliénés et les majeurs en curatelle.

[Art. 409 repealed and replaced by s. 13 of Act 37 of 1980; amended by s. 71 (10) of Act 9 of 1983.]

410. Sont exclus ou destitués de plein droit des différentes charges de la tutelle—

1° Ceux qui ont été condamnés à une peine afflictive ou infamante;

2° Ceux qui ont été déchus de l'autorité parentale.

[Art. 410 repealed and replaced by s. 13 of Act 37 of 1980.]

411. Peuvent être déchus ou destitués des différentes charges de la tutelle, les gens d'une inconduite notoire et ceux dont l'improbité, la négligence habituelle ou l'inaptitude aux affaires aurait été constatée.

[Art. 411 repealed and replaced by s. 13 of Act 37 of 1980.]

412. Ceux qui ont ou dont les père et mère ont avec le mineur un litige mettant en cause l'état de celui-ci ou une partie notable de ses biens, doivent se récuser, et peuvent être recusés, des différentes charges tutélaires.

[Art. 412 repealed and replaced by s. 13 of Act 37 of 1980.]

III – DES AUTRES ORGANES DE LA TUTELLE

413. Le Juge en Chambre peut, en considérant les aptitudes des intéressés et la consistance du patrimoine à administrer, décider que la tutelle sera divisée entre un tuteur à la personne et un tuteur aux biens.

Les tuteurs ainsi nommés seront indépendants, et non responsables l'un envers l'autre, dans leurs fonctions respectives, à moins qu'il n'en ait été autrement ordonné par le Juge en Chambre.

[Art. 413 repealed and replaced by s. 13 of Act 37 of 1980.]

414. La tutelle est une charge personnelle.

Elle ne se communique point au conjoint du tuteur, Si, pourtant, ce conjoint s'immisce dans la gestion du patrimoine pupillaire, il devient responsable solidairement avec le tuteur de toute la gestion postérieure à son immixtion.

[Art. 414 repealed and replaced by s. 13 of Act 37 of 1980.]

415. La tutelle ne passe point aux héritiers du tuteur. Ceux-ci seront seulement responsables de la gestion de leur auteur; et, s'il sont majeurs, ils seront tenus à la continuer jusqu'à la nomination d'un nouveau tuteur.

[Art. 415 repealed and replaced by s. 13 of Act 37 of 1980.]

416. Dans toute tutelle, il y aura un subrogé tuteur, nommé par le Juge en Chambre.

[Art. 416 repealed and replaced by s. 13 of Act 37 of 1980.]

417. Le Juge en Chambre choisit le subrogé tuteur en considération de ses seules aptitudes et peut nommer un membre quelconque de la famille du mineur ou même une tierce personne ayant accepté cette charge.

Cependant si le tuteur n'est parent ou allié du mineur que dans une ligne, le subrogé tuteur est pris autant que possible, dans l'autre ligne.

[Art. 417 repealed and replaced by s. 13 of Act 37 of 1980.]

418. Les fonctions du subrogé tuteur consisteront à surveiller la gestion tutélaire et à représenter le mineur lorsque ses intérêts seront en opposition avec ceux du tuteur.

S'il constate des fautes dans la gestion du tuteur, il doit, à peine d'engager sa responsabilité personnelle, en informer immédiatement le Juge en Chambre.

[Art. 418 repealed and replaced by s. 13 of Act 37 of 1980.]

419. Le subrogé tuteur ne remplace pas de plein droit le tuteur qui est mort ou est devenu incapable, ou qui abandonne la tutelle; mais il doit alors, sous peine des dommages- intérêts qui pourraient en résulter pour le mineur, provoquer la nomination d'un nouveau tuteur.

[Art. 419 repealed and replaced by s. 13 of Act 37 of 1980.]

420. La charge du subrogé tuteur cessera à la même époque que celle du tuteur.

Cependant le Juge en Chambre pourra d'office ou à la requête de toute personne, pourvoir au remplacement du subrogé tuteur en cours de tutelle, si des circonstances graves les requièrent ou s'il apparaît, après enquête et après avoir entendu celui-ci, que cette mesure est souhaitable ou nécessaire dans l'intérêt du mineur.

[Art. 420 repealed and replaced by s. 13 of Act 37 of 1980.]

421. Indépendamment des fonctions et des pouvoirs spéciaux qui lui sont expressément conférés par les dispositions des articles 407 et 444, le Curateur aux biens vacants, peut exercer un contrôle sur la gestion tutélaire, dans les conditions et selon les règles établies par les articles 422 et 423.

[Art. 421 repealed and replaced by s. 13 of Act 37 of 1980.]

422. Nonobstant toutes dispositions contraires, lorsque le patrimoine immobilier du tuteur n'est pas suffisant pour garantir le mineur ou lorsque l'inscription d'une hypothèque légale sur les biens du tuteur risque de porter atteinte aux intérêts de celui-ci, le Juge en Chambre peut accepter toutes autres garanties ou, à défaut, décider de soumettre la gestion tutélaire au contrôle du Curateur aux biens vacants.

En ce cas, il n'y aura pas lieu à l'inscription d'une hypothèque légale sur les biens du tuteur.

[Art. 422 repealed and replaced by s. 13 of Act 37 of 1980.]

423. Nonobstant toutes dispositions contraires, lorsque le Juge en Chambre décide, conformément à l'article 422, de soumettre la gestion tutélaire au contrôle du Curateur aux biens vacants, cette décision est immédiatement exécutoire et ne peut faire l'objet d'aucun recours.

En application de celle-ci, le tuteur doit aussitôt se dessaisir de toutes sommes d'argent qui appartiennent au mineur et les remettre au Curateur aux biens vacants qui aura la charge de créditer un compte ouvert au nom du mineur dans une banque quelconque y compris une banque d'Etat.

Le Curateur aux biens vacants aura le pouvoir d'ordonner aux banques de mettre à la disposition du tuteur les sommes ainsi déposées dont il fixera le montant nécessaire à la subsistance, à l'entretien et à l'éducation du mineur.

Cependant, lorsque les sommes déposées seront destinées à l'investissement, le Curateur aux biens vacants n'ordonnera leur versement au tuteur qu'après que celui-ci ait obtenu l'autorisation du Juge en Chambre.

[Art. 423 repealed and replaced by s. 13 of Act 37 of 1980.]

SECTION TROISIÈME

[Section Troisième repealed and replaced by s. 13 of Act 37 of 1980.]

DU FONCTIONNEMENT DE LA TUTELLE

424. Le Juge en Chambre règle les conditions générales de l'entretien et de l'éducation de l'enfant, en ayant égard à la volonté que les père et mère avaient pu exprimer à ce sujet.

[Art. 424 repealed and replaced by s. 13 of Act 37 of 1980.]

425. Le tuteur prendra soin de la personne du mineur et le représentera dans tous les actes civils, sauf les cas dans lesquels la loi ou l'usage autorise les mineurs à agir eux mêmes.

Il administrera ses biens en bon père de famille et répondra des dommages et intérêts qui pourraient résulter d'une mauvaise gestion.

Il ne peut ni accepter la cession d'aucun droit ou créance contre son pupille, ni acheter les biens du mineur, ni les prendre à loyer, à moins que le Juge en Chambre n'ait autorisé le subrogé tuteur à lui en passer bail.

[Art. 425 repealed and replaced by s. 13 of Act 37 of 1980.]

426. Le tuteur administre et agit en cette qualité du jour de sa nomination, si elle a été faite en sa présence; sinon, du jour qu'elle lui a été notifiée.

Dans les dix jours qui suivront, il requerra la levée des scellés, s'ils ont été apposés, et fera procéder immédiatement à l'inventaire des biens du mineur en présence du subrogé tuteur. Expédition de cet inventaire sera transmise au Juge en Chambre.

A défaut d'inventaire dans le délai prescrit, le Juge en Chambre pourra y faire procéder, à la requête du subrogé tuteur ou de toute autre personne.

Le défaut d'inventaire autorisera le pupille à faire la preuve de la valeur et de la consistance de ses biens par tous les moyens, y compris la commune renommée.

Si le mineur doit quelque chose au tuteur, celui-ci devra le déclarer dans l'inventaire à peine de déchéance, et ce, sur la réquisition que l'officier public sera tenu de lui en faire, et dont mention sera portée au procès-verbal.

[Art. 426 repealed and replaced by s. 13 of Act 37 of 1980.]

427. Lors de l'entrée en exercice de toute tutelle, le Juge en Chambre réglera par aperçu, et selon l'importance des biens régis, la somme annuellement disponible pour l'entretien et l'éducation du pupille, les dépenses d'administration de ses biens, ainsi qu'éventuellement les indemnités qui pourront être allouées au tuteur.

Il ordonnera au tuteur, s'il y a lieu, de procéder à la vente aux enchères reçues par un officier public, et après des affiches ou publications dont le procès-verbal de vente fera mention, de tous les meubles du mineur qu'il désignera.

Il pourra aussi autoriser le tuteur à porter en compte les salaires des administrateurs particuliers ou agents dont celui-ci demandera le concours, sous sa propre responsabilité.

[Art. 427 repealed and replaced by s. 13 of Act 37 of 1980.]

428. Le Juge en Chambre détermine la somme à laquelle commencera, pour le tuteur, l'obligation d'employer les capitaux liquides du mineur, ainsi que l'excédent de ses revenus. Cet emploi devra être fait dans le délai de six mois, sauf prorogation par le Juge en Chambre. Passé ce délai, le tuteur est de plein droit comptable des intérêts.

[Art. 428 repealed and replaced by s. 13 of Act 37 of 1980.]

429. Le tuteur accomplit seul, comme représentant du mineur, tous les actes d'administration.

Il peut ainsi aliéner, à titre onéreux, les meubles d'usage courant et les biens ayant le caractère de fruits.

[Art. 429 repealed and replaced by s. 13 of Act 37 of 1980.]

430. Le tuteur ne peut donner quittance des capitaux qu'il reçoit pour le compte du pupille qu'avec le contreseing du subrogé tuteur.

Ces capitaux seront déposés par lui à un compte ouvert, au nom du mineur et portant mention de sa minorité, dans une banque quelconque y compris une banque d'Etat.

Le dépôt doit être fait dans le délai d'un mois à dater de la réception des capitaux; ce délai passé, le tuteur est de plein droit débiteur des intérêts.

[Art. 430 repealed and replaced by s. 13 of Act 37 of 1980.]

431. Le tuteur ne peut, sans y être autorisé par le Juge en Chambre, faire des actes de disposition au nom du mineur.

Sans cette autorisation, Il ne peut, notamment, emprunter pour le pupille, ni aliéner ou grever de droits réels les immeubles, les fonds de commerce, les valeurs mobilières et autres droits incorporels, non plus que les meubles précieux ou qui constitueraient une part importante du patrimoine pupillaire.

[Art. 431 repealed and replaced by s. 13 of Act 37 of 1980.]

432. Le Juge en Chambre, en donnant son autorisation, considère la nécessité de l'acte de disposition ou l'avantage qui en résulte pour le mineur et tient compte de l'intérêt des tiers, Il prescrit toutes les mesures qu'il juge utiles, en particulier quant au remploi des fonds.

[Art. 432 repealed and replaced by s. 13 of Act 37 of 1980.]

433. La vente d'un immeuble appartenant à un mineur, ou d'actions ou de parts sociales lui appartenant dans un immeuble, ne peut se faire que par acte notarié, aux prix et stipulations autorisés ou déterminés par le Juge en Chambre.

[Art. 433 repealed and replaced by s. 13 of Act 37 of 1980.]

434. L'autorisation exigée par l'article 431 pour l'aliénation des biens du mineur ne s'applique point au cas où un jugement aurait ordonné la l'incitation à la demande d'un copropriétaire par Indivis.

[Art. 434 repealed and replaced by s. 13 of Act 37 of 1980.]

435. Le tuteur ne peut accepter une succession échue au mineur que sous bénéfice d'inventaire. Toutefois, le Juge en Chambre pourra l'autoriser à accepter purement et simplement, si l'actif dépasse manifestement le passif.

Le tuteur ne peut répudier une succession échue au mineur sans une autorisation du Juge en Chambre.

[Art. 435 repealed and replaced by s. 13 of Act 37 of 1980.]

436. Dans le cas où la succession répudiée au nom du mineur n'aurait pas été acceptée par un autre, elle pourra être reprise, soit par le tuteur autorisé à cet effet par le Juge en Chambre, soit par le mineur devenu majeur, mais dans l'état où elle se trouvera lors de la reprise et sans pouvoir attaquer les ventes et autres actes qui auraient été légalement faits durant la vacance.

[Art. 436 repealed and replaced by s. 13 of Act 37 of 1980.]

437. Le tuteur peut accepter sans autorisation du Juge en Chambre, les donations et les legs particuliers advenus au pupille, à moins qu'ils ne soient grevés de charges.

[Art. 437 repealed and replaced by s. 13 of Act 37 of 1980.]

438. Le tuteur peut, sans autorisation, introduire en justice une action relative aux droits patrimoniaux du mineur. Il peut de même se désister de cette instance. Le Juge en Chambre peut lui enjoindre d'introduire une action, de s'en désister ou de faire des offres aux fins de désistement, à peine d'engager sa responsabilité.

Le tuteur peut défendre seul à une action introduite contre le mineur, mais il ne peut y acquiescer qu'avec l'autorisation du Juge en Chambre.

L'autorisation du Juge en Chambre est toujours requise pour les actions relatives à des droits qui ne sont point patrimoniaux.

[Art. 438 repealed and replaced by s. 13 of Act 37 of 1980.]

2. The Criminal Code Act 1838

Section 260. Family abandonment

- (1) Any father or mother who, without any serious reason, abandons for more than 2 months the family residence and eludes all or part of his or her moral or material obligations resulting from parental authority shall commit an offence.
- (2) Any husband who without serious reason, voluntarily abandons for more than 2 months his wife whom he knows to be pregnant shall commit an offence.

- (3) Any father or mother who, through ill-treatment, pernicious examples of habitual drunkenness or notorious ill-conduct, lack of care or direction, seriously endangers the health, security or morality of any of his minor children shall commit an offence.
- (4) A partner of any father or mother who, through any means specified in subsection (3), seriously endangers the health, security or morality of any of his partner's minor children shall commit an offence.
- (5) Any person who commits an offence under this section shall, on conviction, be liable to imprisonment for a term not exceeding 5 years and to a fine not exceeding 100,000 rupees.

[S.260 added by Act 13 of 1998; amended by s.8 of Act 36 of 2008 w.e.f 6 December 2008]

Section 261. Failure to pay alimony

- (1) Any person who, having been judicially ordered to pay alimony to his spouse or children, voluntarily fails, during 2 months, to pay the full amount of alimony so ordered to his spouse or children, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 2 years.
- (2) Any default in the payment of alimony shall, until the contrary is proved, be presumed to be voluntary.
- (3) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under subsection (1).
- (4) A prosecution for an offence under this section shall take place in the district in which the person entitled to the payment of the alimony is ordinarily resident.

[S.261 added by Act 13 of 1998; amended by s.8 of Act 36 of 2008 w.e.f 6 December 2008]

Section 262. Change of domicile

Any person who, having the custody of a minor, fails to notify to any person who, by virtue of a judgment, has a right of visit or lodging in respect of the said minor, any change of his domicile or of the residence of the minor, shall commit an offence and shall, on conviction be liable to imprisonment for a term not exceeding one year and to a fine not exceeding 50,000 rupees.

[S.262 added by Act 13 of 1998; amended by s.8 of Act 36 of 2008 w.e.f 6 December 2008]

Article 19 of the Convention on the Rights of the Child

▪ ***Protection from all forms of violence***

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.

▪ ***Mauritian laws related to Article 19***

1. The Constitution of Mauritius

Section 7. Protection from inhuman treatment

- (1) No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.

2. The Child Protection Act 1994

Section 2. Interpretation

In this Act—

“child” means any unmarried person under the age of 18;

“child mentor” means a person registered as such by the Permanent Secretary;

“harm” includes sexual, physical, psychological, emotional or moral injury, neglect, ill-treatment, impairment of health or development;

“parent” means the father, mother or legal guardian of a child and includes any person in charge of a child;

Section 3. Enquiry

Where the Permanent Secretary has reasonable cause to suspect that a child is being exposed to harm and is in need of assistance, he may summon any person, with or without the child, to give evidence for the purpose of enquiring into the matter.

Section 3A. Child Mentoring Scheme

- (1) The Minister shall set up a Scheme which shall be known as the Child Mentoring Scheme.

- (2) The object of the Scheme shall be to assist children between the ages of 10 and 16 who—
- (a) are victims of neglect;
 - (b) suffer from mild behavioural problems;
 - (c) are in distress; or
 - (d) have problems of social adaptation.
- (3) (a) No child shall be placed under the Scheme unless there is a mentoring order in relation to him.
- (b) (i) Where a child is placed under the Scheme, he shall be assigned a child mentor who shall provide him with guidance, advice and such sense of stability as may be lacking in the life of the child.
- (ii) A child mentor shall not be assigned more than 3 children under the Scheme.
- (c) A child placed under the Scheme shall remain in the custody of his parents.
- (4) (a) The Scheme shall be administered by the Permanent Secretary, with the assistance of the Committee.
- (b) The functions of the Permanent Secretary under the Scheme shall be to -
- (i) receive and consider applications from volunteers for registration as child mentor;
 - (ii) register, in consultation with the Committee, child mentors;
 - (iii) provide child mentors with such guidance and assistance as may be necessary for them to effectively carry out their functions and duties under a mentoring order;
 - (iv) identify children who may need assistance and protection and apply to the District Magistrate for a mentoring order where he deems it necessary;
 - (v) supervise all placements of children and activities of child mentors under the Scheme;
 - (vi) forward to the Court a quarterly progress report, or any other report at such interval as may be decided by the Court, on every child subject of a mentoring order;
 - (vii) carry out such other functions as may be necessary for the effective implementation of the Scheme.

[S.3A inserted by s.4 of Act 40 of 2008 w.e.f 20 December 2008]

Section 3B. Child Mentoring Committee

- (1) There shall be, for the purposes of this Act, a Child Mentoring Committee, which shall consist of -
- (a) a Chairperson to be appointed by the Minister;

- (b) a representative of the Ministry;
 - (c) a representative of the Attorney-General's Office;
 - (d) a representative of the Commissioner of Police;
 - (e) a representative of the Ministry responsible for the subject of education;
 - (f) a psychologist, to be appointed by the Permanent Secretary; and
 - (g) 2 representatives of non-governmental organisations who have wide experience in issues relating to children, to be appointed by the Minister.
- (2) The functions of the Committee shall be to
- (a) advise the Permanent Secretary and assist him in administering and implementing the Scheme;
 - (b) review at regular intervals the criteria for the recruitment of volunteers as child mentors and advise the Permanent Secretary accordingly;
 - (c) conduct interviews for the recruitment of child mentors and make recommendations to the Permanent Secretary;
 - (d) consider the suitability of a child mentor in relation to a child for the purpose of a mentoring order;
 - (e) periodically assess and evaluate the progress of children placed under the Scheme and submit progress reports to the Permanent Secretary;
 - (f) review at regular intervals the Code of Ethics and advise the Permanent Secretary accordingly; and
 - (g) carry out such other functions as the Permanent Secretary may assign or delegate to it for the proper administration and effective implementation of the Scheme.
- (3) The Committee may co-opt such other persons with relevant expertise not already available in the Committee, and set up such subcommittees as it considers necessary to assist it in performing its functions under this Act.
- (4) (a) There shall be a Secretary to the Committee who shall be a public officer appointed by the Permanent Secretary.
- (b) The duties of the Secretary to the Committee shall be to –
- (i) ensure the smooth coordination of the activities of the Committee and the Permanent Secretary;
 - (ii) record all deliberations of the Committee;
 - (iii) assist the Permanent Secretary in keeping a register of child mentors, including a list of child mentors whose registration has been cancelled; and
 - (iv) carry out such other duties as may be assigned to him by the Committee.
- (5) The Committee shall meet at such place and time as the Chairperson may determine.

- (6) Four members of the Committee shall constitute a quorum at any meeting of the Committee.
- (7) Subject to the other provisions of this section, the Committee shall regulate its proceedings in such manner as it thinks fit, provided that a co-opted member shall have no voting rights.
- (8) The members of the Committee and co-opted persons shall be paid such fees and allowance as may be determined by the Minister.

[S.3B inserted by s.4 of Act 40 of 2008 w.e.f 20 December 2008]

Section 3C. Child mentor

- (1) A person shall not be registered or act as a child mentor unless –
 - (a) he has attained the age of 30;
 - (b) he is a person of good character and reputation, with relevant qualifications or proven experience in matters of children’s rights, child development, or child psychology;
 - (c) he has demonstrated ability to work in a team;
 - (d) he has good communication and listening skills;
 - (e) he is in good physical and mental health;
 - (f) he enjoys a stable family life; and
 - (g) he is willing to work flexible hours.
- (2) A child mentor who has been assigned a child pursuant to a mentoring order shall –
 - (a) not enter into any contract with the child unless so authorised by a mentoring order;
 - (b) comply with any order made by the Court under the mentoring order;
 - (c) by the end of each month, submit to the Permanent Secretary, a report on the programme of work undertaken with the child;
 - (d) submit quarterly progress reports to the Permanent Secretary on the situation and evolution of the child;
 - (e) where he reasonably believes that the child is suffering or is likely to suffer harm, immediately report the matter to the Permanent Secretary;
 - (f) notify, at least 5 days in advance, the Permanent Secretary of weekly activities he intends to undertake for the purpose of mentoring;
 - (g) abide by such requirements as may be prescribed for the effective implementation of the Scheme.

[S.3C inserted by s.4 of Act 40 of 2008 w.e.f 20 December 2008]

Section 3D. Mentoring order

(1) Where the Permanent Secretary reasonably believes that—

- (a) a child may require assistance under the Scheme;
- (b) a child cannot adequately be dealt with under the Juvenile Offenders Act;
- (c) the parents of a child are refusing to take or cannot take any measures to provide the child with the assistance and support that he needs;
- (d) it is in the best interest of a child to be placed under the Scheme; and
- (e) there is no alternative means of providing assistance and support to a child,

he may, with or without the consent of the parents, apply to the District Magistrate, in such form as may be prescribed, for a mentoring order in order to have the child placed under the Scheme.

(2) Subsection (1) shall be without prejudice to the powers of the Permanent Secretary under section 4.

(3) Every application for a mentoring order shall, as far as possible, be accompanied by –

- (a) a report from the Permanent Secretary which shall specify the reasons why the child should be placed under the Scheme, the name of the child mentor who shall follow the child and the reasons why the child mentor has been chosen;
- (b) a psychological report; and
- (c) such other information or document which may be relevant for the purpose of determining the application.

(4) Upon receipt of an application for a mentoring order, the District Magistrate shall cause a notice of the application to be served on the parents of the child, requiring them to appear before him on such day and time as may be specified in the notice; and in any case not later than 14 days from the date of the application, to show cause why the order applied for should not be made.

(5) (a) The District Magistrate may, for the purpose of determining an application for a mentoring order, summon and—

- (i) examine any parent of the child;
- (ii) examine the child mentor identified in order to ascertain his suitability as a child mentor in the particular case;
- (iii) examine such other person as he may consider appropriate and request such other information or report as he considers necessary;
- (iv) request such other information or report as he may consider appropriate.

(b) Any person who, in connection with any examination or request under paragraph

(a) –

- (i) refuses to furnish any information or document to the District Magistrate;

- (ii) refuses to answer to the best of his knowledge any question put to him by the District Magistrate; or
- (iii) knowingly gives to the District Magistrate false or misleading information or evidence,

shall commit an offence.

(6) (a) In determining an application for a mentoring order, the District Magistrate shall have regard to the following—

- (i) whether it is imperative that the child should be placed under the Scheme;
- (ii) whether there is any alternative means of providing assistance and support to the child;
- (iii) any undertaking given and measures taken by the parents to provide the child with the required assistance and support without him having to be placed under the Scheme, including the financial means of the parents to provide the child with assistance and support with the help of professionals;
- (iv) any hardship that may be caused to the parents of the child as a result of the mentoring order; and
- (v) any other matter which the Court may consider relevant.

(b) The District Magistrate shall—

- (i) before issuing a mentoring order, consult the child;
- (ii) issue a mentoring order only when it is in the best interest of the child to do so.

(7) (a) Where the District Magistrate is satisfied that the child should be placed under the Scheme, he shall issue a mentoring order which shall be in such form as may be prescribed.

(b) Every mentoring order shall -

- (i) specify the name of the child mentor;
- (ii) specify the time and place where the mentoring exercise shall take place;
- (iii) where appropriate, make provision for such other orders and give such directions as it may consider appropriate to the Permanent Secretary, the child mentor and the parents of the child.

(c) The District Magistrate may, for the purposes of paragraph (b)(ii), take the following factors into consideration -

- (i) the nature and gravity of the child's problem;
- (ii) the infrastructural facilities near the child's residence;
- (iii) the availability and preference of the parents; and
- (iv) such other matters as he may consider relevant.

- (d) A mentoring order shall remain in force for such period, not exceeding 12 months, as the District Magistrate may specify.
- (e) A District Magistrate may extend the mentoring order for such period of time, not exceeding 12 months, as he considers necessary.
- (8) (a) The Permanent Secretary or a parent may, at any time during which a mentoring order is in force, apply to the District Magistrate for a variation or discharge of the mentoring order, including the substitution of a child mentor by another child mentor.
- (b) The District Magistrate may vary or discharge a mentoring order, or substitute a child mentor by another child mentor where he is satisfied that it is in the best interest of the child to do so.
- (9) (a) Notwithstanding any other enactment, a mentoring order shall, while it is in force, confer on the Permanent Secretary the power to—
 - (i) summon any person, with or without the child, to give evidence for the purpose of verifying whether the child is suffering or likely to suffer harm;
 - (ii) enter, and where necessary by force and with the assistance of the police, any premises specified in the mentoring order, and search for the child, subject to a warrant being issued by a District Magistrate;
 - (iii) cause the child to undergo such medical examination or treatment as may be necessary for his welfare;
 - (iv) request police or medical assistance for the exercise of any power under the mentoring order;
 - (v) prevent a child mentor from continuing to mentor a child where he has reason to believe that the child mentor is not discharging his duties under this Act or is acting in breach of the Code of Ethics; and
 - (vi) carry out investigations into complaints against a child mentor or any activities of a child mentor.
- (b) The Commissioner of Police shall provide such assistance as may be necessary to the Permanent Secretary for the effective exercise of his powers under a mentoring order.
- (c) The owner, occupier or person in charge of any premises which the Permanent Secretary or any person lawfully assisting him enters under a mentoring order, shall provide the Permanent Secretary or the person lawfully assisting him with all reasonable facilities and assistance for the effective exercise of his powers under the mentoring order.
- (10) The parents or any person having an influence, control or authority upon a child subject of a mentoring order shall, where so requested, provide such assistance as is possible to the child mentor to enable him to effectively discharge his duties.

[S. 3D inserted by s.4 of Act 20 of 2008 w.e.f 20 December 2008]

Section 3E. Report on compliance

The District Magistrate may, in relation to any order made by him under section 3D and where he deems appropriate, direct the Permanent Secretary to report to him on the compliance of the said order, at such regular intervals as he thinks fit.

[S. 3E inserted by s.4 of Act 40 of 2008 w.e.f 20 December 2008]

Section 3F. Offence by child mentor

- (1) A child mentor who takes advantage of his position as a child mentor under a mentoring order and commits an offence under this Act or allows the commission of an offence under this Act, shall commit an offence and shall, on conviction, be liable to the appropriate sentence as provided for in section 18.
- (2) It shall not be a defence in any criminal case or action against a child mentor that he has been appointed as a child mentor under a mentoring order or registered as a child mentor by the Permanent Secretary.

[S.3F inserted by s.4 of Act 40 of 2008 w.e.f 20 December 2008]

Section 4. Emergency protection order

- (1) Where a District Magistrate is satisfied by information on oath that the Permanent Secretary has reasonable cause to believe that a child is suffering or likely to suffer significant harm, the District Magistrate shall issue an emergency protection order.
- (2) An information on oath, and an emergency protection order shall be in the form set out in the Second Schedule.
- (3) Notwithstanding any other enactment, an emergency protection order shall, while it is in force, confer on the Permanent Secretary authority to —
 - (a) summon any person with or without the child to give evidence for the purpose of verifying whether the child is suffering or likely to suffer significant harm;
 - (b) enter any premises specified in the order, where necessary by force, and search for the child, provided that the order or a copy thereof shall be produced to the occupier of the premises on request;
 - (c) remove or return the child to, or to prevent the child's removal from, any place of safety;
 - (d) where necessary for the welfare of the child, cause him to be submitted to medical examination or to urgent treatment;
 - (e) request police or medical assistance for the exercise of any power under the order.
- (4) The owner, occupier or person in charge of any premises which the Permanent Secretary or any person lawfully assisting him enters under an emergency protection order shall provide the Permanent Secretary or the person lawfully assisting him with

all reasonable facilities and assistance for the effective exercise of his powers under the order.

[S.4 amended by s.5 of Act 40 of 2008 w.e.f 20 December 2008]

Section 5. Duration of order

- (1) An emergency protection order shall have effect for a period of 14 days.
- (2) The District Magistrate may extend the order for a further period of 14 days where he considers it necessary for the protection of the child.

Section 6. Discharge of order

- (1) No appeal shall lie against the issue of an emergency protection order.
- (2) (a) Any parent, not earlier than 72 hours after the issue of the order, may apply to the Court for the discharge of the order.
(b) The Court may discharge the order where it is satisfied that it is in the interests of the child to do so.

Section 7. Follow-up action

Where an emergency protection order has been made in respect of a child, the Permanent Secretary may at any time within a period of 12 months after the order has lapsed—

- (a) summon any person and the child;
- (b) enter the premises where the child is living,

for the purpose of ascertaining whether the child is suffering or likely to suffer significant harm.

Section 8. Committal to place of safety

- (1) Where the Permanent Secretary has reasonable ground to believe that a child is ill-treated, neglected, abandoned, destitute or otherwise exposed to harm, and that it is in his interests to be committed to a place of safety, he may apply in writing to the Court for a committal order.
- (2) Upon an application under subsection (1), the Court—
 - (a) may make an interim order for the child to be put in a place of safety for a period not exceeding 14 days and may extend such interim order for further periods of 14 days until the final determination of the application;
 - (b) shall order an urgent enquiry and report by the Probation Service as to the child's family background, general conduct, home surroundings and school record as may enable it to deal with the case in the best interests of the child;
 - (c) may request that the child be medically examined.
- (3) Where after hearing evidence including that of any parent, wherever possible and practicable, the Court considers it necessary in the interests of the child, it shall order that the child be committed to a place of safety until the child reaches the age of 18 or for such shorter period as the Court may deem fit.

- (4) An order made under subsection (3) may be varied in the interests of the child at the instance of any interested party.
- (5) Any expenses incurred for the care and protection of a child who has been committed under subsection (3) may be recovered from any parent of the child.

[S.8 amended by Act No. 15 of 1998]

Section 9. Removal from place of safety

Where a child is placed in a place of safety any person who knowingly and without lawful authority or reasonable excuse

- (a) takes or keeps the child away;
- (b) does any act for the purpose of enabling the child to stay or run away,

shall commit an offence.

Section 11. Duty to report

Notwithstanding any other enactment, where a person exercising any medical or paramedical profession or a member of the staff of a school has reason to suspect that a child he is examining or who is frequenting the school, as the case may be, has been ill-treated, neglected, abandoned or otherwise exposed to harm, he shall immediately notify the Permanent Secretary.

[S.11 amended by Act 15 of 1998]

Section 13. Ill-treatment

- (1) Any person who ill-treats a child or otherwise exposes a child to harm shall commit an offence.
- (2) For the purposes of this section, any person who, in an advertisement, exploits a child by using him in such a way as is likely to cause in him or in any child watching him reactions which are contrary to morality or detrimental to psychological development shall be deemed to expose a child to harm.

[S.13 amended by Act 15 of 1998]

Section 13A. Child trafficking

- (1) Any person who willfully and unlawfully recruits, transports, transfers, harbours or receives a child for the purpose of exploitation shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.
- (2) Any person who willfully and unlawfully recruits, transports, transfers, harbours or receives a child –
 - (a) outside Mauritius for the purpose of exploitation in Mauritius;
 - (b) in Mauritius for the purpose of exploitation outside Mauritius,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.

- (3) Any person, who, in any place outside Mauritius, does an act preparatory to, or in furtherance of, the commission of an offence under subsection (1), shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.
- (4) (a) Any person who takes part in any transaction the object or one of the objects of which is to transfer or confer, wholly or partly, temporarily or permanently, the possession, custody or control of a child in return for any valuable consideration shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.
- (b) Any person who, without lawful authority or reasonable excuse, harbours or has in his possession, custody or control of any child in respect of whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by any other person in or outside Mauritius, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.
- (5) (a) No press report of any Court proceedings relating to an offence under this section shall include any particulars calculated to lead to the identification of any child who is the victim of that offence, nor shall any photograph or picture be published in any newspaper or broadcast as being or including a photograph or picture of that child.
- (b) Any person who contravenes paragraph (a) shall commit an offence and shall, on conviction, be liable in respect of each offence to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 2 years.
- (6) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section.
- (7) Where the Court finds that a person who has parental responsibility and rights in respect of a minor has committed an offence under this section in relation to that minor, it may –
 - (a) suspend the parental responsibilities and rights of that person; and
 - (b) order the minor to be admitted to a place of safety, for such period as it thinks fit.
- (8) In this section, “exploitation” has the same meaning as in the Combating of Trafficking in Persons Act.

[S.13A inserted by s.3 of Act 34 of 2005 w.e.f 17 December 2005; amended by s.8 of Act 36 of 2008 w.e.f 6 December 2008; s.21 of Act 2 of 2009 w.e.f 30 July 2009]

3. The Protection from Domestic Violence Act 1997

Section 2. Interpretation

In this Act -

“child”, in relation to a spouse, includes any biological, adopted, step or foster child below the age of 18 and any other minor in his or her care or custody;

“domestic violence” includes any of the following acts committed by a person against his spouse, a child of his spouse or another person living under the same roof –

- (a) willfully inflicting, or attempting to inflict, a wound or blow, or threatening to inflict a wound or blow;
- (b) willfully or knowingly placing or attempting to place, or threatening to place, the spouse or the other person in fear of physical injury to himself or to one of his children;
- (c) intimidating, harassing, stalking, ill-treating, insulting, brutality or cruelty;
- (d) compelling the spouse or the other person by force or threat to engage in any conduct or act, sexual or otherwise, from which the spouse or the other person has the right to abstain;
- (e) confining or detaining the spouse or the other person, against his will;
- (f) harming, or threatening to harm, a child of the spouse;
- (g) causing or attempting to cause, or threatening to cause, damage to the spouse’s or the other person’s property;
- (h) depriving, without any reasonable excuse, the spouse of resources which the spouse is entitled to, or of payment for rent in respect of shared residence;

“Enforcement Officer” means an officer of the Ministry responsible for the subject of family welfare, authorized by the Minister to act as such or a police officer.

Section 3. Protection order

(4) In determining an application for a protection order, the Court shall have regard to the following—

- (a) the need to ensure that the aggrieved spouse is protected from domestic violence;
- (b) the welfare of any child affected, or likely to be affected, by the respondent spouse’s conduct;
- (c) the accommodation needs of the aggrieved spouse, his children as well as those of the respondent spouse and his children;
- (d) any hardship that may be caused to the respondent spouse or to any of his children as a result of the making of the order; and
- (e) any other matter which the Court may consider relevant.

Section 3A. Protection order against a person living under the same roof

(1) Any person who has been the victim of an act of domestic violence by a person, other than his spouse, living under the same roof, and who reasonably believes that that person is likely to commit any further act of domestic violence against him, may apply to the Court, in Form AA of the Schedule, for a protection order restraining that person from engaging in any conduct which may constitute an act of domestic violence and ordering him to be of good behaviour towards the applicant.

(4) In determining an application for a protection order, the Court shall have regard to the following—

- (a) the need to ensure that the applicant is protected from domestic violence;
- (b) the welfare of any child affected, or likely to be affected, by the respondent's conduct;
- (c) the accommodation needs of the applicant, his children, as well as those of the respondent and his children;
- (d) any hardship that may be caused to the respondent or to any of his children as a result of the making of the order; and
- (e) any other matter which the Court may consider relevant

(5) Where a protection order is made, the Court may further—

- (a) prohibit the respondent from—
 - (i) contacting, harassing, threatening or intimidating the applicant;
 - (ii) damaging property of the applicant; or
 - (iii) causing or attempting to cause another person to engage in any conduct referred to in paragraphs (i) and (ii);
- (b) specify the conditions on which the respondent may—
 - (i) be on the premises on which the applicant resides or works or which he frequents; or
 - (ii) approach or contact the applicant or his child.

Section 11. Duties of Enforcement Officers

(1) Where an Enforcement Officer reasonably suspects that a person is, has been or is likely to be the victim of an act of domestic violence, he shall—

- (a) as soon as possible, cause an investigation to be made into the matter; and
- (b) where the act of domestic violence requires immediate action or further enquiry or amounts to an offence, forthwith report the matter to the nearest police station.

(2) – Repealed by [Act No. 10 of 2016]

(3) Where, after investigation, the officer reasonably believes that action should be taken

to protect the victim of an act of domestic violence from any further violence, he shall—

- (a) explain to the victim his rights to protection against domestic violence;
 - (b) provide or arrange transport for the victim to an alternative residence or a safe place of shelter, if such transport is required;
 - (c) provide or arrange transport for the victim to the nearest hospital or medical facility for the treatment of injuries, if such treatment is needed;
 - (d) assist the victim in filing a complaint regarding the domestic violence; and
 - (e) accompany and assist the victim to his residence or previous residence for the collection of his personal belongings.
- (4) (a) Subject to paragraph (b), an Enforcement Officer may, with the consent of the victim of an act of domestic violence, make, on behalf of the victim, an application for a protection, occupation or tenancy order and shall, to that effect, swear an affidavit reciting the facts on which he relies to make the application on behalf of the victim.
- (b) An Enforcement Officer may, without the consent of the victim of an act of domestic violence, make an application under paragraph (a) where the victim is unable to give his consent.

Section 11A. Duties and powers of police officers

- (1) The police shall act with diligence in any case where an offence under this Act is reported to it.
- (2) Where a report is made to a police station –
- (a) by a victim of an act of domestic violence, an Enforcement Officer or another person, that an act of domestic violence has been, is being or is likely to be committed against the victim; or
 - (b) by an aggrieved spouse, an Enforcement Officer or another person, that the respondent spouse has failed to comply with any domestic violence order,
- the officer in charge of the police station shall cause the circumstances of the offence to be enquired into.
- (3) Where an offence is reported pursuant to subsection (2), a police officer not below the rank of Assistant Superintendent may, where –
- (a) physical injury has ensued; or
 - (b) he has reason to suspect that person has failed to comply with any domestic violence order,
- cause the person to be arrested and brought before a Magistrate at the earliest opportunity.
- (4) (a) A police officer to whom an offence under this Act is reported shall, notwithstanding

the enquiry to be made under subsection (2), report the matter forthwith -

- (i) to the nearest hospital or other medical institution, where the victim of the offence is in urgent need of medical assistance;
 - (ii) to the Permanent Secretary, where the victim of the offence is in urgent need of counselling or any other form of psychological support.
- (b) Where the matter is reported to the Permanent Secretary under paragraph (a), he shall forthwith arrange for the victim of the offence to consult a psychologist or other suitable person for counselling or such other support as may be required.

Added by [Act No. 10 of 2016]

Section 13. Offences

- (1) Any person who wilfully fails to comply with any interim order, protection order, occupation order, tenancy order or ancillary order made under this Act shall commit an offence and shall, on conviction, be liable to
 - (a) on a first conviction, to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year;
 - (b) on a second conviction, to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years;
 - (c) on a third or subsequent conviction, to imprisonment for a term not exceeding 5 years.
- (2) Any person who does an act of domestic violence shall commit an offence and shall, on conviction, be liable –
 - (a) on a first conviction, to a fine not exceeding 50,000 rupees;
 - (b) on a second conviction, to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years;
 - (c) on a third or subsequent conviction, to imprisonment for a term not exceeding 5 years.
- (3) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under subsection (1).
- (4) Notwithstanding section 114 of the Courts Act and section 72 of the District and Intermediate (Criminal Jurisdiction) Act, a Magistrate shall have jurisdiction to try an offence under this Act and may impose any penalty provided in this Act.

Amended by [Act No. 11 of 2004]; [Act No. 23 of 2007]; [Act No. 10 of 2016]

4. The Criminal Code (Supplementary) Act 1870

Section 26. Idle and disorderly person

- (1) Every person shall be deemed an idle and disorderly person who –
 - (a) being able to work is found wandering abroad or placing himself in any public place to beg or gather alms, or causing any child to do so;

5. The Criminal Code Act 1838

Section 249. Rape, attempt upon chastity and illegal sexual intercourse

- (3) Any person who commits an indecent act ‘attentat à la pudeur’, even without violence and with consent, upon a child of either sex under the age of 12 shall be liable to penal servitude for a term not exceeding 10 years.
- (4) Any person who has sexual intercourse with a minor under the age of 16 or a mentally handicapped person, even with his consent, shall be liable to penal servitude for a term not exceeding 20 years.
- (5) (a) Any person who has sexual intercourse with a specified person, even with consent, shall commit an offence and shall on conviction, be liable to penal servitude.
- (b) Any person who commits an indecent act ‘attentat à la pudeur’, even without violence and with consent, upon a specified person shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 16 years.
- (c) In this subsection, “specified person”–
 - (i) means any person who, in relation to the person charged, comes within the prohibited degrees set out in articles 151, 152 and 153 of the Code Civil Mauricien;
 - (ii) includes –
 - (A) a stepchild or an adopted child, of whatever age, of the person charged;
 - (B) a child of whatever age whose custody or guardianship has been entrusted to the person charged by virtue of any other enactment or of an order of a Court;
 - (C) a child of whatever age or a mentally handicapped person, other than the spouse of, but living under the same roof as, the person charged or who is the child of the partner of the person charged.

[S.249 amended by Act 20 of 1990; Act 26 of 1991; Act 13 of 1998; s.3 of Act 30 of 2003; s.8 (b) of Act 36 of 2008 w.e.f 6 December 2008]

Article 20 of the Convention on the Rights of the Child

▪ ***Children deprived of family environment***

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

▪ ***Mauritian laws related to Article 20***

1. The Child Protection Act 1994

Section 2. Interpretation

In this Act –

“child” means any unmarried person under the age of 18;

“court” means the Juvenile Court having jurisdiction over the district in which the child is, or is reasonably believed to be, found;

“film” has the same meaning as in the Films Act;

“foster home” means a home registered under regulations made under this Act or approved by the Minister;

“gaming house” has the same meaning as in the Gaming Act;

“harm” includes, physical, sexual, psychological, emotional or moral injury, neglect, ill-treatment, impairment of health or development;

“indecent photograph” includes an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film;

“Minister” means the Minister to whom responsibility for the subject of child development and family welfare is assigned;

“parent” means the father, mother or legal guardian of a child and includes any person in charge of a child;

“Permanent Secretary” means the Permanent Secretary of the Ministry or any public officer designated by him to act on his behalf;

“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;

“place of safety” means any place designated by the Minister, and includes a foster home, a convent, a charitable institution, an institution for children and a hospital;

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

[S.2 amended by Act 15 of 1998; s.22(1)(a) of Act 22 of 2003 w.e.f 9 August 2003; s.3 of Act 40 of 2008 w.e.f 20 December 2008]

Section 3. Enquiry

Where the Permanent Secretary has reasonable cause to suspect that a child is being exposed to harm and is in need of assistance, he may summon any person with or without the child to give evidence for the purpose of enquiring into the matter.

Section 4. Emergency protection order

- (1) Where a District Magistrate is satisfied by information on oath that the Permanent Secretary has reasonable cause to believe that a child is suffering or likely to suffer significant harm, the District Magistrate shall issue an emergency protection order.
- (2) An information on oath and an emergency protection order shall be in the form set out in the Second Schedule.
- (3) Notwithstanding any other enactment, an emergency protection order shall, while it is in force, confer on the Permanent Secretary authority to –
 - (a) summon any person with or without the child to give evidence for the purpose of verifying whether the child is suffering or likely to suffer significant harm;
 - (b) enter any premises specified in the order, where necessary by force, and search for the child, provided that the order or a copy thereof shall be produced to the occupier of the premises on request;
 - (c) remove or return the child to, or to prevent the child’s removal from, any place of safety;
 - (d) where necessary for the welfare of the child, cause him to be submitted to medical examination or to urgent treatment;
 - (e) request police or medical assistance for the exercise of any power under the order.
- (4) The owner, occupier or person in charge of any premises which the Permanent Secretary or any person lawfully assisting him enters under an emergency protection order shall provide the Permanent Secretary or the person lawfully assisting him with all reasonable facilities and assistance for the effective exercise of his powers under the order.

[S.4 amended by s.5 of Act 40 of 2008 w.e.f 20 December 2008]

Section 5. Duration of order

- (1) An emergency protection order shall have effect for a period of 14 days.
- (2) The District Magistrate may extend the order for a further period of 14 days where he considers it necessary for the protection of the child.

[S.5 amended by Act No. 15 of 1998]

Section 6. Discharge of order

- (1) No appeal shall lie against the issue of an emergency protection order.
- (2) (a) Any parent, not earlier than 72 hours after the issue of the order, may apply to the Court for the discharge of the order.
- (b) The Court may discharge the order where it is satisfied that it is in the interests of the child to do so.

Section 7. Follow-up action

Where an emergency protection order has been made in respect of a child, the Permanent Secretary may at any time within a period of 12 months after the order has lapsed –

- (a) summon any person and the child;
- (b) enter the premises where the child is living,

for the purpose of ascertaining whether the child is suffering or likely to suffer significant harm.

Section 8. Committal to place of safety

- (1) Where the Permanent Secretary has reasonable ground to believe that a child is ill-treated, neglected, abandoned, destitute or otherwise exposed to harm, and that it is in his interests to be committed to a place of safety, he may apply in writing to the Court for a committal order.
- (2) Upon an application under subsection (1), the Court –
 - (a) may make an interim order for the child to be put in a place of safety for a period not exceeding 14 days and may extend such interim order for further periods of 14 days until the final determination of the application;
 - (b) shall order an urgent enquiry and report by the Probation Service as to the child's family background, general conduct, home surroundings and school record as may enable it to deal with the case in the best interests of the child;
 - (c) may request that the child be medically examined.
- (3) Where after hearing evidence including that of any parent, wherever possible and practicable, the Court considers it necessary in the interests of the child, it shall order that the child be committed to a place of safety until the child reaches the age of 18 or for such shorter period as the Court may deem fit.
- (4) An order made under subsection (3) may be varied in the interests of the child at the instance of any interested party.

- (5) Any expenses incurred for the care and protection of a child who has been committed under subsection (3) may be recovered from any parent of the child.

[S.8 amended by Act 15 of 1998]

Section 9. Removal from place of safety

Where a child is placed in a place of safety, any person who knowingly and without lawful authority or reasonable excuse –

- (a) takes or keeps a child away;
- (b) does any act for the purpose of enabling the child to stay or run away,

shall commit an offence.

Section 10. Appeal

- (1) Notwithstanding any other enactment, the Permanent Secretary or any parent of the child or a guardian ad hoc appointed for the purpose may appeal to a Judge in Chambers against any order made under section 8(3) or any variation made under section 8(4).
- (2) Notwithstanding any other enactment, the Court may, upon the application in writing of any interested party, appoint a guardian ad hoc to appeal on behalf of the child.
- (3) Subject to subsection (4), an appeal under subsection (1) shall be lodged within a period of 21 days of the making of the order.
- (4) Where a guardian ad hoc has been appointed to appeal on behalf of the child, the Judge in Chambers may entertain an appeal lodged outside the time limit specified in subsection (3).

[S.10 amended by Act No. 15 of 1998]

Section 11. Duty to report

Notwithstanding any other enactment, where a person exercising any medical or paramedical profession or a member of the staff of a school has reason to suspect that a child he is examining or who is frequenting the school, as the case may be, has been ill-treated, neglected, abandoned or otherwise exposed to harm, he shall immediately notify the Permanent Secretary.

[S.11 amended by Act 15 of 1998]

Article 21 of the Convention on the Rights of the Child

▪ ***Adoption***

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

▪ ***Mauritian laws related to Article 21***

1. The National Adoption Council Act 1987

Section 4. Objects of Council

The objects of the Council shall be to-

- (a) inquire into all demands for the adoption of citizens by non-citizens before any application is made to the Judge in Chambers;
- (b) advise the Minister on all matters relating to demands referred to in paragraph(a);
- (c) coordinate with overseas official agencies engaged in the adoption and welfare of children.

Section 6. Demand for adoption

- (1) Notwithstanding the Code Napoléon, no non-citizen shall make an application to the Judge in Chambers for the adoption of a citizen unless he is authorised in writing to do so by the Council.
- (2) Where a non-citizen wishes to adopt a citizen, he shall submit to the Council a demand on such form as may be approved by the Council together with the fee and deposit specified in the Schedule.

- (3) Upon receipt of a demand under subsection (2), the Council shall make such inquiry and call for such information in such form as the Council may deem fit and the Council shall hear, and pronounce itself on, the application within 60 days of the demand.
- (4) Where the Council is satisfied, having regard to all the circumstances surrounding a demand, that possibilities for placement of the child within Mauritius have been given due consideration and that the demand will be in the interests of the child, the Council shall authorize an application for adoption to be made to the Judge in Chambers.
- (5) In all other cases, the Council shall notify the non-citizen that his demand has been rejected.
- (6) Any person who is aggrieved by the rejection of a demand may appeal to the Judge in Chambers within 21 days of receipt of the notice of rejection.
- (7) A deposit furnished under subsection (2) shall-
 - (a) where the citizen, in respect of whom an application for adoption has been authorized by the Council, is not permitted to stay in the country of the applicant, be used to cover the costs and expenses of his repatriation; or
 - (b) In any other case, be refunded upon satisfactory evidence being furnished to the effect that the citizen in respect of whom an application for adoption has been authorised by the Council has been allowed to stay in the country of the applicant for an indefinite period.
- (8) No person shall remove from Mauritius any citizen in respect of whom a demand of adoption has been made until an application for adoption to the Judge in Chambers has been approved.

[S.6 amended by [Act No. 31 of 1991]; [Act No. 3 of 1992]; [Act No. 29 of 1992]; [Act No. 40 of 1992]; [Act No. 15 of 1998]

Section 6A. Prohibition of certain payments

- (1) Subject to subsection (2), no person who-
 - (a) being a non-citizen, adopts a citizen;
 - (b) gives his consent for the adoption of a citizen by a non-citizen;
 - (c) transfers the care and control of a citizen with a view to his adoption by a non-citizen;
 - (d) makes any arrangement for the adoption of a citizen by a non-citizen,shall offer, make or receive any payment or reward for and in consideration of the adoption of the citizen.
- (2) Subsection (1) shall not apply to a person who bona fide receives a fee in his professional capacity.

[S.6A amended by Act 40 of 1992]

Section 14. Offences

Any person who contravenes this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000 rupees and to imprisonment for a term not exceeding 2 years.

[S.14 amended by Act 40 of 1992]

2. The Code Civil Mauricien

DE LA FILIATION ADOPTIVE

DE L'ADOPTION SIMPLE

343. L'adoption peut être demandée par toute personne âgée de plus de trente ans.

Toutefois cette condition d'âge n'est pas exigée lorsque l'adoptant est marié et non séparé de corps. En ce cas, le consentement de son conjoint est nécessaire à moins que ce conjoint ne soit dans l'impossibilité de manifester sa volonté.

L'adoption peut aussi être demandée par deux époux non séparés de corps, sans condition d'âge ni de délai.

[Art. 343 repealed and replaced by s.2 of Act 7 of 1963 ; s.10 of Act 37 of 1980]

344. Les adoptants doivent avoir quinze ans de plus que les enfants qu'ils se proposent d'adopter. Si ces derniers sont les enfants de leur conjoint, la différence d'âge exigée n'est que dix ans.

Toutefois le Juge en Chambre peut, s'il a de justes motifs, prononcer l'adoption lorsque la différence d'âge est inférieure à celles que prévoit l'alinéa premier.

[Art. 344 repealed and replaced by s. 2 of Act 7 of 1963; s. 10 of Act 37 of 1980.]

345. L'adoption est permise quel que soit l'âge de l'adopté.

Si l'adopté est âgé de plus de quinze ans, il doit consentir personnellement à l'adoption.

[Art. 345 repealed and replaced by s. 2 of Act 7 of 1963; s. 10 of Act 37 of 1980.]

348. Nonobstant toutes dispositions contraires, peuvent être adoptés—

1° Les enfants dont la filiation est légalement établie, même du vivant de leurs père et mère ou de l'un d'entre eux;

2° Les enfants dont la filiation n'est pas légalement établie ou qui ont été abandonnés par leurs parents.

Dans l'application des dispositions du présent article, le Juge en Chambre apprécie souverainement en fonction des circonstances si le comportement des parents est ou non constitutif d'un abandon d'enfant.

[Art. 348 repealed and replaced by s. 2 of Act 7 of 1963; s. 10 of Act 37 of 1980.]

349. Lorsque la filiation d'un enfant est établie à l'égard de son père et de sa mère, ceux-ci doivent consentir l'un et l'autre à l'adoption.

Si l'un des deux est mort ou dans l'impossibilité de manifester sa volonté, s'il a perdu ses droits d'autorité parentale, le consentement de l'autre suffit.

Lorsque la filiation d'un enfant n'est établie qu'à l'égard d'un de ses auteurs, celui-ci donne le consentement à l'adoption.

[Art. 349 repealed and replaced by s. 2 of Act 7 of 1963; s. 10 of Act 37 of 1980.]

350. Lorsque la filiation de l'enfant n'est pas établie ou lorsque ses père et mère sont décédés, dans l'impossibilité de manifester leur volonté ou s'ils ont perdu leurs droits d'autorité parentale, le consentement est donné par le Juge en Chambre, après avis de la personne qui, en fait, prend soin de l'enfant.

[Art. 350 repealed and replaced by s. 2 of Act 7 of 1963; s. 10 of Act 37 of 1980.]

351. La personne qui se proposera d'adopter et, dans les cas prévus aux articles 349 et 350, les personnes dont le consentement est requis, se présenteront devant le Juge en Chambre, ou devant un notaire, pour y passer acte de leurs consentements respectifs.

[Art. 351 repealed and replaced by s. 2 of Act 7 of 1963; s. 10 of Act 37 of 1980.]

352. Le Juge en Chambre peut prononcer l'adoption s'il estime abusif le refus de consentement opposé par les parents légitimes ou naturels ou par l'un d'entre eux seulement, lorsqu'ils se sont désintéressés de l'enfant au risque d'en compromettre la santé ou la moralité.

[Art. 352 repealed and replaced by s. 2 of Act 7 of 1963; s. 10 of Act 37 of 1980.]

353. A la requête de l'adoptant et après instruction de la demande, l'adoption est prononcée par le Juge en Chambre qui vérifie si les conditions de la loi sont remplies et si l'adoption est conforme à l'intérêt de l'enfant.

S'il l'estime nécessaire, le Juge en Chambre peut différer le prononcé de l'adoption en imposant au requérant un délai d'épreuve dont la durée n'excédera pas six mois, pendant lequel celui-ci devra recueillir à son foyer l'enfant qu'il a l'intention d'adopter.

La décision rejetant la demande d'adoption doit être motivée et mentionner expressément le texte des dispositions légales sur lesquelles elle a été fondée ou les raisons pour lesquelles l'adoption n'a pas été jugée conforme à l'intérêt de l'enfant.

[Art. 353 repealed and replaced by s. 2 of Act 7 of 1963; s. 10 of Act 37 of 1980.]

354. Il peut être fait appel de la décision prise en application de l'article 353, par les parties en cause ou par le Ministère Public.

L'appel doit être interjeté dans le mois qui suit la décision. L'appel est entendu par deux juges siégeant en Chambre, lesquels statuent conformément aux dispositions de l'article 353.

[Art. 354 repealed and replaced by s. 2 of Act 7 of 1963; amended by s. 4 of Act 43 of 1975; s. 10 of Act 37 of 1980.]

355. Tout jugement ou arrêt qui admet l'adoption sera affiché au greffe de la Cour Suprême et en tels lieux que le ou les juges décideront.

Le ou les juges ordonneront le dépôt au greffe de la Cour Suprême du jugement ou de l'arrêt et des pièces relatives à l'instruction de la requête en adoption.

Dans les trois mois qui suivront ce jugement ou cet arrêt, le greffier de la Cour Suprême fera parvenir à l'officier de l'état civil une expédition en forme du jugement ou de l'arrêt aux fins d'inscription sur un registre prévu à cet effet.

Il sera fait mention de l'adoption ainsi inscrite et des nouveaux noms et prénoms de l'adopté en marge de son acte de naissance, sauf s'il est né à l'étranger ou si le lieu de sa naissance n'est pas connu.

[Art. 355 repealed and replaced by s. 2 of Act 7 of 1963; s. 10 of Act 37 of 1980.]

SECTION DEUXIÈME

DES EFFETS DE L'ADOPTION SIMPLE

357. L'adoption simple confère le nom de l'adoptant à l'adopté. Le Juge en Chambre peut toutefois décider que l'adopté ne portera pas le nom de l'adoptant ou que le nom de l'adoptant sera ajouté au nom de l'adopté.

L'adopté reste dans sa famille d'origine et y conserve tous ses droits, notamment ses droits héréditaires.

Les prohibitions au mariage prévues par la loi s'appliquent entre l'adopté et sa famille d'origine.

[Art. 357 repealed and replaced by s. 2 of Act 7 of 1963; s. 10 of Act 37 of 1980.]

359. Le lien de parenté résultant de l'adoption s'étend aux enfants de l'adopté. Le mariage est prohibé—

- 1° Entre l'adoptant, l'adopté et ses descendants;
- 2° Entre l'adopté et le conjoint de l'adoptant; réciproquement entre l'adoptant et le conjoint de l'adopté;
- 3° Entre les enfants adoptifs du même individu;
- 4° Entre l'adopté et les enfants de l'adoptant.

Néanmoins, les prohibitions au mariage portées aux paragraphes 3 et 4 ci-dessus peuvent être levées par dispense de l'Attorney-General, s'il y a des causes graves.

La prohibition au mariage portée au paragraphe 2° ci-dessus peut être levée dans les mêmes conditions lorsque la personne qui a créé l'alliance est décédée.

[Art. 359 repealed and replaced by s. 2 of Act 7 of 1963; s. 10 of Act 37 of 1980.]

363. S'il est justifié de motifs graves, l'adoption peut être révoquée, à la demande de l'adoptant ou de l'adopté.

La demande de révocation faite par l'adoptant n'est recevable que si l'adopté est âgé de plus de quinze ans.

Lorsque l'adopté est mineur, les père et mère par le sang ou à leur défaut, un membre de la famille d'origine jusqu'au degré de cousin germain inclus, peuvent également demander la révocation.

Le jugement révoquant l'adoption doit être motivé. Son dispositif est mentionné en marge de l'acte de naissance ou de la transcription du jugement d'adoption dans les conditions prévues à l'article 355.

La révocation fait cesser pour l'avenir tous les effets de l'adoption.

[Art. 363 repealed and replaced by s. 2 of Act 7 of 1963; s. 10 of Act 37 of 1980]

CHAPITRE DEUXIÈME

DE L'ADOPTION PLÉNIÈRE

SECTION PREMIÈRE

DES CONDITIONS REQUISES POUR L'ADOPTION PLÉNIÈRE

364. L'adoption plénière ne peut être demandée que conjointement par deux époux non séparés de corps.

Elle n'est soumise à leur égard à aucune condition d'âge ni de délai.

[Art. 364 repealed and replaced by s. 2 of Act 7 of 1963; s. 8 of Act 8 of 1980; s. 10 of Act 37 of 1980.]

365. Nonobstant toutes dispositions contraires, peuvent être adoptés, par adoption plénière—

- 1° Les enfants dont la filiation est établie, lorsqu'ils ont été abandonnés par leurs parents et leur famille;
- 2° Les enfants non reconnus;
- 3° Les enfants dont les parents sont inconnus ou décédés.

Dans l'application des dispositions du présent article, le Juge en Chambre apprécie souverainement, en fonction des circonstances, si le comportement des parents est ou non constitutif d'un abandon d'enfant.

[Art. 365 repealed and replaced by s. 2 of Act 7 of 1963; s. 8 of Act 8 of 1980; s. 10 of Act 37 of 1980.]

SECTION DEUXIÈME

DES EFFETS DE L'ADOPTION PLÉNIÈRE

367. L'adoption plénière ne produit ses effets entre les parties qu'à partir de la décision d'adoption.

L'adoption plénière n'est opposable aux tiers qu'à partir de la date à laquelle la décision aura été affichée conformément aux dispositions de l'alinéa 1 de l'article 355.

A dater du jour de son dépôt et sauf rejet de celle-ci, la requête en adoption plénière fait échec à toute déclaration de filiation et à toute reconnaissance.

[Art. 367 repealed and replaced by s. 2 of Act 7 of 1963; amended by s. 4 of Act 43 of 1975; repealed and replaced by s. 9 of Act 8 of 1980; s. 10 of Act 37 of 1980.]

368. L'adoption confère à l'enfant une filiation qui se substitue à sa filiation d'origine: l'adopté cesse d'appartenir à sa famille par le sang, sous réserve des prohibitions au mariage.

L'adoption confère à l'enfant le nom du mari.

Nonobstant toutes dispositions contraires, le Juge en Chambre peut, à la demande des adoptants, modifier les prénoms de l'enfant.

L'adopté a, dans la famille de l'adoptant, les mêmes droits et les mêmes obligations qu'un enfant légitime.

[Art. 368 repealed and replaced by s. 2 of Act 7 of 1963; s. 10 of Act 37 of 1980.]

369. L'adoption plénière est irrévocable.

[Art. 369 repealed and replaced by s. 2 of Act 7 of 1963; s. 10 of Act 37 of 1980.]

CHAPITRE TROISIÈME

DE LA LÉGITIMATION PAR ADOPTION

SECTION PREMIÈRE

DES CONDITIONS REQUISES POUR LA LÉGITIMATION PAR ADOPTION

370. Nonobstant toutes dispositions contraires et sous réserve des conditions prévues par l'article 370-1, un conjoint peut adopter en vue de sa légitimation, un enfant naturel dont la filiation n'est établie qu'à l'égard de l'autre conjoint.

SECTION DEUXIÈME

DES EFFETS DE LA LÉGITIMATION PAR ADOPTION

370-3. Lorsqu'elle est conforme aux dispositions des articles 370 et 370-1, l'adoption par un conjoint de l'enfant naturel de l'autre conjoint a pour effet de conférer à cet enfant le statut d'un enfant légitime des deux conjoints.

[Art. 370-3 inserted by s. 10 of Act 37 of 1980.]

370-4. En application de l'article 370-3; l'enfant adopté porte toujours le nom du mari

[Art. 370-4 inserted by s. 10 of Act 37 of 1980]

370-5. La légitimation par adoption est irrévocable.

[Art. 370-5 inserted by s. 10 of Act 37 of 1980.]

Article 22 of the Convention on the Rights of the Child

▪ ***Refugee children***

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

▪ ***Mauritian laws related to Article 22***

No local legislation related to refugees in the Republic of Mauritius

In the case ***MAHMOTAKY M.A. v. THE SECRETARY FOR HOME AFFAIRS & ORS 2003 SCJ 238***, the following observations were made:

It is true that the then Colony of Mauritius succeeded to the Convention relating to the status of Refugees by reason of the fact that the United Kingdom of Great Britain and Northern Ireland became a signatory of the said Convention on 28 July 1951, which was ratified on 11 March 1954 and extended to the Colony of Mauritius, as per the Notification of Territorial Application made by the United Kingdom on 25 October 1956 according to Article 40 of the Convention. As can be further gathered from the affidavit [...], Ambassador posted at the Ministry of Foreign Affairs & Regional Co-operation, in a letter dated 12 March 1968 addressed to the Secretary General of the United Nations, the then Prime Minister acknowledged that many treaty rights and obligations of the United Kingdom were succeeded by Mauritius upon independence by virtue of the customary international law, so that Mauritius succeeded to the 1951 Convention, as was also explained in the case of *Danche v The Commissioner of Police & ors* [2002 SCJ 171] in the context relating to all treaties, multilateral or bilateral.

It is important to note that the 1951 Convention relating to the Status of Refugees covered only those persons who had become refugees as a result of events occurring before 1 January 1951, which does not apply to the applicant. The Protocol relating to the status of Refugees

of 31 January 1967 redefined the term “refugee” thus removing the restriction concerning events occurring only prior to 1 January 1951. However, that Protocol came into force on 4 October 1967 and the United Kingdom of Great Britain and Northern Ireland adhered to it on 4 September 1968, that is, after Mauritius had become independent. As affirmed [...] **Mauritius is not a party to the Protocol relating to the Status of Refugees of 31 January 1967. Further, there is no domestic law in Mauritius on which the applicant can rely to claim the status of refugee.** In fact, the applicant has been refused entry under section 13 of the Immigration Act and it appears from the affidavits filed that the procedure under that section has been followed.

Article 23 of the Convention on the Rights of the Child

▪ ***Children with disabilities***

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

▪ ***Mauritian laws related to Article 23***

1. The Social Aid Act 1983

Section 2. Interpretation

In this Act –

“child”, in relation to a claimant –

- (a) means –
 - (i) an unmarried person who is under the age of 20; or
- (b) includes a step-child or an adopted child who is living with the claimant;

“dependants”, in relation to a claimant, means his spouse and child;

“Minister” means the Minister to whom responsibility for the subject of social security is assigned;

“parent”, in relation to a child –

- (a) means his father or mother; and
- (b) includes a person who is in charge of him;

“Permanent Secretary” means the Permanent Secretary of the Ministry or a public officer designated by him;

“requirements”, in relation to a claimant, means the requirements specified in section 3 (4) (a);

“stepchild”, in relation to a claimant, means a child of his spouse or deceased spouse who is not his own child.

[S.2 amended by s.39(a) of Act 14 of 2009 w.e.f 1 July 2009]

Section 3. Social Aid

(1) Subject to this section, any person who, as a result of –

- (a) any physical or mental disability;
- (b) any sickness or accident certified by an approved medical practitioner; or
- (c) Deleted by [Act No. 14 of 2009]
- (d) any sudden loss of employment which has lasted continuously for not less than 6 months,

is temporarily or permanently incapable of earning adequately his livelihood and has insufficient means to support himself and his dependants, shall be qualified to claim social aid.

(1A) Subject to this section, where a person –

- (a) as a result of abandonment by his spouse; or
- (b) is the spouse of the head of a household who is in police custody, has been remanded to jail or is serving a term of imprisonment,

is temporarily or permanently incapable of earning adequately his livelihood and has insufficient means to support himself and his dependants, he shall be qualified to claim social aid.

(2) A claimant shall –

- (a) apply for social aid to the Minister in the prescribed manner; and
- (b) furnish, in support of his application, such information and documents as the Minister may require.

(3) Where the Minister is satisfied that a claimant is qualified to claim social aid under subsection (1) or (1A), he may, subject to such conditions as he thinks fit to impose, grant to the claimant such amount of social aid as meets his requirements.

(4) For the purpose of this section –

(a) the requirements of a claimant –

(i) under subsection (1) shall be computed in the manner specified in Part I of the First Schedule; or

(ii) under subsection (1A) shall be computed in the manner specified in Part III of the First Schedule;

(b) the resources of a claimant shall be determined by the Permanent Secretary in accordance with such criteria as may be prescribed.

(5) (a) Subject to paragraph (b), the social aid payable to a claimant shall be the amount by which the resources of the claimant fall short of his requirements after deducting from that amount any benefit or allowance received by him under the National Pensions Act or the Family Allowance Act.

(b) The social aid payable under paragraph (a) shall not be less than the amount specified in Part II of the First Schedule.

(6) Notwithstanding this section, the Minister may grant social aid in such circumstances as may be prescribed.

[S.3 amended by Act No. 27 of 1983; S.39(b) of Act No. 14 of 2009 w.e.f. 1 July 2009]

Article 24 of the Convention on the Rights of the Child

▪ Health and health services

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

▪ Mauritian laws related to Article 24

1. The Mauritius Family Planning and Welfare Association Act 2005

Section 3. Establishment of Association

- (1) There is established for the purposes of this Act the Mauritius Family Planning and Welfare Association.
- (2) The Association shall be a body corporate.
- (3) The Association shall be managed and administered by the National Executive Committee.

Section 4. Objects of Association

The objects of the Association shall be to –

- (a) promote family welfare;
- (b) preserve and protect the good health, both mental and physical, of parents and children through effective family planning services;
- (c) collaborate with organisations engaged in similar activities in Mauritius and abroad; and
- (d) promote as a basic human right, the free and informed choice of a person to sexual and reproductive right.

Section 5. Functions of Association

Subject to the provisions of this Act, the functions of the Association shall be to –

- (a) advise on population education, sex education and to provide marriage counselling;
- (b) establish family planning centres and clinics to provide family planning and welfare services to the public;
- (c) collect and disseminate information and statistics relating to family welfare;
- (d) set up branches of the Association all over Mauritius and provide for their management;
- (e) create awareness in respect of sexual and reproductive health;
- (f) help in the treatment of childless couples desiring to establish a family; and
- (g) perform such functions as may be necessary to further its objects.

2. The Mauritius Child Care Society Act 1958

Section 3. Object of Society

The object of the Society shall be to promote motherhood skills and child care in Mauritius through lectures, home visits, baby shows and exhibitions and to do such things as are incidental or conducive to the attainment of these objects.

3. The Mental Health Care Act 1998

PART V – PROTECTION OF PATIENTS AND THEIR PROPERTY

Section 23. Patient's Units

(1) There shall be a separate unit for each of the following categories of patients –

- (d) Patients under the age of 18

(2) There shall be, for all categories of patients, a separate unit for male and female patients.

Section 24. Living conditions and treatment

The Superintendent of a centre shall ensure that every patient is –

- (a) provided with health care and is kept in living conditions conducive to human dignity and proper treatment; and
- (b) protected from danger to himself and others.

Article 25 of the Convention on the Rights of the Child

▪ ***Review of treatment in care***

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

▪ ***Mauritian laws related to Article 25***

1. The Mauritius Family Planning and Welfare Association Act 2005

Section 3. Establishment of Association

- (1) There is established for the purposes of this Act the Mauritius Family Planning and Welfare Association.
- (2) The Association shall be a body corporate.
- (3) The Association shall be managed and administered by the National Executive Committee.

Section 4. Objects of Association

The objects of the Association shall be to –

- (a) promote family welfare;
- (b) preserve and protect the good health, both mental and physical, of parents and children through effective family planning services;
- (c) collaborate with organisations engaged in similar activities in Mauritius and abroad; and
- (d) promote as a basic human right, the free and informed choice of a person to sexual and reproductive right.

Section 5. Functions of Association

Subject to the provisions of this Act, the functions of the Association shall be to –

- (a) advise on population education, sex education and to provide marriage counselling;
- (b) establish family planning centres and clinics to provide family planning and welfare services to the public;
- (c) collect and disseminate information and statistics relating to family welfare;
- (d) set up branches of the Association all over Mauritius and provide for their management;
- (e) create awareness in respect of sexual and reproductive health;
- (f) help in the treatment of childless couples desiring to establish a family; and
- (g) perform such functions as may be necessary to further its objects.

2. The Mauritius Child Care Society Act 1958

Section 3. Object of Society

The object of the Society shall be to promote motherhood skills and child care in Mauritius through lectures, home visits, baby shows and exhibitions and to do such things as are incidental or conducive to the attainment of these objects.

Article 26 of the Convention on the Rights of the Child

▪ ***Social security***

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.

▪ ***Mauritian laws related to Article 26***

1. The Constitution of Mauritius

Section 94. Pension laws and protection of pension rights

- (5) In this section, “pensions benefits” means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.
- (6) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

Section 95. Power of Commissions in relation to pensions

- (1) Where under any law any person or authority has a discretion to –
 - (a) decide whether or not any pensions benefits shall be granted; or
 - (b) withhold, reduce in amount or suspend any such benefits that have been granted,
 those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the appropriate Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.
- (2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the appropriate Commission concurs in his being granted benefits of a smaller amount.
- (5) Any person who is entitled to the payment of any pensions benefits and who is ordinarily resident outside Mauritius may, within a reasonable time after he has received that payment, remit the whole of it (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Mauritius.

[S. 95 amended by Act 5 of 1997]

2. The Pensions Act 1976

Section 12. Pension not to be assignable

A pension, gratuity and other allowance granted under this Act shall not be assignable or transferable except for the purpose of satisfying –

- (a) a debt due to Government: or
- (b) an order of a Court for the payment of periodical sums of money towards the maintenance of the wife or former wife or minor child of the officer to whom the pension, gratuity or other allowance has been granted,

and notwithstanding any other enactment, shall not be liable to be attached, sequestered or levied upon for or in respect of any debt or claim except a debt due to Government.

Section 17. Pension where officer is killed on duty

(1) Where an officer dies as a result of injuries received –

- (a) in the actual discharge of his duty;
- (b) without his own default; and
- (c) on account of circumstances specifically attributable to the nature of his duty,

while in service, the Minister may, in addition to any grant made to his legal personal representative under section 16 –

- (ii) where the deceased officer leaves a widow to whom a pension is granted under paragraph (i) and a child or children, grant a pension in respect of every child, until such child attains the age of 18, of an amount not exceeding one-eighth of the pension prescribed under paragraph (i),
- (iii) where the deceased officer leaves a child or children, but does not leave a widow, or no pension is granted to the widow, grant a pension in respect of every child, until such child attains the age of 18, of double the amount prescribed by paragraph (ii);
- (iv) where the deceased officer leaves a child or children and a widow to whom a pension is granted under paragraph (i) and the widow subsequently dies, grant a pension in respect of every child as from the date of the death of the widow until such child attains the age of 18, of double the amount prescribed in paragraph (ii);

(2) (c) A pension granted to a female child under subsection (1) shall cease upon the marriage of such child under the age of 18.

(5) For the purpose of this section –

“Child” includes –

- (a) A posthumous child

- (b) A stepchild or illegitimate child born before the date of the injury and wholly or mainly dependent upon the deceased officer for support; and
- (c) an adopted child, adopted in a manner recognised by law, before the date of the injury, and dependent upon the deceased officer for support.

[S. 17 amended by Act 48 of 1991; s. 15(d) of Act 18 of 2003 w.e.f 21 July 2003; s.21 (1) of Act 26 of 2012 w.e.f 22 December 2012]

3. The Social Aid Act 1983

Section 2. Interpretation

In this Act -

“child”, in relation to a claimant –

- (a) means -
 - (i) an unmarried person who is under the age of 20, or
 - (ii) an unmarried person of the age of 20 but not above the age of 23, who is pursuing a full-time course at a tertiary education institution; and
 - (b) includes a step-child or an adopted child who is living with the claimant;
- “dependants”, in relation to a claimant, means his spouse and child.

[S. 2 amended by s. 39 (a) of Act 14 of 2009 w.e.f. 1 July 2009]

Section 3. Social aid

(1) Subject to this section, a person who, as a result of –

- (a) any physical or mental disability;
- (b) any sickness or accident certified by an approved medical practitioner; or
- (c) –
- (d) Any sudden loss of employment, which has lasted continuously for not less than 6 months,

is temporarily or permanently incapable of earning adequately his livelihood and has insufficient means to support himself and his dependants, shall be qualified to claim social aid.

(1A) Subject to this section, where a person –

- (a) as a result of abandonment by his spouse; or
- (b) being the spouse of the head of a household who is in police custody, has been remanded to jail or is serving a term of imprisonment,

is temporarily or permanently incapable of earning adequately his livelihood and has insufficient means to support himself and his dependants, he shall be qualified to claim social aid.

- (2) A claimant shall –
 - (a) apply for social aid to the Minister in the prescribed manner; and
 - (b) furnish, in support of his application, such information and documents as the Minister may require.
- (3) Where the Minister is satisfied that a claimant is qualified to claim social aid under subsection (1) or (1A), he may, subject to such conditions as he thinks fit to impose, grant to the claimant such amount of social aid as meets his requirements.
- (4) For the purpose of this section –
 - (a) the requirements of a claimant –
 - (i) under subsection (1) shall be computed in the manner specified in Part 1 of the First Schedule; or
 - (ii) under subsection (1A) shall be computed in the manner specified in Part III of the First Schedule;
 - (b) the resources of a claimant shall be determined by the Permanent Secretary in accordance with such criteria as may be prescribed.
- (5) (a) Subject to Paragraph (b), the social aid payable to a claimant shall be the amount by which the resources of the claimant fall short of his requirements after deducting from that amount any benefit or allowance received by him under the National Pensions Act or the Family Allowance Act.
- (b) the social aid payable under paragraph (a) shall not be less than the amount specified in Part II of the First Schedule
- (6) Notwithstanding this section, the Minister may grant social aid in such circumstances as may be prescribed.

[S. 3 amended by Act 27 of 1983; s. 39 (b) of Act 14 of 2009 w.e.f. 1 July 2009]

4. The Civil Service Family Protection Scheme Act 1969

Section 2. Interpretation

(1) In this Act -

“child”, in relation to a contributor –

- (a) means a legitimate or legitimated child, a natural acknowledged child or a child whose filiation has been pronounced by a Court of law, a posthumous child, an adopted child or a stepchild who –
 - (i) is under the age of 18; or
 - (ii) after reaching the age of 18, is receiving full-time education at a university, college, school or other educational establishment, until he reaches the age of 21 or ceases to receive such education, whichever is the earlier; but

(b) does not include –

- (i) a child conceived after the contributor has ceased to be a public officer or an employee, as the case may be, and any child of the conceiving spouse by a previous marriage; or
- (ii) a child adopted after the contributor has ceased to be a public officer or an employee, as the case may be.

[S. 2 amended by Act 48 of 1991; Act 28 of 1993; Act 15 of 1998; s. 4 (a) of Act 18 of 2008 w.e.f. 1 July 2008; s. 6 (a) of Act 20 of 2011 w.e.f. 1 July 2008; s. 3 (a) of Act 26 of 2013 w.e.f. 1 January 2013]

Section 27. Surviving spouse's and children's pensions

Subject to this Act, on the death of a contributor, whether it occurs before or after he ceases to be a member of the Assembly, a public officer or an employee, as the case may be, the Board shall –

- (b) where the contributor leaves children and whether or not a surviving spouse's pension is granted,

grant for their benefit a pension, to be known as a children's pension.

[s. 27 amended by Act 28 of 1993; s.4 (f) of Act 18 of 2008 w.e.f 18 July 2008]

Section 29. Rate of Children's pension

The annual rate of a children's pension shall be –

- (a) where no surviving spouse's pension is payable –
 - (i) if the pension accrues to 2 or more children, one half of the rate of the basic unreduced pension of the deceased;
 - (ii) if the pension accrues to one child only, one quarter of the rate of the basic unreduced pension of the deceased;
- (b) where the deceased leaves a surviving spouse, one sixth of the basic unreduced pension of the deceased, irrespective of the number of children to whom the pension accrues.

[s. 29 amended by Act 28 of 1993]

5. The National Solidarity Fund Act 1991

Section 4. Objects of Fund

The objects of the Fund shall be to –

- (c) provide, with the approval of the Minister, financial assistance directly to individuals who have undergone severe personal hardship.

[s.4 amended by s.23(a) of Act 14 of 2005 w.e.f. 21 April 2005]

6. The National Pensions Act 1976

Section 5. Orphan's pension

- (1) Subject to subsection (2) and section 10, an orphan shall be entitled to an orphan's pension so long as -
 - (a) he is -
 - (i) under the age of 15; or
 - (ii) in the case of an orphan who is receiving full-time education, under the age of 20; and
 - (b) he is not married.
- (2) An orphan's pension shall be -
 - (a) paid to the guardian of the orphan or such other person having the custody of the orphan as the National Pensions Officer may determine; and
 - (c) devoted by the person receiving it for the exclusive benefit of the orphan.

Amended by [Act No.7 of 1990]

Section 6. Guardian's allowance

- (1) Subject to subsection (2), where an orphan's pension is payable to a person under section 5(2)(a), that person shall be qualified to receive a guardian's allowance.
- (2) No person shall be qualified to receive more than one guardian's allowance irrespective of the number of orphans for whom he acts as guardian and not more than one guardian's allowance shall be paid in respect of the same household.

Section 7. Child's allowance

- (1) A person shall be qualified to receive a child's allowance where -
 - (a) he has one dependent child or more; and
 - (b) subject to subsection (2), he is qualified to receive -
 - (i) a widow's basic pension;
 - (ii) an invalid's basic pension; or
 - (iii) a survivor's pension
- (2) A person who is in receipt of a child's allowance shall not cease to receive such allowance by reason only that -
 - (a) he has ceased to be qualified to receive a widow's basic pension or a survivor's pension; or
 - (b) he has ceased to be qualified to receive an invalid's basic pension on the ground that he has attained the age of 60.
- (3) Where more than one person is qualified to receive a child's allowance in respect of the same child, the allowance shall be paid to such of those persons as the National Pension Officer may determine.
- (4) A child's allowance shall-
 - (a) subject to paragraph (b), be paid in respect of each child;
 - (b) not be payable to any person in respect of more than 3 children.

Article 27 of the Convention on the Rights of the Child

▪ ***Adequate standard of living***

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

▪ ***Mauritian laws related to Article 27***

1. The Code Civil Mauricien

CHAPITRE CINQUIÈME DES OBLIGATIONS QUI NAISSENT DU MARIAGE

203. Les époux contractent ensemble, par le seul fait du mariage, l'obligation de nourrir, entretenir et élever leurs enfants.

CHAPITRE SIXIÈME DES DROITS ET DES DEVOIRS RESPECTIFS DES ÉPOUX

213. Les époux assurent ensemble la direction morale et matérielle de la famille. Ils pourvoient à l'éducation des enfants et préparent leur avenir.

TITRE NEUVIÈME DE L'AUTORITÉ PARENTALE CHAPITRE PREMIER

DE L'AUTORITÉ PARENTALE RELATIVEMENT À LA PERSONNE DE L'ENFANT

371-2. L'autorité appartient aux père et mère pour protéger l'enfant dans sa sécurité, sa santé, sa moralité.

Ils ont à son égard droit et devoir de garde, de surveillance et d'éducation.

[Art 371-2 repealed and replaced by s. 7 of Act 26 of 1980]

Article 28 of the Convention on the Rights of the Child

▪ *Right to education*

1. 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;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

▪ *Mauritian laws related to Article 28*

1. The Constitution of Mauritius

Article 14. Protection of freedom to establish schools

- (1) No religious denomination and no religious, social, ethnic or cultural association or group shall be prevented from establishing and maintaining schools at its own expense.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that the law in question makes provision –
 - (a) in the interests of defence, public safety, public order, public morality or public health; or
 - (b) for regulating such schools in the interests of persons receiving instruction in them, except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

- (3) No person shall be prevented from sending to any such school a child of whom that person is parent or guardian by reason only that the school is not a school established or maintained by the Government.
- (4) In subsection (3), “child” includes a stepchild and a child adopted in a manner recognised by law, and “parent” shall be construed accordingly.

2. The Education Act 1957

PART II – MINISTRY OF EDUCATION AND EDUCATION AUTHORITIES

Section 3. Powers and duties of Minister

- (3) The Minister shall have control of the educational system of Mauritius and shall be responsible for the general progress and development of such system.
- (4) In particular, he shall ensure –
 - (a) the effective direction, development and co-ordination of all educational activities in Mauritius;
 - (b) the recruitment and training of teachers;
 - (c) the progressive development for all classes of the community of practical education suited to the age, ability and aptitude of the pupil and relevant to the needs of Mauritius

Amended by [Act No. 33 of 2011]; [Act No. 18 of 2016]

Section 5. National Education Council

- (2) The functions of the Council shall be -
 - (a) to advise Government on policies for the effective direction, promotion and development of education;
 - (b) to review the implementation of plans, policies, strategies, programmes and projects for the provision of education;
 - (c) to examine and make recommendations on any educational matter referred to it by the Minister.

Amended by [Act No. 49 of 1992]

Section 5B. Regional Education Boards

- (1) There shall be established for the purposes of this Act such number of Regional Education Boards, not exceeding 11, as the Minister may determine.
- (2) The functions of each Education Board shall be -
 - (a) to advise on the effective direction, promotion and development of education in the region for which it has been assigned responsibility;
 - (b) to make recommendations on the future plans and projects for education in the region;

- (c) to advise on the improvement of the administration of schools;
- (d) to organise and foster educational activities with the collaboration of the schools and the Parent-Teacher Association;
- (e) to ensure the general welfare of students, and to examine and make recommendations on any educational matter that may be referred to it by the Minister.

Amended by [Act No.49 of 1992]

Section 6. Education Authorities

- (1) There shall be Education Authorities responsible to the Minister for the good administration of the aided primary schools under their control.
- (2) The appropriate Education Authority for any religious denomination or a local government body or a group of private persons shall be such as may be approved by the Minister.
- (3) The Minister may withdraw the approval given to any Education Authority.

Section 7. Exemption of certain schools

- (1) This Part shall not, except in such cases as the President may in the Gazette, specify, apply to –
 - (a) any school entirely maintained and controlled by Government;
 - (b) any school in which the education is solely religious.

Amended by [Act No.48 of 1991]

Section 7A. Powers of Private Secondary Schools Authority

- (1) Subject to subsection (2), the powers conferred and the duties imposed upon the Minister under this Part shall in respect of a private secondary school, be exercisable by the Private Secondary Schools Authority.

Amended by [Act No. 56 of 1983]; [Act No. 20 of 2000]; [Act No. 16 of 2001]; [Act No. 18 of 2016]

Section 8. Registers to be maintained

- (1) The Minister shall cause to be maintained –
 - (a) a register of schools, in which shall be entered the name and address of every registered school;
 - (b) a register of managers in which shall be entered the name and address of every registered manager and the name of the school of which he is the manager;
 - (c) a register of rectors in which shall be entered the name, address and qualifications of every registered rector and the name of the school of which he is the rector; and
 - (d) a register of teachers in which shall be entered the name of every qualified teacher.

- (2) There may be entered in such registers such other particulars as the Minister thinks necessary.

Amended by [Act No.49 of 2002]; [Act No 18 of 2016]

Section 9. Registration of schools

- (1) No school shall begin to function unless it has been registered under this Act.

Amended by [Act No. 23 of 1986]

PART V – MISCELLANEOUS

Section 37. Compulsory education up to the age of 16

- (1) Every child who has attained such age as may be prescribed for admission to a primary school shall attend a primary school.
- (2) It shall be compulsory for every child to attend school up to the end of the academic year in the course of which he attains the age of 16.
- (3) Any responsible party of a child under the age of 16 who, without reasonable cause, refuses or neglects to cause the child to attend school regularly in accordance with subsection (1) or (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to a term of imprisonment not exceeding 2 years.
- (4) For the purposes of this section -

“academic year”, in relation to a school, means such academic year as may be determined by the Minister;

“pre-vocational course’ means such course for students having failed the Certificate of Primary Education Examinations as may be approved by the Minister;

“school” means –

- (a) a primary or secondary school, including a special education needs school, registered under this Act;
- (b) such institution as may be authorised by the Minister to run the prevocational course; or
- (c) such institution as the Minister may authorise to run a technical or vocational course.

Amended by [Act No 10 of 1991]; [Act No 44 of 2004]; [Act No18 of 2016]

3. The Education Regulations 1957 (Under the Education Act 1957)

PART V

FINANCIAL PROVISIONS

Section 25. Fees

- (1) No tuition fees shall be payable for school children attending Government or aided primary schools.

Amended by [GN No. 2 of 1959]; [GN No. 65 of 1964]; [GN no. 60 of 1965]; [GN No.134 of 1972]; [Act No. 2 of 1960]

Section 32. Grants to secondary schools

- (1) An approved secondary school which fulfils the conditions of paragraph (1) of regulation 52 of these regulations, may receive a regular grant-in-aid from public funds based on such percentage of the salaries of the approved staff or of part thereof as the President shall from time to time determine:

Provided that such school shall not be organised and maintained for the financial profit of any individual or group of partners or shareholders.

- (2) The Minister may, at his discretion, make ad hoc grants or issue equipment to any approved secondary school to assist that school to develop its library, laboratory, art, music, handicraft, homecraft or physical education services:

Provided that a grant made under this regulation shall not, except with the approval of the President, exceed one thousand rupees in value in anyone year.

- (3) For the purpose of assisting any secondary school towards the fulfilment of the conditions regarded as essential for making that school an approved secondary school, the Minister may also make ad hoc grants at his discretion:

Provided that a grant made under this paragraph shall not, except with the approval of the President, exceed two thousand rupees in value in anyone year.

- (4) An approved secondary school in receipt of Government grants may spend at its own discretion the money received in grant on the needs of its school:

Provided that unless the Manager of the school can satisfy the Minister, when called upon to do so, that the money paid in grant has in fact been spent on the school, the manager shall be liable to refund the whole or such part of the grant as the President may determine.

Amended by [GN No 12 of 1962]; [GN No 61 of 1968]; [GN No 144 of 1989]; [GN No. 144 of 1991]; [Act No 2 of 1960]; [Act No 48 of 1991]

Section 34. School discipline

The Principal of a Government or aided primary school, or of a Government central or secondary school, of the Government Secondary and Technical School and the Principal of the Teachers' Training College may, with the approval of the Minister, and, in the case of an aided primary school, with the approval of the Manager, make such rules for the administration and discipline of the school as he may deem fit. He may require his staff to perform such duties in the execution of these rules as he may deem fit, and he may authorise them to inflict such punishments, other than corporal punishment, as he may deem fit for any misconduct or breach of the rules of which a pupil may be found guilty at any time and in any place.

Amended by [GN No 2 of 1959]; [GN No 166 of 1964]; [Act No 2 of 1960]

4. The Tertiary Education Commission Act 1988

Section 4. Objects of the Commission

(1) The duties of the Commission shall be –

- (a) to foster the development of post-secondary education and training facilities;
- (b) to provide guidelines to the tertiary educational institutions for preparing annual and long-term plans for the operation and development of post-secondary education and training;
- (c) to make recommendations to the Minister on the development of higher education in Mauritius;
- (d) to advise the Minister on policy matters relating to the award of scholarships;
- (e) to promote coordination among tertiary educational institutions in respect of:
 - (i) the use of physical infrastructure and other material resources;
 - (ii) the optimum use of manpower;
 - (iii) the Organisation of teaching programmes;
 - (iv) the planning and implementation of research.

(2) In the performance of its functions, the Commission shall have regard to –

- (a) the educational, cultural, social and economic needs of Mauritius;
- (b) the advisability of promoting the most effective use of available resources;
- (c) the need to encourage students to take advantage of the tertiary educational institutions of Mauritius.

Article 29 of the Convention on the Rights of the Child

▪ *Goals of education*

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, 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 originate, and for civilizations 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 peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

▪ *Mauritian laws related to Article 29*

1. The Education Act 1957

PART II – MINISTRY OF EDUCATION AND EDUCATION AUTHORITIES

Section 5A. The National Curriculum Advisory Board

- (1) There is established for the purposes of this Act a National Curriculum Advisory Board.
- (2) The functions of the Board shall be –
 - (a) to advise on a national policy for the development of the school curriculum with regard to the overall economic, social and cultural context of the country and the personal development of the student;
 - (b) to review regularly and make recommendations for the updating and consolidation of the school curriculum;
 - (c) to advise on curriculum development for children with special needs and for remedial education ;
 - (d) to examine and advise on any matter relating to curriculum development, as may be referred to it by the Minister.

Added by [Act No 49 of 1992]

2. The National Children's Council Act 2003**PART II – THE COUNCIL****Section 4. Objects of the Council**

The objects of the Council shall –

- (a) be the key consultative and coordinating national body on all activities and issues related to children;
- (b) protect the rights of children, promote their interest and well-being and ensure their participation in matters of interest to them; and
- (c) promote activities for the welfare of children in line with the Convention on the Rights of the Child.

Article 30 of the Convention on the Rights of the Child

▪ *Children of minorities/indigenous groups*

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

▪ *Mauritian laws related to Article 30*

1. The Constitution of Mauritius

Article 11. Protection of freedom of conscience

- (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section, that freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.
- (2) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion that he does not profess.
- (3) No religious community or denomination shall be prevented from making provision for the giving, by persons lawfully in Mauritius, of religious instruction to possess of that community or denomination in the course of any education provided by that community or denomination.
- (4) No person shall be compelled to take any oath that is contrary to his religion or belief or to take oath in a manner that is contrary to his religion or belief.
- (5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -
 - (a) in the interests of defence, public safety, public order, public morality or public health; or
 - (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited intervention of persons professing any other religion or belief,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

Article 31 of the Convention on the Rights of the Child

▪ ***Leisure, play and culture***

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

▪ ***Mauritian laws related to Article 31***

1. The Education Act 1957

PART VI

ADMINISTRATION

Section 37. Health and Sanitation

(8) Every school shall -

- (a) be provided with an adequate, safe and salubrious area for open air recreation and its own playing fields or arrange for the provision of such facilities.
- (b) provide the necessary equipment and facilities for sports and games it is registered to provide.

Amended by [GN No. 35 of 1959]; [GN No. 83 of 1959]; [GN No. 37 of 1962]; [GN No. 72 of 1986]

2. The National Children's Council Act 2003

Section 4. Objects of the Council

The objects of the Council shall –

- (a) be the key consultative and coordinating national body on all activities and issues related to children;
- (b) protect the rights of children, promote their interest and well-being and ensure their participation in matters of interest to them; and
- (c) promote activities for the welfare of children in line with the Convention on the Rights of the Child.

3. The Local Government Act 2011

PART V – PURPOSE AND SERVICES OF LOCAL AUTHORITY

Sub-Part A – Purpose, Functions and Powers of Local Authority

50. Functions of Municipal City Council, Municipal Town Council or District Council

(2) A Municipal City Council, Municipal Town Council or District Council shall, subject to its financial capability and within the limits of its administrative area, be responsible –

- (n) for the provision of infrastructure for leisure and cultural activities to the inhabitants and the organization of leisure, welfare and cultural activities;

51. Functions of Village Council

(1) Subject to this section, a Village Council shall, within the limits of its administrative area, be responsible for –

- a) the organisation of sports, leisure and cultural activities;

Article 32 of the Convention on the Rights of the Child

▪ ***Child labour***

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

▪ ***Mauritian laws related to Article 32***

1. The Constitution of Mauritius

Section 6. Protection from slavery and forced labour

- (1) No person shall be held in slavery or servitude.
- (2) No person shall be required to perform forced labour.
- (3) For the purposes of this section, the expression "forced labour" does not include –
 - (a) any labour required in consequence of the sentence or order of a court;
 - (b) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
 - (c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that person is required by law to perform in place of such service; or
 - (d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

Section 7. Protection from inhuman treatment

- (1) No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Mauritius on 11 March 1964.

2. The Employment Rights Act 2008

PART I – PRELIMINARY

Section 2. Interpretation

In this Act -

“child” means a person under the age of 16;

“young person” means a person, other than a child, who is under the age of 18

PART II – MINIMUM AGE FOR EMPLOYMENT

Section 12. Employment of children and young persons

- (1) No person shall employ a child for employment or work in any occupation.
- (2) No person shall employ, or continue to employ, a young person –
 - (a) on work which by its nature, or the circumstances in which it is carried out, is likely to jeopardise the health, safety, physical, mental, moral or social development of the young person; or
 - (b) after being notified in writing by the Permanent Secretary that the kind of work for which the young person is employed is unsuitable for the young person, or will interfere with the young person’s education.

Section 13. Record of young persons

An employer shall keep a record of every young person employed by him stating –

- (a) the full name of the young person;
- (b) the address of the young person;
- (c) the date of birth of the young person; and
- (d) such other details that may be prescribed.

PART IV – HOURS OF WORK

Section 14. Normal working hours

- (6) No person shall employ a young person in an industrial undertaking between 10.00 pm and 5.00 am.

3. The Occupational Safety and Health Act 2005

Section 8. Prohibitions regarding young persons

No employer shall employ a young person in any activity involving –

- (a) work with explosives;
- (b) exposure to ionising radiation;
- (c) work with heavy metals, including lead and mercury;
- (d) work in the forestry and construction sector;
- (e) work or exposure to any form of asbestos;
- (f) exposure to benzene or other harmful organic solvents;
- (g) exposure to aromatic amines;
- (h) exposure to prescribed noise or vibration;
- (i) work in compressed air or in confined spaces; and
- (j) any work which is harmful to the health and safety of that person.

Section 46. Training and supervision of young persons working at dangerous machines

- (1) No young person shall work at any machine specified in the Third Schedule, unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed, and-
 - (a) has received sufficient training in work at the machine; or
 - (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.
- (2) No young person shall be required to clean any part of any machine where the cleaning thereof would expose him to risk of injury from any moving part of the machine.
- (3) Every employer shall keep a record of training given to employees in pursuance of this section.

4. The Merchant Shipping Act 2007

Section 81. Minimum age

- (1) No person under the age of 16 shall be employed or engaged, or shall work, on board any Mauritius ship.
- (2) No person under the age of 18 shall perform night work on a Mauritius ship except –
 - (a) when the effective training of the seafarers concerned, in accordance with established programmes and schedules, would otherwise be impaired; or
 - (b) the specific nature of the duty or a recognised training programme requires that the seafarers perform duties at night.

Article 33 of the Convention on the Rights of the Child

▪ ***Drug abuse***

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

▪ ***Mauritian laws related to Article 33***

1. The Dangerous Drugs Act 2000

Section 34. Unlawful use of drugs

(1) Any person who unlawfully –

- (a) smokes, inhales, sniffs, consumes or administers to himself in any way whatsoever, any dangerous drug;
- (b) possesses, purchases, offer to purchase or transports any dangerous drug;
- (c) has in his possession any pipe, syringe, utensil, apparatus or other article for use in connection with smoking, inhaling sniffing, consuming or the administration of any dangerous drug,

shall commit an offence and shall, on conviction, and subject to subsections (2) and (5), be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 2 years.

(2) Subject to subsection (5), before passing a sentence of imprisonment under subsection (1), the Court, where it considers this to be appropriate, explain to the convicted person that, if he undertakes to co-operate in order to be cured of his addiction, the Court, instead of sentencing him to imprisonment, may order him to undergo, at such institution as may be prescribed and for such period not exceeding 3 years as the Court may determine, such treatment, education, aftercare, rehabilitation or social reintegration as the Court thinks appropriate and if he so undertakes, the Court may order accordingly.

(3) (a) Where the Court is satisfied that an order made under subsection (2) has been complied with, the Court shall discharge the offender.

[s.34 repealed and replaced by s.5 of Act 29 of 2003 w.e.f 1 September 2003, amended by s.7 of Act 30 of 2008 w.e.f 20 February 2009]

Section 41. Aggravating circumstances

(1) For the purposes of this section, aggravating circumstances shall be deemed to exist whenever –

- (f) another person under the age of 18 years was concerned in the offence;
- (g) the drug was offered or delivered to a person under the age of 18 years or to a mentally handicapped person, or a person undergoing treatment involving withdrawal from drug abuse;

[s.41 amended by s.4 (2) (a) of Act 6 of 2007 w.e.f 18 June 2007; s.12 of Act 30 of 2008 w.e.f 20 February 2009, s.6 of Act 36 of 2008 w.e.f 6 December 2008]

2. The Child Protection Act 1994

Section 16. Licensed premises

- (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 house keeper (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.

[s.16 amended by Act 15 of 1998]

3. The Public Health (Restrictions on Tobacco Products) Regulations 2008

Section 2

In these regulations –

“child” means any person under the age of 18.

Section 5

- (1) No person shall, directly or indirectly -
 - (a) give, sell or offer to sell a tobacco product to a child;
 - (b) allow a child to sell or distribute a tobacco product;
 - (c) buy or acquire a tobacco product for the purpose of giving it, whether or not for a consideration, to a child.
- (2) A seller of a tobacco product may request a buyer to produce proof of his age before any sale of a tobacco product.
- (3) For the purpose of paragraph (2), proof of age shall be made by the production of -
 - (i) a national identity card;
 - (ii) a passport; or
 - (iii) a driving licence.
- (4) Every seller of a tobacco product shall conspicuously post at the point of sale inside his shop a notice in such manner as specified in the Sixth Schedule, informing the public that the sale of tobacco products to children is prohibited.
- (5) No seller of a tobacco product shall display a tobacco product for sale except in duty free shops at the airports of Mauritius and Rodrigues.

Article 34 of the Convention on the Rights of the Child

▪ ***Sexual exploitation***

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

▪ ***Mauritian laws related to Article 34***

1. The Criminal Code Act 1838

Section 249. Rape, attempt upon chastity and illegal sexual intercourse

- (3) Any person who commits an indecent act ‘attentat à la pudeur’, even without violence and with consent, upon a child of either sex under the age of 12 shall be liable to penal servitude for a term not exceeding 10 years.
- (4) Any person who has sexual intercourse with a minor under the age of 16 or a mentally handicapped person, even with his consent, shall be liable to penal servitude for a term not exceeding 20 years.

Amended by [Act No. 20 of 1990]; [Act No. 26 of 1991]; [Act No 13 of 1998]; [Act No 36 of 2008]

Section 251. Debauching youth

- (1) Any person who offends against morality, by habitually exciting, encouraging, or facilitating the debauchery or corruption of youth of either sex under the age of 18 shall be punished by imprisonment for a term of not exceeding 10 years.
- (2) Where such prostitution or corruption has been excited, encouraged or facilitated by the father, mother, guardian or other person entrusted with the care of youth so debauched, the punishment shall be imprisonment for a term not exceeding 15 years.
- (3) (a) Notwithstanding section 152 of the Criminal Procedure Act, any person charged under subsection (1) or (2) shall be liable to the minimum penalties provided in that subsection.
(b) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under paragraph (a).

Amended by [Act No 29 of 1990]; [Act No 13 of 1998]; [Act No 36 of 2008]

2. The Criminal Code (Supplementary) Act 1870

Section 86. Dealing in obscene matter

- (1) Any person who—

- (a) for the purposes of, or by way of, trade or for distribution or public exhibition, makes or produces or has in his possession any obscene matter;
- (b) for a purpose specified in paragraph (a), imports, conveys, or exports or causes to be imported, conveyed or exported any obscene matter or in any manner puts into circulation any obscene matter;
- (c) carries on or takes part in a business, whether public or private, concerned with any obscene matter or deals in any obscene matter in any manner, or publicly distributes or exhibits or makes a business of lending any obscene matter; or
- (d) advertises or makes known by any means that a person is engaged in any of the acts specified in paragraphs (a) to (c), or advertises or makes known how or from whom the obscene matter can be procured either directly or indirectly,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding one year and the obscene matter forming the subject matter of the offence shall be forfeited.

- (2) (a) Any person who sells, lends, hires or distributes to a minor or exposes or allows to be exposed to the view of a minor any obscene matter shall commit an offence and, notwithstanding section 152 of the Criminal Procedure Act, shall, on conviction, be liable to imprisonment for a term not exceeding 4 years together with a fine not exceeding 100,000 rupees.
- (b) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under paragraph (a).
- (3) In this section, “obscene matter” means any obscene writing, drawing, print, painting, printed matter, picture, poster, emblem, photograph, cinematograph film, video tape, slide, data stored on a computer disc or by any other electronic means capable of conversion into a photograph, or any other obscene object.
- (4) In addition to making an order that the obscene matter forming part of the subject matter of the offence be forfeited, the Court shall, where appropriate, order that the obscene matter be no longer stored on and made available through the computer system, or that the material be deleted.

[S.86 amended by Act 10 of 1985, Act 29 of 1990; Act 14 of 1998; Act 5 of 1999; S.22(3) of Act 22 of 2003 w.e.f 9 August 2003, ss.4 and 8 of Act 36 of 2008 w.e.f 6 December 2008]

3. The Child Protection Act 1994

Section 14. Sexual offences

- (1) Any person who causes, incites or allows any child to –
 - (a) be sexually abused by him or by another person;
 - (b) have access to a brothel;
 - (c) engage in prostitution,
 shall commit an offence.

- (2) For the purposes of subsection (1)(a), a child shall be 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 –
- (a) another person's gratification;
 - (b) any activity of pornographic, obscene or indecent nature;
 - (c) any other kind of exploitation by any person.

Section 15. Indecent photographs of children

- (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.

- (2) Where a person is charged with an offence under subsection (1)(b) or (c), it shall be a defence for him to prove that –
- (a) he had reasonable grounds for distributing or showing the photograph or pseudo photograph or having them in his possession; and
 - (b) that he had not himself seen the photograph or pseudo-photograph and did not know, nor had any cause to suspect, it to be indecent.
- (3) Where –
- (a) the impression conveyed by the pseudo-photograph is that the person shown is a child; or
 - (b) the predominant impression conveyed is that the person shown is a child, notwithstanding that some of the physical characteristics shown are those of an adult,

the pseudo-photograph shall be treated for all purposes of this Act as showing a child.

[s.15 inserted by s.2 (1)(b) of Act 22 of 2003 w.e.f 9 August 2003]

Section 18(5). Offences and penalties

- (5) Any person who commits an offence under section 14 or 15 shall, on conviction, be liable–
- (a) where the victim is mentally handicapped, to penal servitude for a term not exceeding 30 years;

- (b) in any other case, to a fine not exceeding 100,000 rupees and to penal servitude for a term not exceeding 20 years.

(5A) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under subsection (5).

[s.18 amended by s.22(1) of Act 22 of 2003 w.e.f 9 August 2003; s.4 of Act 34 of 2005; s.8 of Act 36 of 2008 w.e.f 6 December 2008]

4. The Independent Broadcasting Authority Act 2000

SECOND SCHEDULE

(sections 21, 24, 25)

CODE OF CONDUCT FOR BROADCASTING SERVICES

Section 3. News

- (7) The identity of rape victims and other victims of sexual violence shall not be divulged in any broadcast without the prior consent of the victim concerned.

Article 35 of the Convention on the Rights of the Child

▪ ***Abduction, sale and trafficking***

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

▪ ***Mauritian laws related to Article 35***

1. The Child Protection Act 1994

Section 13A. Child trafficking

- (1) Any person who willfully and unlawfully recruits, transports, transfers, harbours or receives a child for the purpose of exploitation shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.
- (2) Any person who willfully and unlawfully recruits, transports, transfers, harbours or receives a child -
 - (a) outside Mauritius for the purpose of exploitation in Mauritius;
 - (b) in Mauritius for the purpose of exploitation outside Mauritius,shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.
- (3) Any person who, in any place outside Mauritius, does an act preparatory to, or in furtherance of, the commission of an offence under subsection (1), shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.
- (4)
 - (a) Any person who takes part in any transaction the object or one of the objects of which is to transfer or confer, wholly or partly, temporarily or permanently, the possession, custody or control of a child in return for any valuable consideration shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.
 - (b) Any person who, without lawful authority or reasonable excuse, harbours or has in his possession, custody or control of any child in respect of whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by any other person in or outside Mauritius, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.
- (5)
 - (a) No press report of any Court proceedings relating to an offence under this section shall include any particulars calculated to lead to the identification of any child who is the victim of that offence, nor shall any photograph or picture be published in any newspaper or broadcast as being or including a photograph or picture of that child.

(b) Any person who contravenes paragraph (a) shall commit an offence and shall, on conviction, be liable in respect of each offence to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 2 years.

- (6) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section.
- (7) Where the Court finds that a person who has parental responsibility and rights in respect of a minor has committed an offence under this section in relation to that minor, it may –
 - (a) suspend the parental responsibilities and rights of that person; and
 - (b) order the minor to be admitted to a place of safety, for such period as it thinks fit.
- (8) In this section - “exploitation” has the same meaning as in the Combating of Trafficking in Persons Act.

[S.13A inserted by s.3 of Act 34 of 2005 w.e.f 17 December 2005; amended by s.8 of Act 36 of 2008 w.e.f 6 December 2008; s.21 of Act 2 of 2009 w.e.f 30 July 2009]

Section 13B. Abandonment of child

- (1) Any person who, for pecuniary gain or by gifts, promises, threats or abuse of authority, incites the parents of a child to abandon the child or a child to be born shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 20 years.
- (2) Any person who, for pecuniary or other gain, acts as an intermediary between a person wishing to adopt a child and a parent willing to abandon a child or a child to be born, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 700,000 rupees and to penal servitude for a term not exceeding 30 years.

[S. 3B inserted by s. 3 of Act 34 of 2005 w.e.f. 17 December 2005; amended by s. 8 of Act 36 of 2008 w.e.f. 6 December 2008]

Section 13C. Abducting child

- (1) Any person who, by force or fraud, without the consent of the legal custodian -
 - (a) takes away or causes to be taken away a child; or
 - (b) leads away, decoys, entices or causes to be led away, decoyed or enticed, a child out of the keeping of the custodian or from any place where the child has been placed or is with the consent of the custodian,

shall commit the offence of abduction, and shall, on conviction, be liable to penal servitude for a term not exceeding 25 years.

- (2) Any person who unduly fails to present a child to the person who has the right to claim the child shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

- (3) In the case specified in subsection (1), where the abduction is committed without fraud or violence, the offender shall be liable to penal servitude for a term not exceeding 20 years.
- (4) Where an offender who has committed an offence under subsection (1) has civilly married the child whom he has so taken away, he shall not be prosecuted, except upon the complaint of the parties who have the right, under the Code Civil Mauricien, of suing for the nullity of such marriage, and he shall not be convicted until after the nullity of the marriage has been pronounced.
- (5) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section.

[S 13C inserted by s.3 of Act 34 of 2005 w.e.f 17 December 2005; amended by s.8 of Act 36 of 2008 w.e.f 6 December 2008]

2. The Combating of Trafficking in Persons Act 2009

Section 2. Interpretation

In this Act –

“Centre” means a Centre for victims of trafficking set up under section 4;

“exploitation” includes –

- (a) all forms of slavery or practices similar to slavery, including forced marriage;
- (b) sexual exploitation;
- (c) forced labour; and
- (d) the illegal removal of body organs;

“trafficking” means –

- (a) the recruitment, sale, supply, procurement, capture, removal, transportation, transfer, harbouring or receipt of a person –
 - (i) by the use of threat, force, intimidation, coercion, abduction, fraud, deception, abuse of power or abuse of a position of vulnerability; or
 - (ii) by the giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or
- (b) the adoption of a person facilitated or secured through illegal means, for the purpose of exploitation.

Section 3. Application of Act

This Act shall be in addition to, and not in derogation from, the Child Protection Act.

Section 4. Centres for victims of trafficking

- (1) The Minister shall –

- (a) cause to be set up one or more Centres which shall be premises for the provision of temporary accommodation suited for the needs of victims of trafficking admitted to them;
 - (b) designate an investigation officer to be in charge of each Centre.
- (2) Every Centre –
- (a) shall secure the safety of its inmates against any risk of retaliation;
 - (b) shall provide counselling and rehabilitation services to its inmates;
 - (c) shall facilitate the integration of its inmates into their families;
 - (d) may offer facilities aimed at providing education, skills development and training;
 - (e) shall, where necessary, provide reception, care and other facilities for a child who is in the care and custody of an inmate.
- (3) The officer in charge of a Centre shall, on the admission of an inmate, make an assessment to determine –
- (a) the risks to the safety of the inmate and of any child in his care and custody;
 - (b) the immediate and long term needs of the inmate.

Section 9. Return of victims of trafficking to Mauritius

Where a victim of trafficking is a citizen or a permanent resident of Mauritius and is to be returned to Mauritius, the Minister shall –

- (a) where the victim is a minor and it is in his interest to do so, designate an adult, at State expense, to escort the minor home;
- (b) facilitate and accept the return of the victim;
- (c) where necessary, take measures to secure the reception of the victim at a Mauritian port of entry;
- (d) issue such travel document or other authorisation as may be necessary to enable the victim to return;
- (e) at the request of another State which is a party to the United Nations Protocol or to any other agreement relating to trafficking in persons to which Mauritius is a party, verify that a person who is a victim of trafficking is a citizen or permanent resident of Mauritius;
- (f) on entry into Mauritius, where the victim of trafficking –
- (h) is a minor, refer him to the Child Development Unit.

Section 11. Trafficking in persons

- (1) (a) Any person who trafficks another person or allows another person to be trafficked shall commit an offence.
- (b) It shall not be a defence to a charge under paragraph (a) that a person who is a

victim of trafficking, or a person having control or authority over a minor who is a victim of trafficking, has consented to the act which was intended to constitute trafficking.

(2) Any person who knowingly -

- (a) leases a room, house, building or establishment or subleases or allows it to be used, for the purpose of harbouring a victim of trafficking; or
- (b) advertises, publishes, prints, broadcasts, distributes, or causes the advertisement, publication, broadcast or distribution of, information which suggests or alludes to trafficking by any means, including the use of the internet or other information technology,

shall commit an offence.

- (3) (a) Every internet service provider operating in Mauritius shall be under a duty to report to the Police forthwith any site on its server which contains information in contravention of subsection (2)(b).
- (b) Any internet service provider who fails to comply with paragraph (a) shall commit an offence.
- (4) Any person who knowingly benefits, financially or otherwise, from the services of a victim of trafficking or uses, or enables another person's usage of, the services of a victim of trafficking shall commit an offence.

3. The Convention on the Civil Aspects of International Child Abduction Act 2000

Section 4. Central Authority

- (1) The Central Authority required to be designated under Article 6 of the Convention as being competent to discharge the duties which are imposed by the Convention upon such authorities shall be the Permanent Secretary of the Ministry.
- (2) The Authority shall cooperate with all competent authorities to secure the prompt return of children under the Convention and shall take all appropriate measures to achieve the objects of the Convention.
- (3) Where the Authority is requested to provide information relating to a child under Article 7(d) of the Convention, it may request the assistance of -
 - (a) the Commissioner of Police in order to obtain any information relating to the whereabouts of a child who has been wrongfully removed or retained;
 - (b) a Probation Officer to obtain any information relating, to the social background of the child.

Article 36 of the Convention on the Rights of the Child

▪ ***Other forms of exploitation***

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

▪ ***Mauritian laws related to Article 36***

1. The Child Protection Act 1994

Section 17. Mendicity

Any person who causes or allows any child under his care to beg shall commit an offence.

2. The Ombudsperson for Children Act 2003

Section 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.

[S. 7 amended by s. 3 of Act 8 of 2005]

Article 37 of the Convention on the Rights of the Child

▪ *Detention and punishment*

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

▪ *Mauritian laws related to Article 37*

1. The Constitution of Mauritius

Article 4. Protection of right to life

- (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.
- (2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable -
 - (a) for the defence of any person from violence or for the defence of property;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) for the purpose of suppressing a riot, insurrection or mutiny; or
 - (d) in order to prevent the commission by that person of a criminal offence,
 or if he dies as the result of a lawful act of war.

Article 5. Protection of right to personal liberty

- (1) No person shall be deprived of his personal liberty save as may be authorised by law –
 - (f) in the case of a person who has not attained the age of 18 years, for the purpose of his education or welfare;
- (2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

Article 7. Protection from inhuman treatment

- (1) No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Mauritius on 11 March 1964.

Article 10. Provisions to secure protection of law

- (1) Where any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial Court established by law.
- (2) Every person who is charged with a criminal offence –
 - (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
 - (b) shall be informed as soon as reasonably practicable, in a language that he understands and, in detail, of the nature of the offence;
 - (c) shall be given adequate time and facilities for the preparation of his defence;
 - (d) shall be permitted to defend himself in person or, at his own expense, by a legal representative of his own choice or, where so prescribed, by a legal representative provided at the public expense;
 - (e) shall be afforded facilities to examine, in person or by his legal representative, the witnesses called by the prosecution before any court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that court on the same conditions as those applying to witnesses called by the prosecution; and
 - (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the Court has ordered him to be removed and the trial to proceed in his absence.

Article 17. Enforcement of protective provisions

- (1) Where any person alleges that any of sections 3 to 16 has been, is being likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the Supreme Court for redress.

- (2) The Supreme Court shall have original jurisdiction to hear and determine made by any application made by any person in pursuance of subsection (1), and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of sections 3 to 16 to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

- (3) The Supreme Court shall have such powers in addition to those conferred by this section as may be prescribed for the purpose of enabling that Court to exercise the jurisdiction conferred upon it by this section more effectively.
- (4) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred upon it by or under this section (including rules with respect to the time within which applications to that Court may be made).

2. The Criminal Code Act 1838

Section 44. Minor under 14 acting without discernment

Where an accused person is under the age of 14 and it is determined that he acted without discernment, he shall be acquitted, but shall, according to the circumstances of his case, be handed over to his relations or placed in a reformatory to be brought up and detained during such number of years as the sentence may determine, which period shall in no case exceed the period at which the accused will have reached the age of 18.

Section 45. Minor under 14 acting with discernment

Where it is decided an accused person under the age of 14 acted with discernment, he shall be condemned to imprisonment in a reformatory for such time as shall be determined by the judgment.

3. The Juvenile Offenders Act 1935

Section 8. Separation of juveniles from adults

The Commissioner of Police shall make arrangements for preventing a juvenile while detained in a police station, or while being conveyed to and from any criminal court, or while waiting before or after attendance in any criminal court, from associating with an adult (other than a relative), who is charged with any offence other than an offence with which the juvenile is jointly charged, or of which he has been jointly convicted, and for ensuring that a girl, being a juvenile, while so detained, being conveyed or waiting, is under the care of a woman.

Section 15. Restrictions on punishment of juveniles

- (4) A young person sentenced to imprisonment or committed to prison in default of payment of a fine, damages or costs, shall not, as far as is practicable, be allowed to associate with adult prisoners.

[s.15 amended by Act 15 of 1998]

Article 38 of the Convention on the Rights of the Child

▪ *War and armed conflicts*

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

▪ *Mauritian laws related to Article 38*

1. The Geneva Conventions Act 1970

Section 3. Breaches of the Conventions and Protocol I

- (1) Any person who in Mauritius or elsewhere commits, or is an accomplice in the commission by another person of, a grave breach of any of the Conventions or of Protocol I shall commit an offence.
- (2) For the purposes of this section –
 - (a) a grave breach of the First Convention is a breach of that Convention involving an act referred to in article 50 of that Convention committed against persons or property protected by that Convention;
 - (b) a grave breach of the Second Convention is a breach of that Convention involving an act referred to in article 51 of that Convention committed against persons or property protected by that Convention;
 - (c) a grave breach of the Third Convention is a breach of that Convention involving an act referred to in article 130 of that Convention committed against persons or property protected by that Convention;
 - (d) a grave breach of the Fourth Convention is a breach of that convention involving an act referred to in article 147 of that Convention committed against persons or property protected by that Convention;
 - (e) a grave breach of Protocol I is any breach referred to as a grave breach of that Protocol in paragraph 4 of article 11, or paragraph 2, 3 or 4 of article 85, of that Protocol.

- (3) This section applies to persons regardless of their nationality or citizenship.
- (4) Any person who commits an offence against this section shall, on conviction, be liable –
- (a) where the offence involves the wilful killing of a person protected by the relevant Convention, or of Protocol I to the same penalty as that for the time being for murder;
 - (b) in any other case, to penal servitude for a term not exceeding 15 years.
- (4A) Any person who, in Mauritius, commits any breach of any of the Conventions or Protocols other than a breach covered by subsection (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees.
- (4B) A Mauritian Court shall have jurisdiction to try the offence, and inflict the penalty, specified in subsection (4A), where the act constituting the offence under that subsection has been done or completed outside Mauritius.

Added by [Act No. 2 of 2003]

- (5) No proceedings for an offence under this section shall be instituted without the consent of the Director of Public Prosecutions.

Amended by [Act No. 2 of 2003]

Article 39 of the Convention on the Rights of the Child

▪ ***Rehabilitation of child victims***

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

▪ ***Mauritian laws related to Article 39***

1. The Child Protection Act 1994

Section 8. Committal to place of safety

- (1) Where the Permanent Secretary has reasonable ground to believe that a child is ill-treated, neglected, abandoned, destitute or otherwise exposed to harm, and that it is in his interests to be committed to a place of safety, he may apply in writing to the Court for a committal order.
- (2) Upon an application under subsection (1), the Court—
 - (a) may make an interim order for the child to be put in a place of safety for a period not exceeding 14 days and may extend such interim order for further periods of 14 days until the final determination of the application;
 - (b) shall order an urgent enquiry and report by the Probation Service as to the child's family background, general conduct, home surroundings and school record as may enable it to deal with the case in the best interests of the child;
 - (c) may request that the child be medically examined.
- (3) Where after hearing evidence including that of any parent, wherever possible and practicable, the Court considers it necessary in the interests of the child, it shall order that the child be committed to a place of safety until the child reaches the age of 18 or for such shorter period as the Court may deem fit.
- (4) An order made under subsection (3) may be varied in the interests of the child at the instance of any interested party.
- (5) Any expenses incurred for the care and protection of a child who has been committed under subsection (3) may be recovered from any parent of the child.

[s. 8 amended by Act 15 of 1998]

2. The Child Protection (Foster Care) Regulations 2002

Section 6

The Permanent Secretary shall-

- (a) have all powers of supervision over the foster home including the power to visit, assess, assist and guide the foster home;

- (b) ensure that adequate training be given to the foster home and assistance and support be given to the biological parents;
- (c) ensure that the registered foster home complies with the Act and these regulations;
- (d) ensure that the child's best interests shall prevail;
- (e) interview the child before the placement;
- (f) ensure that due consideration shall be given to the child's wishes and views;
- (g) inform the Court and the probation officer of the child's wishes and views;
- (h) arrange for after-care service to the child upon termination of the placement;
- (i) inform the Ministère Public of any placement made and recommend that necessary action be initiated before the appropriate jurisdiction regarding the exercise of "autorité parentale";
- (j) explain to the foster home all the duties and obligations that they have under these regulations, code of conduct and related policy;
- (k) enter into a written agreement with the foster home regarding the placement before such placement is made, specifying that the foster home shall carry out the duties specified in the code of conduct to these regulations.

Article 40 of the Convention on the Rights of the Child

▪ ***Juvenile justice***

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

▪ ***Mauritian laws related to Article 40***

1. The Constitution of Mauritius

Section 10. Provisions to secure protection of law

- (1) Where any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial Court established by law.
- (2) Every person who is charged with a criminal offence –
 - (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
 - (b) shall be informed as soon as reasonably practicable, in a language that he understands and, in detail, of the nature of the offence;
 - (c) shall be given adequate time and facilities for the preparation of his defence;
 - (d) shall be permitted to defend himself in person or, at his own expense, by a legal representative of his own choice or, where so prescribed, by a legal representative provided at the public expense;
 - (e) shall be afforded facilities to examine, in person or by his legal representative, the witnesses called by the prosecution before any Court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that Court on the same conditions as those applying to witnesses called by the prosecution; and
 - (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the Court has ordered him to be removed and the trial to proceed in his absence.
- (3) Where a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such

reasonable fee as may be specified by or under any law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the Court.

- (4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.
- (5) No person who shows that he has been tried by a competent Court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial of that offence, except upon the order of a superior Court in the course of appeal or review proceedings relating to the conviction or acquittal.
- (6) No person shall be tried for a criminal offence if he shows that he has been granted a pardon, by competent authority, for that offence.
- (7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.
- (8) Any Court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial, and where proceedings for such a determination are instituted by any person before such a Court or other authority, the case shall be given a fair hearing within a reasonable time.
- (9) Except with the agreement of all the parties, all proceedings of every Court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the Court or other authority, shall be held in public.

2. The Juvenile Offenders Act 1935

Section 2. Interpretation

In this Act -

“juvenile” means a person under the age of 18;

“young person” means a person who has attained the age of 14 and is under the age of 18.

[s. 2 amended by Act 15 of 1998]

Section 3. Constitution of Juvenile Court

- (1) District Courts sitting for the purpose of hearing any charge against a juvenile or of exercising any other jurisdiction conferred on Juvenile Courts by or under this Act or any other enactment shall be known as Juvenile Courts.

- (2) (a) The President may, by Proclamation, specify the places in which Juvenile Courts are to sit.
- (b) Notwithstanding the Courts Act, the President may, specify places other than District Courts.
- (3) Every Juvenile Court shall be held by and before a Magistrate exercising jurisdiction as such in the district where the Juvenile Court is required by Proclamation of the President to sit.
- (4) (a) Notwithstanding any other enactment but subject to paragraph (b), every Magistrate sitting in the Juvenile Court and before whom any juvenile is charged with having committed an offence, other than an offence under sections 50 to 76, 216 to 223, 228 (3) and 229 of the Criminal Code shall have power and jurisdiction, in whatever district the offence has been committed, and whatever may be the minimum punishment imposed by law with respect to the offence so charged, to hear, try and determine the charge and all questions of fact and law arising in the case and to convict the juvenile and, on conviction, to impose on him any penalties not exceeding the maximum penalties applicable to the offence of which the juvenile is convicted.
- (b) No Magistrate shall inflict on any young person imprisonment with or without hard labour for more than one year or any fine exceeding 1,000 rupees.

[s. 3 amended by Act 48 of 1991.]

Section 4. Assignment of matters to Juvenile Court

- (1) Subject to subsection (2), no charge against a juvenile and no application the hearing of which is under this Act assigned to Juvenile Courts shall be heard by a Court which is not a juvenile Court.
- (2) Notwithstanding subsection (1) –
 - (a) the offences listed in section 3 (4) shall not be tried before a Juvenile Court;
 - (b) a charge made jointly against a juvenile and a person who has attained the age of 18 shall be heard by a Court other than a Juvenile Court;
 - (c) where a juvenile is charged with an offence, the charge may be heard by a Court which is not a Juvenile Court if a person who has attained the age of 18 is charged at the same time with aiding, abetting, causing, procuring or permitting that offence;
 - (d) where, in the course of any proceedings before a Court of summary jurisdiction, other than a Juvenile Court, it appears that the person to whom the proceedings relate is a juvenile, the Court may, if it thinks fit, proceed with the hearing and determination of those proceedings.

[s. 4 amended by Act 48 of 1991; Act 15 of 1998]

Section 5. Powers of Juvenile Court

A Juvenile Court sitting for the purposes of hearing a charge against, or an application relating to, a person who is believed to be a juvenile may, if it thinks fit, proceed with the hearing and determination of the charge or application, even if it is discovered that the person in question is not a juvenile.

Section 6. Procedure in Juvenile Court

- (1) Juvenile Courts shall sit as often as may be necessary for the purpose of exercising any jurisdiction conferred on them by or under this Act or any other enactment.
- (2) A Juvenile Court shall, subject to subsection (3), sit either in a different building or room from that in which sittings of Courts, other than Juvenile Courts, are held, or on different days from those on which sittings of such other Courts are held.
- (3) No person shall be present at any sitting of a Juvenile Court except –
 - (a) members and officers of the Court;
 - (b) parties to the case before Court, their attorneys, barristers, witnesses and other persons directly concerned in that case;
 - (c) bona fide representatives of the newspapers or news agencies;
 - (d) such other persons as the Court may specially authorise to be present

Section 7. Restrictions on reports

- (1) (a) Subject to paragraph (b), no report of any proceedings in a Juvenile Court shall reveal the name, address or school, or include any particulars calculated to lead to the identification of any juvenile concerned in those proceedings either as being the person against or in respect of whom the proceedings are taken or as being a witness nor shall any photograph or picture be published as being or including a photograph or picture of that juvenile.
 - (b) The Court or the President may, if satisfied that it is in the interests of justice to do so, by order, dispense with the requirements of this section to such extent as may be specified in the order.
 - (2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable in respect of each offence to a fine not exceeding 10,000 rupees.
- [s. 7 amended by Act 48 of 1991; Act 15 of 1998]

Section 8. Separation of juveniles from adults

The Commissioner of Police shall make arrangements for preventing a juvenile while detained in a police station, or while being conveyed to and from any criminal court, or while waiting before or after attendance in any criminal court, from associating with an adult (other than a relative), who is charged with any offence other than an offence with which the juvenile is jointly charged, or of which he has been jointly convicted, and for ensuring that a girl, being a juvenile, while so detained, being conveyed or waiting, is under the care of a woman.

Section 9. Bail or detention

- (3) Where any person apparently below the age of 18 is apprehended, the police officer in charge of the station to which that person is brought shall, immediately, take all reasonable steps to inform his parent or guardian of his apprehension and the place where he may be seen by the parent or guardian.
- (4) No statement shall be recorded from an apprehended person below the age of 18 outside the presence of his parent or guardian unless the parent or guardian cannot be contacted within a reasonable time or the parent or guardian, after being contacted, fails to call at the police station where the statement is to be recorded within a reasonable time fixed by the police officer in charge of the station.

[S. 9 amended by Act 15 of 1998]

Section 13. Attendance of parents

- (1) Where a juvenile is charged with an offence or is for any other reason brought before a Court, his parent or guardian may in any case and shall, where he can be found and where he resides within a reasonable distance, be required to attend at the Court before which the case is heard or determined during all stages of the proceedings unless the Court is satisfied that it would be unreasonable to require his attendance.
- (2) Where a juvenile is arrested, the police officer by whom he is arrested, or the officer in charge of the police station to which he is brought, as the case may be, shall cause the parent or guardian of the juvenile where he can be found, to be warned to attend at the Court before which the juvenile will appear.
- (3) For the purpose of enforcing the attendance of a parent or guardian and enabling him to take part in the proceedings and enabling orders to be made against him, the Court before which the juvenile is brought may issue a summons to his parent or guardian directing him to appear before it at a time and place specified, and, where the parent or guardian fails to appear in obedience to the summons, the Court may issue a warrant for his arrest.
- (4) (a) The parent or guardian whose attendance is required under this section shall be the parent or guardian having the actual possession and control of the juvenile.
(b) Where the person having the actual possession and control of the juvenile is not one of the parents, the attendance of one or both parents may also be required.
- (5) The attendance of the parent of a juvenile shall not be required under this section where the juvenile was, before the institution of the proceedings, removed from the custody or charge of his parent by an order of a Court.

Section 18. Uncontrollable juveniles

- (1) Where the parent or guardian of a juvenile represents on oath before a Juvenile Court that he is unable to control the juvenile and desires him to be sent to a Rehabilitation Youth Centre, and gives an undertaking or security to the satisfaction of the Court to

pay the expenses of the maintenance of the juvenile at that Centre, the Court may, after hearing the juvenile, order the juvenile to be removed to and detained in a Rehabilitation Youth Centre until he attains the age of 18 or for a shorter period.

(2) This section is in addition to and not in derogation from the Code Civil Mauricien.

[s. 18 amended by Act 15 of 1998]

Section 19. Children liable to be committed

(1) Any police officer may bring before a Juvenile Court any person apparently under the age of 18 who is-

- (a) found begging or receiving alms whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise, or is found in any street, premises or place for the purpose of so begging or receiving alms;
- (b) found wandering without any home or settled place of abode, or visible means of subsistence or is found wandering having no parent or guardian or a parent or guardian unfit to exercise care and guardianship, or not exercising proper care and guardianship;
- (c) found destitute, not being an orphan, and having both parents or his surviving parent undergoing imprisonment;
- (d) under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care or guardianship of the child;
- (e) the daughter of a father who has been convicted of an offence under section 251 of the Criminal Code in respect of any of his daughters;
- (f) frequenting the company of any reputed thief, or common or reputed prostitute;
- (g) lodging or residing in a house or part of a house used by any prostitute for the purposes of prostitution, or is otherwise living in circumstances calculated to cause, encourage or favour the seduction or prostitution of the juvenile; or
- (h) being persistently ill-treated or neglected by the parent or guardian under whose care he is.

[s. 19 amended by Act 15 of 1998]

Section 22. Methods of dealing with juveniles

(1) Where a juvenile charged with an offence is tried and convicted by any Court, the Court shall take into consideration the manner in which, under this Act or any other enactment enabling the Court to deal with the case, the case should be dealt with, and may –

- (a) discharge the offender on his entering into a recognisance;
- (b) send the offender to a Rehabilitation Youth Centre;
- (c) order the offender to pay a fine, damages or costs;

- (d) order the parent or guardian of the offender to pay a fine, damages or costs;
 - (e) order the parent or guardian of the offender to give security for his good behaviour;
 - (f) commit the offender to custody in a place of detention provided under this Act;
 - (g) where the offender is a young person, sentence him to imprisonment; or
 - (h) deal with the case in any other manner in which it may be legally dealt with.
- (2) (a) Where the Court decides to send the offender to a Rehabilitation Youth Centre, the period of detention to which the offender shall be sentenced shall be not less than 3 years nor more than 5 years.
- (b) Where the offender is over the age of 13, the maximum period of detention in a Rehabilitation Youth Centre to which he may be sentenced shall not exceed that which might elapse between the date of his conviction and that on which he shall attain the age of 18.

3. The Reform Institutions Act 1988

Section 15. Sentencing of young offenders

- (1) Before sentencing a minor, a court shall ascertain his age and consider –
- (a) the evidence available as to the character and previous conduct of the offender and the circumstances of the offence;
 - (b) whether it is expedient for his reformation that he should undergo a training in a Correctional Youth Centre or a Rehabilitation Youth Centre case may be;
 - (c) any report or representation which may be made to it by or on behalf of the Chief Probation Officer in consultation with the Commissioner as to the suitability of the case for treatment in a Correctional Youth Centre or a Rehabilitation Youth Centre; and
 - (d) the state of health and mental condition of the minor, especially with regard to the benefit that he would be likely to derive from instruction and discipline in a Correctional Youth Centre or a Rehabilitation Youth Centre.
- (2) Subject to subsection (3), where the court is satisfied that it is expedient for the reformation of a minor that he should undergo training in a Correctional Youth Centre or a Rehabilitation Youth Centre, it may direct that the minor be sent to that institution as appropriate.
- (3) Subject to this Act, any sentence of training in a Correctional Youth Centre or a Rehabilitation Youth Centre shall –
- (a) be for a minimum period of 2 years; and
 - (b) include supervision under section 49.

[s.15 amended by Act 15 of 1998]

Section 16. Misconduct of detainee

- (1) Where the Commissioner considers that a detainee in a Correctional Youth Centre is of such a character, or has conducted himself in such manner, as to render his detention in such centre no longer expedient, he may move the Court to order the detainee to undergo a term of imprisonment equivalent to the residue of his detention.
- (2) The Court before which a motion is made under subsection (1) shall, upon being satisfied that the detainee deserves to be imprisoned, order that he undergoes a term of imprisonment which shall be equivalent to the residue of his detention.

Section 17. Offence committed by detainee

Subject to this Act, where a Court convicts a person of an offence committed while he was a detainee in a Correctional Youth Centre and sentences him to a term of imprisonment, the Court shall –

- (a) in assessing the length of the term, take into consideration the period of that person's detention which remained unexpired at the time of the conviction; and
- (b) cancel the order committing the detainee to the Correctional Youth Centre.

Section 18. Detainee in custody of officer in charge

- (1) Every detainee shall be deemed to be in the lawful custody of the Commissioner from the time an order is made for his detention in any institution until his discharge by due course of law.
- (2) Every Officer in charge shall keep and detain every person duly committed to his custody according to the terms of the order by which the person has been committed or until that person is discharged by due course of law.

Section 38. Punishment of minor

- (1) Subject to sections 42 and 43, the officer in charge of a Rehabilitation Youth Centre may punish a minor found after due inquiry by him to be guilty of a Rehabilitation Youth Centre default by ordering that the detainee shall –
 - (a) be deprived of either or both of –
 - (i) the privilege of playing games;
 - (ii) the privilege of pocket money;
 - (b) suffer loss of grade for a period not exceeding one month;
 - (c) be confined in a separate room for a period not exceeding 3 days; or
 - (d) suffer a combination of any of the punishments specified in paragraphs (a) to (c).
- (2) Where the officer in charge is of the opinion that in the circumstances of the case the powers of punishment he possesses are inadequate, he shall refer the case to the Commissioner.

- (3) Where the officer in charge refers a case to the Commissioner under subsection (2), he shall forward to the latter—
- a copy of the charge;
 - the record of all the evidence given in the case;
 - the reasons why he has found the detainee guilty; and
 - any representation the minor wishes to make to the Commissioner in regard to punishment.
- (4) Subject to section 43, the Commissioner may punish a minor found after due inquiry by him to be guilty of a Rehabilitation Youth Centre default by ordering -
- any punishment authorised under subsection (1);
 - confinement in a separate room for a period not exceeding 14 days; or
 - loss of grade for a period not exceeding 3 months; or
 - a combination of any of the punishments specified in paragraphs (a) to (c).

[s. 38 amended by Act 15 of 1998]

Section 39. Correctional Youth Centre defaults

- (1) Subject to sections 16 and 43, the officer in charge of a Correctional Youth Centre may punish any young offender found after due inquiry by him to be guilty of a Correctional Youth Centre defaulted by ordering -
- confinement in a separate room for a period not exceeding 7 days;
 - reduction in stage or a deferment of promotion in stage for a period not exceeding one month.
 - forfeiture of privileges for a period not exceeding 2 months;
 - forfeiture of earnings for a period not exceeding 2 months; or
 - a combination of any of the punishments specified in paragraphs (a) to (d).
- (2) On finding a young offender guilty of a Correctional Youth Centre default, the officer in charge may, where he is of the opinion that in the circumstances of the case, the powers of punishment he possesses are inadequate, refer the case to the Commissioner.
- (3) Where the officer in charge refers a case to the Commissioner under subsection (2), he shall forward to the Commissioner –
- a copy of the charge;
 - the record of all the evidence given in the case;
 - the reasons why he has found the young offender guilty; and
 - any representation the young offender wishes to make to the Commissioner in regard to punishment.

- (4) Subject to sections 16 and 43, the Commissioner may -
- (a) punish a young offender found after due enquiry by him to be guilty of a Correctional Youth Centre default by –
 - (i) any punishment authorised under subsection (1);
 - (ii) confinement in a separate room for not more than 15 days;
 - (iii) a reduction in stage or a deferment of promotion in stage for a period not exceeding 3 months; or
 - (iv) a combination of any of the punishments specified in subparagraphs (i) to (iii).
 - (b) refer the record to the Board.

Section 46. Leave of absence

- (1) A Magistrate may, by written direction, authorise a detainee to leave an institution under escort for the purpose of declaring the birth of his child.
- (2) Where the Commissioner is satisfied that a spouse, parent, grandparent, child, brother or sister of a detainee has died, he may permit the detainee to leave the institution in ordinary clothes and under escort, for the purpose of viewing the body before burial or cremation.
- (3) The officer in charge of a Correctional Youth Centre or a Rehabilitation Youth Centre may—
 - (a) grant leave of absence to a detainee for such period and on such conditions as he thinks fit; and
 - (b) at any time revoke the leave of absence for breach of any of its conditions and direct the detainee to whom the leave was granted to return to the centre.
- (4) The Commissioner, or the officer in charge of a Correctional Youth Centre or a Rehabilitation Youth Centre, may authorise a detainee to proceed, under escort, to such place or premises as are specified in a request under the hand of the Commissioner for Drugs, being a place or premises at or upon which he intends to carry out a search in the detainee's presence pursuant to an order made under section 45A (1) of the Dangerous Drugs Act.

[s.46 amended by s.9 of Act 29 of 2003 w.e.f. 1 September 2003]

Section 47. Aftercare order

- (1) (a) The Commissioner may permit a detainee in a Correctional Youth Centre or a Rehabilitation Youth Centre who has served a minimum of 6 months, to live under the charge of a suitable and willing person.
- (b) A detainee who is released under subsection (1) shall be deemed to be on aftercare and be guided and advised by a Probation Officer.

- (2) Aftercare granted under subsection (1) shall, unless revoked under section 48, remain in force until the expiry of the detainee's sentence.
- (3) The time during which a detainee is absent from a Correctional Youth Centre or a Rehabilitation Youth Centre on aftercare shall be deemed to be part of his detention in the Correctional Youth Centre or Rehabilitation Youth Centre.

Section 48. Revocation of aftercare order

An aftercare order granted under section 47 may be revoked by the Commissioner—

- (a) where the person to whom it was granted has not complied with a condition of the aftercare order or any instruction given by a Probation Officer; or
- (b) where revocation of the aftercare order appears to be in the best interest of the person to whom it was granted.

Section 49. Supervision after release on aftercare

- (1) Subject to subsection (5), every minor who is released on aftercare shall, on release, remain on aftercare for a period of one year or the balance of his sentence, whichever is the longer, under the supervision of a Probation Officer.
- (2) Every person who is under supervision under subsection (1) shall comply with the conditions contained in the aftercare order and any other instructions given by the Probation Officer with particular reference to his place of residence, occupation, activities or conduct.
- (3) A person on aftercare who is recalled shall be detained for a period not exceeding 3 months unless his sentence terminates earlier.
- (4) Subject to subsection (5), where a person is detained under subsection (3) he shall, on completion of the period of detention, be released and remain under supervision on the conditions of a fresh aftercare order until the expiry of the period of supervision.
- (5) The Commissioner may decide at any time to cancel an aftercare order where in his opinion supervision is no longer necessary or desirable.

[s.49 amended by Act 15 of 1998]

4. The Community Service Order Act 2002

Section 3. Community Service Order

(1) Where a Court –

- (a) convicts a minor and, in accordance with the Juvenile Offenders Act, sentences him to a term of imprisonment, not being a sentence fixed by law,

the Court may suspend the sentence of imprisonment and make a community service order.

Amended by [Act No. 5 of 2009]; [Act No. 27 of 2013]; [Act No.3 of 2018]

5. The Legal Aid and Legal Assistance Act 1973

Section 7A. Grant of Legal Aid to minors

Notwithstanding sections 3 to 7, where an application for legal aid is made to the Authority in respect of a minor charged with a crime or misdemeanour, the Authority shall approve the grant of legal aid.

Amended by[Act No. 15 of 1998]; [Act No. 13 of 2012]

6. The Probation of Offenders Act 1946

Section 3. Court may make probation order

- (1) (a) Subject to paragraph (b), where a Court by or before which a person is convicted of an offence, not being an offence the sentence for which is fixed by law, is of opinion that, after duly considering any report made under section 3A and having regard to the circumstances, including the nature of the offence and the character, antecedents, age, health, mental condition and home surroundings of the offender, it is expedient to do so, the Court may, instead of sentencing him, make a probation order.
- (b) Before making a probation order, the Court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any way to comply with the order or commits another offence, he shall be liable to be sentenced for the original offence.
- (c) The Court shall not make a probation order unless the offender expresses his willingness to comply with the order.

[s.3 amended by Act 48 of 1991; by s.4 of Act 11 of 2009; w.e.f. 1 October 2010]

Section 3A. Report by probation officer

- (1) Subject to subsection (2), where a report by a probation officer is made to a Court with a view to assisting the Court in determining the most suitable method of dealing with a person in respect of an offence, a copy of the report shall be given by the Court to the offender or his Counsel or attorney.
- (2) Where the offender is a minor and is not represented by Counsel or an attorney, the copy of the report shall be given to his parent or guardian if present in Court.

[s. 3A amended by ss of Act 11 of 2009 w.e.f 1 October 2010]

Section 4. Probation order

- (1) (a) A probation order shall-
 - (i) have effect for such period being not less than one year nor more than 3 years from the date of the order as may be specified in the order; and
 - (ii) require the probationer to submit during that period to the supervision of

a probation officer appointed for or assigned to the district in which the probationer will reside after the making of the order.

(b) the order shall contain –

- (i) such conditions and requirements as the Court considers necessary for securing the supervision of the offender; and
- (ii) such other conditions and requirements as the Court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition of the same offence or the commission of other offences.

(c) (i) Subject to subparagraph (ii), in making a probation order, a Court may impose one or more of the following requirements –

- (A) an attendance centre requirement;
- (B) a curfew requirement;
- (C) a drug or alcohol treatment requirement;
- (D) a residence requirement.

(ii) A curfew and a residence requirement shall be imposed in respect of a minor only.

(6) A Court making a probation order shall give one copy of the order to the offender and one to the probation officer under whose supervision he is placed.

[s. 4 amended by s. 6 of Act 11 of 2009 w.e.f 1 October 2010]

7. The National Children's Council Act 2003

Section 9. Functions of Board

In furtherance of the objects of the Council, the Board shall –

- (g) assist children who are charged with a criminal offence so that they may benefit from a fair trial and, if convicted, are dealt with in accordance with the provisions of the Convention on the Rights of the Child.

CHAPTER 2:

TEENAGE PREGNANCY: A COMPLEX CHILD RIGHTS ISSUE

2.1 Introduction

The public in Mauritius has been moved by the stories of pregnant adolescent girls which appeared in the local press in June 2018. Statutory authorities, journalists, other professionals and the civil society have since then been trying to unpack the phenomenon of teenage pregnancy and parenthood. These events have also urged us to identify and reflect on several areas that require improvements in our country to prevent minors from engaging in sexual activity, falling pregnant or getting “married”. Several other issues such as child sexual abuse, teen dating and cohabitation (or “concubinage”) between either two minors or an adult and a minor have also been brought to light. While some of these teenage pregnancies catch media attention, we can certainly argue that there are currently many more cases in the country that are not reported to authorities.

I, the Ombudsperson for Children, am mandated to provide recommendations on areas of concern in order to ensure the promotion of the rights and welfare of children of the Republic of Mauritius, especially those finding themselves in vulnerable situations. Pregnant adolescents and teenage parents, especially mothers, undoubtedly comprise one such vulnerable group of children who merit special consideration from the relevant stakeholders. It is important to explore the complex interplay of personal, physical and psychosocial factors that make young Mauritians more vulnerable to the societal challenges of teenage pregnancy and parenthood.

In this context, the Ombudsperson for Children’s Office conducted inquiries on this particular matter from a child rights perspective. A major initiative was the release of a Press Communiqué on 25 June 2018 to invite interested citizens to come forward with their inputs regarding teenage pregnancy and parenthood and other related issues. A copy of the Communiqué is provided in section 2.3 of the current chapter and a summary of responses received are outlined in subsection 2.4.3.

In the present chapter, I start by providing an overview of three selected cases of teenage pregnancy in Mauritius. Based on issues identified through these cases, I then present my findings in relation to international and local provisions on teenage pregnancy in order to understand this phenomenon in Mauritius. Finally, I propose some recommendations.

It is important to note that the first two selected cases have been reported but not investigated by my office. This is because they are involved in judicial proceedings and, according to the section 7(4) of the Ombudsperson for Children Act 2003, I am not allowed to “*investigate any case which is pending before any Court*”. The third one was investigated upon receipt of a complaint made to my office which was not being dealt by Court.

2.2 An overview of three selected cases of teenage pregnancy

2.2.1 “Married” and pregnant at 13 years old

Ms. A²⁷, a 13-year-old girl, was illegally married to a 19-year-old young man named Mr. B and was pregnant. Ms. A’s parents reported that they had opposed this marriage, but they gave in to their daughter’s threats of harming herself if they did not agree. Ms. A and Mr. B were “married” during a family ceremony, after which Ms. A left school and lived at her husband’s place.

Ms. A was three months pregnant when she faced a sudden death in the bathroom at her husband’s home. Her family suspected that she was a victim of domestic violence, an allegation denied by Mr. B’s family. The autopsy concluded that Ms. A had died of a severe asthma crisis. Nevertheless, Mr. B was arrested by the police based on section 14 of the Child Protection Act 1994 for having caused a child to be sexually abused. Mr. B stipulated that he did not know that marriage and sexual intercourse with a minor under 16 years old were against local laws.

This case certainly raised attention on several issues such as the definition of a child in our country, the minimum age of marriage, child marriage, parental authority, the compulsory age for education, teenage pregnancy and a lack of knowledge and understanding of sexual offences in the Republic of Mauritius.

2.2.2 The case of physical and sexual abuse against a 13-year-old pregnant adolescent girl

Ms. X, a 13-year-old girl, who stopped school at Grade 8, has been dating her 19-year-old boyfriend, Mr. Y, since a couple of years. Although this is unlawful, Mr. Y caused Ms. X to engage in sexual activity with him. This resulted in Ms. X falling pregnant at 13 years old. Following an argument, Mr. Y physically abused Ms. X by slapping her several times. Ms. X reported her pregnancy and physical abuse to her mother who informed the police immediately. Mr. Y was arrested for having had sexual intercourse with a minor under 16 years as per subsection 249(4) of the Criminal Code Act 1838 and for causing a child to be sexually abused under section 14 of the Child Protection Act 1994. Ms. X, who was pregnant of 7 months, was kept under observation at a local hospital.

Mr. Y was released on bail while awaiting trial. Despite her mother’s and the police’s prohibitions, Ms. X remained insistent on wanting to meet Mr. Y. In the best interests of Ms. X, an Emergency Protection Order was issued by the Court and the concerned statutory authority transferred her to a place of safety on the day of her discharge from hospital. Following reassessment of her family’s circumstances, needs and safety, a decision will be made by the relevant authorities on whether she can be reunited with her family and, if so, under which conditions.

²⁷ All names in section 2.2 have been replaced with arbitrary alphabets to protect the individuals’ identities.

This particular case also brought up issues such as the compulsory age for education, a lack of understanding of sexual offences against minors under 16 years, teenage pregnancy, parental authority and challenges in child protection.

2.2.3 The case of declaring the forthcoming baby of a 16-year-old girl

Ms. V, a 16-year-old adolescent girl, is four months pregnant with Mr. W, her same-aged boyfriend. This has been a matter of dispute and stress between the two families. Ms. V's parents initially wanted to settle the matter through marriage, otherwise they would lodge a complaint against the boy. It was reported that Ms. V and Mr. W did not wish to get married presently. Allegedly being pressured by Ms. V's father and unsure about who should declare the forthcoming baby, Mr. W's mother registered a complaint at the Ombudsperson for Children's Office (OCO). She reported that Ms. V's father claimed that he will declare his grandchild.

The case was reported to the concerned authority. Ms. V contacted the investigator of the OCO claiming that particular adults from that authority were trying to convince her into getting married to her boyfriend to resolve the conflict. Reports on this case were requested from the concerned authority. Both families and minors were convened to the OCO in order to work on lawful solutions collaboratively. This case explored several questions such as:

- When declaring a baby at the Civil Status Office, what document is required as proof of paternity?
- Are birth notifications issued by ALL hospitals and private clinics to certify a child's birth?
- How is paternity acknowledged by the authorities?
- Can a minor declare his or her baby?
- When a minor declares a baby, is there any notification to the CDU or the police?
- Are Civil Status Officers sensitised on matters related to teenage pregnancy?
- Can grandparents declare their grandchildren?
- Can situations where 16/17-year-old minors are dating and engaging in sexual activity be referred to as 'abuse'? Can a case be lodged against the boy or the girl?

In the end, Ms. V's father did not lodge a complaint against Mr. W. Within 45 days post-birth, Ms. V declared the baby alone using her surname. One month later, Mr. W called at the Civil Status Office to acknowledge the baby.

2.3 Investigations conducted by the OCO on teenage pregnancy and associated issues

Several investigation techniques were used to understand the phenomenon of teenage pregnancy and parenthood in order to build a picture of its current situation in Mauritius. These included:

- Searching for international and local literature on this topic;
- Conducting interviews with the Registrar of the Civil Status Office and relevant local

organisations such as ‘Mouvement d’Aide à la Maternité’ (MAM), Mauritius Family Planning and Welfare Association (MFPWA) and Action Familiale (AF) to determine the extent of the problem and to take cognizance of the services offered to pregnant adolescents and teenage mothers in Mauritius;

- Consulting relevant press articles;
- Analysing cases of teenage pregnancy referred to the OCO; and
- Releasing a national Press Communiqué (see below) to invite inputs from interested citizens on the matter of teenage pregnancy and parenthood, and other related issues.

All the relevant information gathered have been synthesised in section 2.4 of the present chapter.



REPUBLIC OF MAURITIUS

OMBUDSPERSON FOR CHILDREN'S OFFICE

Press Communiqué from Ombudsperson for Children's Office

The saddening death of a 13-year-old girl child in Goodlands who was pregnant and “married”, has undoubtedly stirred reflections on several issues regarding children such as teenage pregnancy, child marriage, child sexual abuse, teen dating and cohabitation (“concubinage”) between either two minors or an adult and a minor.

I, the Ombudsperson for Children, would like to draw the attention of all Mauritian citizens on the fact that it is the prime duty of families to protect children from all forms of abuse.

Moreover, as recommended by the Committee on the Rights of the Child, Mauritian laws should be amended to define a child as a person under the age of 18 and to prohibit marriages under this age.

It is important to hear the voice of Mauritian people on these issues. In this context, I invite interested citizens including children, to provide their inputs in one of the following ways:

- By calling in person at the **Ombudsperson for Children's Office (OCO), 1st Floor, NPF Building, Rue des Artistes, Beau-Bassin**, between 10 am and 3 pm from Monday 25 June 2018 to Friday 06 July 2018.
- By phoning us on **(230) 454-3010 and 464 4380** (Monday to Friday between 9 am and 3.30 pm)
- By emailing us on ombudschild@govmu.org

This will enable me to propose meaningful recommendations to the relevant authorities on these matters. I rely on your participation and I thank you in anticipation.

Rita Venkatasawmy (Mrs) O S K
Ombudsperson for Children

2.4 Findings

2.4.1 Some international literature on teenage pregnancy and early marriage

There is no standard international definition of ‘adolescence’, but it is commonly attributed to the age period from 10 to 19 years. In its General Comment No.4, the Committee on the Rights of the Child (2003)²⁸ described ‘adolescence’ and its developmental and health implications in the following words:

*[A] period characterized by **rapid physical, cognitive and social changes, including sexual and reproductive maturation**; the gradual building up of the capacity to assume adult behaviours and roles involving new responsibilities requiring **new knowledge and skills**. While adolescents are in general a healthy population group, adolescence also poses new challenges to health and development owing to their relative vulnerability and pressure from society, including peers, to adopt risky health behaviour. These challenges include developing an individual identity and **dealing with one’s sexuality**.*

The World Health Organisation (WHO; 2018)²⁹ outlined that around 16 million girls aged 15 to 19 years and 2.5 million girls under 16 years give birth annually, especially in developing regions such as several parts of Asia, sub-Saharan Africa and Latin America. Historically, and still in some cultures, teenage pregnancy and motherhood have been generally accepted. However, these have been challenged fairly recently with worldwide mindset shifts on, for example, women empowerment and gender equality, and with the international recognition of girls’ rights to education and a high standard of health.

Several potential determinant factors of teenage pregnancy have been suggested by Simigiu (2012)³⁰, for instance,

- being sexually active at an early post-pubertal age along with poor sexual education;
- being children of single parents who have more permissive sexual attitudes;
- experiencing traumatic events at a young age, especially those involving sexual abuse;
- being a preteenager living with adolescents who are sexually active or with a pregnant sister;
- having difficult relationships with one’s parents;
- being part of cultures that are more tolerant of early pregnancy; and
- living in a society with high unemployment rates.

²⁸ Committee on the Rights of the Child (2003). General Comment No. 4 (2003): Adolescent health and development in the context of the Convention on the Rights of the Child. Geneva: United Nations.

²⁹ World Health Organisation (2018). Adolescent pregnancy. Retrieved on 01 August 2018 from www.who.int/news-room/fact-sheets/detail/adolescent-pregnancy

³⁰ Simigiu, A. (2012, May). Teen pregnancy. Factors. Options. Consequences. Paper presented at the International Conference of Scientific Paper, Afases 2012, Brasov, Romania.

Nowadays, pregnancy in adolescence and mothering as a teenager are known to have adverse consequences on the young girl's and their baby's medical health, mental health, education and social opportunities. According to Simigiu (2012), some examples of consequences of teenage parenthood were suggested as follows:

- Teenage mothers experience longer period of loneliness, educational sacrifice, low employment opportunities and smaller income than those of non-adolescent mothers;
- Babies born to teenage mothers are more likely to experience medical complications such as being premature or weighing less at birth;
- Less than one on five teenage mothers marry the father of their child;
- Teenage fathers earn a lower income and engage in more delinquent behaviours than non-adolescent fathers;
- There is significant financial burden on the extended family and on the society through public assistance to cater for the needs of the teenage mother and her child.

The WHO (2018) highlighted that complications during pregnancy and childbirth are considered to be the leading cause of death for 15 to 19-year-old girls worldwide. The Committee on the Rights of the Child (2003) also expressed concerns in its General Comment No. 4 that *“early marriage and pregnancy are significant factors in health problems related to sexual and reproductive health, including HIV/AIDS”* (article 20) and they urged countries to ensure that adolescent girls are sensitised about these dangers and have *“access to health services that are sensitive to their rights and particular needs”* (article 31).

2.4.2 Local provisions on issues related to teenage pregnancy and motherhood

2.4.2.1) Statistics on teenage pregnancy and motherhood in the Republic of Mauritius

The OCO retrieved statistics on teenage pregnancy and motherhood from several locally published sources as shown below:

- i) **The 2011 Housing and Population Census Analysis Report (Statistics Mauritius, 2015):** According to Statistics Mauritius (2015)³¹, the **teenage fertility** rate for the Republic of Mauritius among young women aged 15 to 19 years old was around 32 births per 1,000 in the year 2011 compared to 39 births per 1000 in the year 2000. The rate is more elevated than those for some developed countries such as Germany (i.e. 5 births per 1000) and Australia (i.e. 13 births per 1000), and lower than those for African countries such as South Africa (i.e. 53 births per 1000) and Kenya (i.e. 95 births per 1000). In the island of Rodrigues, the teenage fertility rate among young women aged 15-19 years during the period from 2000 to 2011 was on average 65 births per 1000 women.

³¹ Statistics Mauritius (2015). 2011 *Housing and Population Census Analysis Report, Volume VIII – Nuptiality, fertility and Childlessness*. Mauritius: Ministry of Finance and Economic Development.

- ii) **The 2014 Contraceptive Prevalence Survey (Ministry of Health and Quality of Life [MHQL] and the Mauritius Institute of Health [MIH], 2016):** The MHQL and the MIH (2016)³² reported that 12.1 per cent and 29.5 per cent of female adolescents aged between 15 and 19 years old in Mauritius and Rodrigues respectively were **either already mothers or pregnant with a first child** for the year 2014. During the celebration of the World Population Day 2015 (Government Information Service, 2015)³³, the Minister of Health and Quality of Life, had highlighted that the reported Mauritian figure for the year 2014 (i.e. 12.1 per cent) had increased by 1.2 per cent from that obtained in the year 2000 (i.e. 10.9 per cent). He also advanced that the situation must be tackled from a medico-social perspective.
- iii) **Health Statistics Report (MHQL, 2016)**³⁴ : From the year 2010 to 2016, there has been a gradual decrease in the number of live births registered among mothers aged between 10 and less than 20 years in Mauritius from 1,530 to 1,036.
- iv) **Figures requested by OCO from the Civil Status Office:** The number of **birth registrations** at the Civil Status Office from 2013 to 2017, where at least one of the parents (either the mother or the father) is a minor aged less than 18 years was 2316.
- v) **Figures from the Mauritius Family Planning and Welfare Association (MFPWA) as published in a local newspaper (Sunday Times, 2018)**³⁵: From January to March 2018, 35 young pregnant teens were sexually abused, with the majority of victims being between 12 and 15 years old. From January to March 2016, there were 45 cases of teenage pregnancy among 96 girls who had been sexually abused. In 2017, 208 cases of teenage pregnancies have been registered against 147 in 2015. The President of MFPWA concluded that, *“The situation is worsening over the years. We have alarming figures facing us. It is time to act”*.

2.4.2.2) Relevant local legislation and policies

This present subsection summarises the different local legislation and policies that are linked to the several issues raised in the three selected case studies as well as to the responses received from the various stakeholders who participated in the OCO's inquiries:

i) Who is a 'child' in the Republic of Mauritius?

Across different laws concerning children in the Republic of Mauritius, there are confusions as to the definition of the 'child'. For instance, the Child Protection Act (CPA) 1994 defines the

³² Ministry of Health and Quality of Life and Mauritius Institute of Health (2016). *The 2014 Contraceptive Prevalence Survey*. Republic of Mauritius: Author. Retrieved 04 August 2018 from health.govmu.org/English/Documents/2017/FINAL%20%202014%20CPS%20REPORT.pdf

³³ Government Information Service (2015). *Health Minister raises alarm on teenage pregnancy in Mauritius*. Retrieved 04 August 2018 from www.govmu.org/English/News/Pages/Health-Minister-rings-alarming-bell-on-teenage-pregnancy-in-Mauritius.aspx

³⁴ Ministry of Health and Quality of Life (2016). *Health Statistics Report: Island of Mauritius and Island of Rodrigues*. Mauritius: Author. Retrieved 04 August 2018 from health.govmu.org/English/Documents/2017/health%20statistics%20report%202016.pdf

³⁵ Sunday Times (2018). *Teenage pregnancy: A growing concern!* Retrieved 04 August 2018 from www.sundaytimesmauritius.com/teenage-pregnancy-a-growing-concern/

child as “**any unmarried person under the age of 18**”. The Employment Rights Act 2008 refers to the child as “a person under the age of 16”. In contrast, the Ombudsperson for Children Act 2003 defines the child as “a person under the age of 18”, which is based on the Convention on the Rights of the Child’s (CRC; United Nations, 1989)³⁶ definition. In the CPA 1994’s definition of the child, the term ‘unmarried’ has long stirred debates within the regional and international community, as discussed next.

ii) The minimum age of marriage

The ‘Code Civil Mauricien’ stipulates that **no one can marry before the age of 18 years** in the Republic of Mauritius (article 144). However, a clause exists within this law whereby **a minor who is below the age of 18 years but over 16 years old can get married with the consent of his father and mother or the one who detains parental authority** (article 145). This consent should be expressed in the presence of a Civil Status Officer, a notary, or the person authorised to conduct the marriage.

It is worthy to note that, in the 1970s and early 1980s, the ‘Muvman Liberasyon Fam’, a local women’s movement, had been very active on the field to advocate for a two-pronged change in the Civil Code: firstly, the age of marriage should be raised to 18 years, and secondly, in exceptional cases of earlier marriage, a Court Order should be required along with parental permission. Following these years of activism, the age of marriage was raised to 18 in the series of 1980 to 1981 amendments of the Civil Code. However, on 10 April 1984, there was a unanimous vote in Parliament to lower the minimum age of marriage to 16 years old, which has been maintained since that time.

Within the regional community, Mauritius is the ONLY country that has NOT signed the Southern African Development Community (SADC) Protocol on Gender and Development (Gender Links Johannesburg, 2017)³⁷. This protocol (SADC, 2008)³⁸ aims to “*provide for the empowerment of women, eliminate discrimination and achieve gender equality by encouraging and harmonising the development and implementation of gender responsive legislation, policies and programmes and projects*”. In its article 8 on ‘marriage and family rights’, this document proposed that:

- (2) *Legislation on marriage shall ensure that:*
 - (a) **No person under the age of 18 shall marry** unless otherwise specified by law, which takes into account the best interests and the welfare of the child;
 - (b) *Every marriage takes place with the free and full consent of both parties;*
 - (c) *Every marriage, including civil, religious, traditional or customary, is registered in accordance with national laws;*

³⁶ United Nations (1989). Convention on the Rights of the Child. Geneva: Author.

³⁷ Gender Links Johannesburg (2017). Botswana Signs Gender Protocol, Mauritius Remains. Retrieved 04 august 2018 from allafrica.com/stories/201705020574.html

³⁸ Southern African Development Community (2008). SADC Protocol on Gender and Development. South Africa: Author. Retrieved 04 August 2018 from www.sadc.int/files/8713/5292/8364/Protocol_on_Gender_and_Development_2008.pdf

- (d) *During the subsistence of their marriage the parties shall have reciprocal rights and duties towards their children with the best interests of the children always being paramount.*

In 2016, Mauritius advanced its reason for not signing this protocol as not agreeing to the above-stated article 8(2)(a), which was “against certain religious practices in Mauritius” (Gender Links Johannesburg, 2017). Paradoxically, in 1992, our country had ratified the African Charter on the Rights and Welfare of the Child (African Commission on Human and People’s Rights [ACHPR], 1990)³⁹, whereby it committed to uphold all the Charter’s provisions, including article 21(2) which states that:

*Child marriage and the betrothal⁴⁰ of girls and boys shall be prohibited and effective action, including legislation, shall be taken to **specify the minimum age of marriage to be 18 years** and make registration of all marriages in an official registry compulsory.*

However, since Mauritius is a dualist country, any ratified public international laws will not apply until they are domesticated or incorporated within local legislation through Parliament. The international community has recognised that ending child marriage, that is before the child’s 18th birthday, is key to achieving at least 8 Sustainable Development Goals (SDGs) by 2030, including no poverty, zero hunger, quality education, gender equality and decent work and economic growth (Girls Not Brides, 2018)⁴¹. In this spirit, the Committee on the Rights of the Child (2015)⁴² expressed its concerns regarding Mauritius’s minimum age of marriage and made recommendations as follows:

25. *The Committee is concerned that, while the age of marriage is set at 18 years (art. 144 of the Civil Code), **exceptions to the minimum age of marriage** are possible and extensively granted, as is shown by the high number of underage marriages in the State party. **The Committee is also concerned that the Child Protection Act defines a child as any unmarried person under the age of 18.***
26. *The Committee urges the State party to **ensure that the minimum age of marriage, set at 18 years, is strictly enforced, in line with the State party’s obligations under the African Charter on the Rights and Welfare of the Child.** The Committee recommends that the State party carry out comprehensive awareness-raising programmes on the negative consequences of child marriage, targeting in particular parents, teachers and community leaders.*

³⁹ African Commission on Human and People’s Rights (1990). *African Charter on the Rights and Welfare of the Child*. Retrieved on 04 August 2018 from www.achpr.org/instruments/child/#a21

⁴⁰ According to Oxford Dictionaries, ‘betrothal’ is defined as a formal engagement to be married. Retrieved 04 August 2018 from en.oxforddictionaries.com/definition/betrothal

⁴¹ Girls Not Brides (2018). *What is the impact of Child Marriage*. Retrieved 04 August 2018 from www.girlsnotbrides.org/themes/sustainable-development-goals-sdgs/

⁴² Committee on the Rights of the Child (2015). *Concluding observations on the combined third to fifth periodic reports of Mauritius*. Geneva: United Nations.

iii) Sexual offences against a minor under 16 years

The Child Protection Act 1994 provides in section 14 on ‘sexual offences’ that:

*(1) Any person who **causes, incites or allows any child** –*

*(a) **to be sexually abused by him or by another person;***

(b) to have access to a brothel;

(c) to engage in prostitution,

shall commit an offence.

*(2) For the purposes of subsection (1)(a), a child shall be 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 –*

(a) another person’s gratification;

(b) any activity of pornographic, obscene or indecent nature;

(c) any other kind of exploitation by any person.

In addition, the Criminal Code Act 1838 states in its subsection 249(4) that “any person who has **sexual intercourse with a minor under the age of 16** or a mentally handicapped person, even with his consent, shall be liable to penal servitude for a term not exceeding 20 years”. However, the Act also provides in subsection 249(7) that “it shall be a sufficient defence to any prosecution...that the person charged had reasonable cause to believe that the child was above the age of...16”.

iv) Compulsory education until 16 years

According to subsection 37(2) of the Education Act 1957, “it shall be **compulsory** for every child to attend school up to the end of the academic year in the course of which he attains **the age of 16**”. Pregnant teenagers and adolescent mothers often leave school early and this may feed into vicious cycles of poverty and unemployment. When they do so while being under 16 years old, this is considered as a law violation.

It is important that parents or other responsible parties of these pregnant girls and teenage mothers ensure that they are supported to reintegrate school. The Nine Year Continuous Basic Education strategy of the Ministry of Education and Human Resources, Tertiary Education and Scientific Research (2016)⁴³ was also implemented with the aims of increasing the number of children completing the first nine years of quality basic education and encouraging the completion of the secondary education cycle.

The following is an extract of a letter received by the Ombudsperson for Children in 2017 from the Rector of Le Chou College, Rodrigues, who highlighted pertinent issues linked to teenage pregnancy and motherhood, especially the need to ensure that stakeholders do not lose sight

⁴³ Ministry of Education and Human Resources, Tertiary Education and Scientific Research (2016). Inspiring every child. Mauritius: Open University of Mauritius.

of the newborn's rights when planning and providing support and intervention to the young mother.

***Extract from a letter addressed to the Ombudsperson for Children
from Mr R. Bhowany, Rector of Le Chou College, Rodrigues***

"The Constitution of the Republic of Mauritius guarantees the right to education to all citizens irrespective of gender. It is a known fact that teenage pregnancies disrupt and disturb girls' education alarmingly. Generally speaking, whether or not to keep young girls during their pregnancy at school is a debatable issue. However, the rights of the baby are neglected.

The government has no clear policies on how pregnancy in schools can be handled or on assisting girls who want to come back to school after delivery. The law provides 'protection' for the mother-to-be while at the same time remaining discriminatory towards the baby. What does happen in certain situations is that the mother rushes back to school only after one week's delivery.

We are fully aware that working mothers are given fourteen weeks maternity leave. The "student mother" cannot afford to take such a long leave as they are conscious that missing classes will have dreadful repercussions on their SC and HSC examination preparation. They opt to come back to school at the expense of their and their babies' health and wellbeing. Furthermore, they know that the government will not pay their examination fees if they do not satisfy 90% attendance.

Very often the baby is left to the care of the grandmother. We all know that a newborn's upbringing and breastfeeding is the responsibility of the mother, especially in its early days.

It is high time that the government come up with a new policy concerning teenage pregnancies at schools to protect both mother-to-be and child in particular. The Head of School has to be provided with a clear protocol to deal with pregnancy when it occurs.

The significant gaps in addressing issues of pregnancies in schools can be filled up in the following ways:

- 1. Teenage mothers should be given the same rights as adult mothers.*
- 2. Expecting mothers should be advised to take one academic year off for regular prenatal and antenatal care to maintain good health.*
- 3. They should be taught that what they eat and drink go into the umbilical cord and to the baby. The baby should have a good start in life.*
- 4. Breastfeeding is another sure way to get the baby off the best start.*
- 5. School re-admission should be mandatory."*

v) Teenage parenthood in the context of current local birth registration laws and procedures

This section looks at the importance for any child to receive an identity at birth and the local current provisions for a child to be legally registered. I then discuss this information and their implications in the context of teenage parenthood in the Republic of Mauritius.

- **The importance of receiving an identity:** Whether born to a teenage mother or not, it is a fundamental right according to article 7(1) of the CRC (UN, 1989) that the child “*shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents*”. This international provision had been reinforced by the Human Rights Committee’s (1989)⁴⁴ General Comment No. 17 which stated that:

*(...) In the Committee’s opinion, this provision should be interpreted as being closely linked to the provision concerning the right to special measures of protection and it is designed to promote recognition of the child’s legal personality. **Providing for the right to have a name is of special importance in the case of children born out of wedlock.** The main purpose of the obligation to register children after birth is **to reduce the danger of abduction, sale of or traffic in children, or of other types of treatment that are incompatible with the enjoyment of the rights** provided for in the Covenant. Reports by States parties should indicate in detail the measures that ensure the immediate registration of children born in their territory.*

The fulfilment of this right plays a crucial role in the identity formation and personality development of the child, as well as, in the respect of the other rights of the child, such as his/her rights to a family, to quality health and to adequate housing among others. Unregistered or inappropriately registered children are likely to be less visible, and sometimes less valued. These children often belong to groups who suffer from other forms of discrimination.

- **Local legislation on birth registration:** According to section 12 of the Civil Status Act 1982, a birth should be registered within 45 days post-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 birth. Beyond this delay, the parent will need an authorisation from the Registrar of Civil Status to perform the registration. For children not registered within 3 months, the parent will have to apply for a declaration of birth before the Magistrate of the district where the birth took place.

A declaration of birth consists of recording several vital information that need to be provided by the parent or informant as per section 13 of the Civil Status Act 1982, which include date, time and place of the birth; the sex and names of the child; the names and addresses of the informant; the names, nationality, profession and address of each parent; the national identity card number of each parent; and any other particulars as

⁴⁴ Human Rights Committee (1989). CCPR General Comment No. 17: Article 24 (Rights of the child). Geneva: Office of the High Commissioner for Human Rights.

may be required. The birth declaration will be made in one entry when the mother is married to the father of the child. Where one parent is not married to the other parent of the child, the entry can still be made if the parent appears before the Civil Status Officer and signs the entry, or appoints an agent to do so on his or her behalf.

- **Procedures of the Civil Status Division (CSD) in the Republic of Mauritius:** The CSD is the body that manages the procedures for the registration of births, deaths, marriages and for other matters relating to the civil status of persons of our country. Although this is not mentioned in the Civil Status Act 1982, in addition to the above-listed birth registration particulars, an attestation of birth issued by the hospital or clinic authorities is requested for formalities at the CSD.

The CSD explained to the Ombudsperson for Children's Office (OCO) that this attestation of birth from public hospitals and private clinics differs in format. While the attestation from public hospitals tends to be more detailed, that of certain clinics can be very brief, mentioning only the name of the mother. The OCO also understood from the information given by Officers of the CSD that if parents are civilly married, the presence of only one parent suffice for the declaration of a child. If the parents are not civilly married, both parents are required to be present to declare their child. If the child is declared by only one parent of a non-married couple, the child will bear the surname of that parent. Interestingly, there is no time limit assigned to the father to acknowledge his child and, if he does so, this will be mentioned in the child's birth records.

Given that the delay for birth registration is 45 days, it is worth highlighting that there are particular scenarios where the CSD proceeds with the declaration of a child:

- The attestation of birth mentions only the name of the mother.
- Only the father calls at the Civil Status Office stating that the mother is indisposed.
- In cases of births at home, the only required document is a written proof from a witness.
- In cases of child abandonment, the hospital/the State declares the child with only a first name.
- If the mother and father declare their ward separately at two different intervals, the child bears only the name of the mother.
- No witness is required at the time of birth registration.

The above scenarios may create a leeway to child trafficking in a Mauritian context, especially when adoption procedures are not very well established in the country. There is also the risk of paternity fraud, whereby a mother can name a man to be the father of the child despite knowing that he is not the biological father. There have been cases lodged at the OCO in the past where individuals have declared children who are not theirs.

- **Implications for teenage parents:** The OCO was informed that Civil Status Officers are authorised to proceed with birth registration even if the parents are minors below 16 years old. However, the teenage parent(s) should be accompanied by their responsible

parties at the time of registration. If a potential case of sexual abuse or exploitation is suspected during registration, the CSD currently does not have any protocol in place to alert the concerned authorities. It is commonly known that different kinds of situations may arise when minors become parents, for instance:

- The girl may be coerced by her parents into lodging a case against her boyfriend.
- Parents may force the minors to get married against their will.
- Parents might even declare their ward as 'beyond control' and the latter might be committed to the Rehabilitation Youth Centre (RYC) by the Court. The teen mother and her baby could suddenly find themselves living in the RYC for an undefined period.
- There are minors who wish to give their child for adoption. Unfortunately, the absence of an appropriate legal and administrative structure complicates adoption matters in Mauritius.
- If the minors neglected their baby, the latter could be removed from their care by the Child Development Unit and placed with other family members, in foster care or at a residential care institution.

In some countries of the world, a concept known as close in age exemptions are used with regards to the age of consent (Age Of Consent, 2018)⁴⁵. This exemption allows for a maximum age difference (e.g. four years) between two individuals, with at least one of them being below the age of consent, to engage in consensual sexual activity, and it prevents these individuals from facing extreme prosecution. Mauritius has no such exemption in its legislation. This can mean that two young people who are significantly close in age to each other, where at least one of them is below the age of consent (i.e. 16 years), and who willingly engage in sexual intercourse could be prosecuted for statutory rape under the Criminal Code Act 1838, although this is rare.

In reference to the case of Ms. V and Mr W. provided in subsection 2.2.3 of this chapter, the parents of Ms. V were initially claiming that they would declare their daughter's child. According to local legislation and procedures, this would have been against the law in that Ms. V's parents would have made a false statement during birth registration by declaring themselves as the biological parents of this child. In the end, Ms. V lawfully declared her child alone, in the presence of her parents, and Mr. W acknowledged the baby one month later. Furthermore, Mr. V and Mr W. were both 16 years old, therefore at the legal age of consent in the Republic of Mauritius. Teenage pregnancy is not always the result of sexual abuse, it can be the result of sexual intercourse between two dating and legally consenting adolescents.

2.4.2.3) Local organisations working in the field of teenage pregnancy and motherhood

Finding out that she is pregnant can be alarming for a teenager and her partner as well as both their families. They may feel scared and uncertain about how to handle the situation or which

⁴⁵ Age Of Consent (2018). *Close in Age Exemptions / Romeo and Juliet Laws*. Retrieved 04 August 2018 from www.ageofconsent.net/close-in-age-exemptions

services to access for help. Often, teenage pregnancies are viewed in a negative light within the society and, as a result, families may experience shame and disrepute. It is important to be aware that there are organisations in Mauritius that can educate and support teenagers and their families through this challenge, namely,

- Mouvement d'Aide à la Maternité (MAM);
- Mauritius Family Planning and Welfare Association (MFPWA); and
- Action Familiale (AF).

More information on each of these organisations are provided in the following Tables 1-3.

Table 1. Information on Mouvement d'Aide à la Maternité (MAM)

Headquarters	Centre pour La Vie, Rose Hill <i>(Other groups of MAM are active in vulnerable suburbs of upper Plaines-Wilhems, Souillac, Riviere-Noire, Rose-Belle, Mahebourg, Goodlands and Pamplemousses.)</i>
Mission	The prevention and alleviation of teenage pregnancy distress
Main activities	1. Accompany teenage pregnant mothers: MAM's supportive action prepares young pregnant girls and women into motherhood with a positive mindset. In-house sessions animated by two midwives of the MAM's team are held at the Centre pour la Vie. Instead of being idle during their pregnancy, participants learn about self-care, health, hygiene, delivery, childcare and breastfeeding. MAM believes that babies raised in a positive atmosphere are given the best chances to live a happy life. 2. Empower young mothers with a diploma in child care: Owing to early pregnancy, some teenage girls have done little schooling and do not have adequate qualifications. Burdened with a child, they do not have much opportunity to learn skills and find jobs that will help them become financially autonomous. Proper training in childcare helps them become better mothers, and provides them with the possibility of finding a job. MAM has for the last seven years been holding weekly courses with qualified educators from La Crèche de Bethlehem and they trained around 150 mothers to obtain their diploma in childcare. 3. Educate teenagers to a positive attitude towards sexuality: Sessions are held in villages with the teens, both boys and girls, on the theme 'Pran letan pou kontan'. The objectives of the workshops are to (i) speak about sexuality in a healthy and positive way; (ii) provide information on problems entailed by early pregnancies; (iii) foster respect of life and encouraging responsible sexual behaviour; (iv) to develop awareness of risks and diseases associated with irresponsible sexual behaviour. Parents are also invited to join the sessions to encourage open dialogue within the family. Another programme entitled 'Maman Soleil' promotes happy families by strengthening family ties, encouraging and facilitating dialogue among members of the family and better communication.

Table 2. *Information on Mauritius Family Planning and Welfare Association (MFPWA)*

Headquarters	Port Louis
Mission	The promotion of social justice, gender equity, the advancement of the rights of the individual and family to free and informed choice regarding the number and spacing of children and contraception, and the preparation of young people for healthy attitudes and behaviour.
Main activities	MFPWA had started as a grass-root movement in the late 1950's promoting birth control programme in the country. Over the years, the MFPWA has adopted a holistic approach to reproductive health, and has extended its services to cater for all men and women, in preparation for reproductive life, in active reproductive life and beyond. Hence, besides contraceptive information and services to men and women in the reproductive ages, the Association also caters for babies, pre-pubertal boys and girls, adolescents, menopausal women, the elderly as well as people with different sexual orientations. The MFPWA has a commitment to serving all segments of the population. The Officers of the Association supported by volunteers and a team of trained teachers implement sex education in schools and parenting education sessions to sensitise them on their roles and responsibilities and the challenges affecting the youth. The Association provides sexual education to about 15,000 in and out of school students yearly to bring behaviour change and make them responsible citizens as well as protect themselves from unwanted teenage pregnancies and unprotected sex, HIV/AIDS, sexually transmitted infections, drug addiction and negative peer influence. The programmes target vulnerable groups mainly youth and adolescents. MFPWA undertakes information, education, communication and behaviour change programme. The Association has put in place condom distribution machines around the island but not properly serviced by partners who have taken over. They intend to introduce a modern youth friendly services to attend to the needs of the adolescents but due to logistical constraints they are not able to implement the project at a large scale.

Table 3. *Information on Action Familiale (AF)*

Headquarters	Moka
Mission	The promotion of family values and harmonious couple life and family life education to young people.
Main activities	Since 1965, Action Familiale has been delivering life skills-based family life/sexual education to end of primary and secondary school pupils in Mauritius and Rodrigues. This programme, delivered in a series of 4 to 6

	talks, goes far beyond providing information, but aims at the integral human development of young people. Action Familiale's educators are welcome in all the schools they visit whether state, private or confessional (Christian and non-Christian) schools. Since 2003, more than 65,000 educational pamphlets providing information and promoting behavior change have been distributed. In order to increase the number of young people reached, especially in this era of AIDS pandemic, Action Familiale has since 2008 been organising training workshops for school teachers willing to pass on family life education to the pupils of their school.

2.4.3 Summary of responses to the OCO's Press Communiqué

The Press Communiqué elicited a very good response rate from numerous children, adults and civil society organisations who came in person, phoned the office or emailed their inputs to the Ombudsperson for Children's Office between Monday 25 June 2018 to Friday 06 July 2018. We had in total 110 different respondents over the 10 days, with on average 10 different inputs per day.

There was a general emphasis on the body and mind of a teenage girl not being ready to take the full responsibility of another child. Some people also advocated for the need to increase the minimum age of marriage to 18 years and discouraging cohabitation between minors or a minor and an adult. The following subsections below provide some verbatim comments gathered in different languages including Mauritian Creole, French and English from children, adults and representatives of the civil society.

2.4.3.1) A selection of views from children

▪ Eski zanfan anba 18 an kapav gagn relasyon ouswa marye ? 1. Non akòz li interdi par lalwa. 2. Mo panse bizin marye laz 19 an. 3. Bizin gagn enn travay ekenn lakaz avan. 4. Kapav gagn problem ek fami. 5. Zanfan kapav kontan me bizin atann gagn laz pou marye. 6. Lekor pa ankò forme. 7. Li pa bon parski si gagn zanfan kouma pou fer. Lavenir gate. Fami pa pou kontan. 8. Li pa ase devlope. Li pa ankò konpran lavi. Tou fami kontan zot zanfan lir. Limem li pou sagrin.
▪ Ki so konsekans ? 1. Kapav gagn bann maladi sexielman transmisib. 2. Kan zanfan ansint, mama ek zanfan kapav mor.

3.	Bann tifi kinn gagn zanfan pa kapav al lekol aköz bizin vey zanfan.
4.	Bann zanfan ki vinn paran kapav debaras zot bebe avek lezot dimounn.
5.	Paran garson ek tifi kapav gagn problem ant zot.
6.	Bebe la kapav vinn andikape.
7.	Zanfan ki gagn zanfan kapav pas bokou mizer. Bann la pa pou otan kontan li ek donn li so bann zafer ki li bizin.
8.	Bann tifi miner souvan gagn regre kifer zot finn fer sa.
▪ Kifer sa arive ?	
1.	Tor vinn lor zot paran. Zot paran lav lame ar zot. Lerla mem bann zanfan fer ninport kwa.
2.	Paran bizin pran swin zot zanfan ek non negliz zot. Ena al mandie ek bann pedofil anbet zot.
3.	Sikolog CDU pa pran nou kont. Zot fer renion apre zot pa fer nanye.
▪ Ki bizin fer ?	
1.	Bann zanfan bizin exprim zot ar bann seki ed zot.
2.	Bizin ena program pou paran sirtou pou bann ki afekte par ladrog ek bann ki bwar methadone.
3.	Ledikasyon bien inportan. Bizin fer bann zanfan regagn gou pou aprann.
4.	Sa lalwa marye 16 an la bizin tire.
5.	Bizin fer renion dan lekol pou koz ar paran ek zanfan.
6.	Bizin fer ledikasyon lor sexialite.
7.	Bizin lalwa sever pou zot gagn enn koreksion.
8.	Bizin enn lotorite pou get paranki dan ladrog. Aköz zot ki souvan zanfan negligize ek fer fos larout e tom ansint.
9.	Lapolis trape ek ferme pa enn solision. Zot bizin explik fami ki laz bizin marye.
10.	Lekol bizin fer enn chek pou gete komie absan e kontakte zot paran.

2.4.3.2) A selection of views from adult citizens

▪ Mr. U	
1.	Bizin ena program dan televizyon ki koz lor sa bann zafer zanfan pa bizin marye avan laz ek tom ansint la.
2.	Tou kominote dan Moris bizin swiv lalwa Moris zis.
3.	2 miner an konkibinaz bizin pena mem sa.
4.	Bann dimounn ansarz sa bann lalwa la bizin bann dimounn devwe pou zot post - zot bizin fer maximem pou ki ena sanzman dan pei.
▪ Mrs. MF	
1.	Zanfan konn zot drwa me kot zot devwar ? Zanfan zordi zour zot fer seki zot anvi, zot pa ekout paran.
3.	Avan kan enn tifi marye, lerla li gagn relasion me aster pa parey. Bann tifi zot pa respekte zot lekor pou ki lezot respekte zot. Bann dirizan dan nou pei bizin met latet ansam.
4.	Mo extra sagrin pou sa tifi 13 an la. Paran pa pran responsabilite ditou.

▪ Mrs. SM 1. Child marriage, bien sûr que non. 2. Concubinage- 2 mineurs ensam, li pas acceptable, c'est la dégradation de notre société. 3. Entendre une fille de forme 4 de dire, "je suis en couple", c'est catastrophe. 4. Concubinage - une mineur et un adulte c'est hors la loi, il faut condamner ces gens.
▪ Mr. D 1. Mo bien sagrin pou sa tifi 13 an la. 2. Se pa evidan pou enn paran trouv so zanfán koumsa. 3. Bann zanfán pa reflesi ditou. 4. Sa laz la li bien delika.
▪ Mr. MP 1. Mo pa dakor avek zanfán marye avan 18 an. 2. Konkibinaz ant 2 miner li pa valab parski bann zanfán pa kone ki pou fer dan sa bann sitiasion la.
▪ Mr. B 1. Mo bien sagrin seki inn ariv sa tifi 13 an la. Li bizin atann li gagn 18 an pou li marye. Enn zanfán anba 18 an li ankòr tann.
▪ Ms. N 1. The law needs to be amended to criminalise religious marriages which take place before civil unions. 2. Cohabitation must be made illegal if the people concerned are not at least 18 years old.

2.4.3.3) A selection of views from representatives of civil society organisations

▪ A poem in Mauritian Creole written by the Association 'Raise Brave Girls' on the minimum age of marriage <i>Mariaz pas enn badinaz Ena so laz Avan 18 ans to tro baba To pas kav fer letalaz Mariaz pas enn badinaz Ena so laz Avan 18ans to plas dan lekol Non pas fer menaz Acoz mariaz pas enn badinaz Mariaz pas enn zouzou menaz Pu ki to fer menaz avan laz</i>
▪ Ms. A. Koenig, Social Psychologist from the NGO 'OpenMind' 1. (...) les jeunes filles passent de la puberté à "femme mariée, à mère". Il y a une manque de possibilité de développer une personnalité autonome. Tout processus d'individuation est rendu impossible ou difficile.

2. Avant 18 ans, il est considéré qu'un jeune n'a pas la maturité psychologique pour consentir au mariage ou aux relations sexuelles (majorité sexuelle à 16 ans à Maurice). 3. Les filles qui tombent enceintes ou se marient jeunes sont plus exposées que les autres à la violence de leur partenaire et aux abus sexuels. 4. De nombreuses actions peuvent être mises en place afin de limiter le mariage et les grossesses précoces et les impacts socio-psychologiques...au niveau institutionnel, relever l'âge minimum du mariage légal, fournir un niveau d'éducation de qualité pour les filles et les garçons et prendre en charge les causes primaires du mariage précoces, à savoir la pauvreté, l'inégalité hommes-femmes, la discrimination, l'éducation, les fausses croyances (...) la sensibilisation et la prévention dès le plus jeune âge (...) un accompagnement psychosocial ou psychologique peut aider à la diminution des symptômes (angoisses, depression, sentiment de solitude et de manque de soutien social).
▪ Ms. A. Budoo, online article published on child marriage in 'The Conversation' 1. Mauritius must repeal laws that allow child marriage. 2. The Children's Bill (...) should make it a crime to officiate a marriage where one, or both of the parties, are under the age of 18.
▪ The Committee of the NGO 'Pedostop' 1. Pedostop's position on this subject is clear: any sexual relationship with a minor below 16 years is rape because there can be no informed consent before that age. 2. By insisting that Children's Bill be amended, calling Mauritius to sign the SADC protocol on Gender and Development and reminding our compatriots that marriage is illegal in Mauritius before the age of 16.
▪ Ms M. Deliot, Director of 'Planète Enfants' 1. "Parent" reste le seul "metier" qui ne s'enseigne pas formellement. Le ministère concerné devrait mettre des antennes dans les villes et villages pour éduquer les parents sur leurs responsabilités envers leurs enfants. 2. La loi est archaïque concernant l'âge du mariage. 18 ans, voire même 21 ans, serait raisonnable.
▪ Ms F. Maudaubocus Moolna, Chairperson of the Muslim Family Council Up to date the Muslim Family Council has not registered any marriage of minors of less than 16 years and officers of the Council have been requested to check this information closely upon receipt of any request for registration and to report thereon.
▪ The 'Muvman Liberasyon Fam' The marriage age was raised to 18 in the series of 1980 to 1981 amendments [of the 'Code Civil Mauricien'] that followed the years of mobilisation. To marry younger, it was necessary to get a Court Order, not only parental permission. So, it had become an acquired right for women not to be married off before the age of majority. However, the minimum marriage age was again lowered to 16 years in Parliament on 10 April 1984. [Back in the 1980s], if a young woman [was] raped, her family [would] make her marry the rapist to "save the honour of the family".

2.5 Recommendations

The following are recommendations of the Ombudsperson for Children with regards to teenage pregnancy and parenthood in the Republic of Mauritius:

- i) **Comprehensive assessment is *sine qua non* to intervention:** Several contextual factors should be considered when assessing any case of teenage pregnancy and motherhood. These may include teen dating, precocious sexuality, sexual abuse, adolescent's health and education, poverty, family adversity, promiscuity, other precarious living conditions, socio-cultural beliefs and attitudes, and prevalent legislative frameworks. This will enable concerned parties to provide more targeted and personalised interventions in response to the identified needs of the pregnant teenagers and adolescent mothers.
- ii) **Child marriage is not an option:** It is unacceptable to coerce a child into marriage as a way to 'resolve' a teenage pregnancy situation. This mentality has to be challenged within the society through awareness campaigns, dissemination of research evidence and appropriate law reforms. Many adolescents are not prepared to live as a couple or to take up parental responsibilities. This may also result into the newborns facing difficult beginnings such as maltreatment or being removed from their parent's care.
- iii) **Increase the minimum age of marriage to 18 years:** As recommended by both regional and international committees (refer to subsection 2.4.2.2(ii)) and as advocated by many local citizens and organisations (refer to subsection 2.4.3), Mauritian legislation should be amended to increase the minimum age of marriage to 18 years, especially within the forthcoming Children's Bill. Our Republic should also sign and ratify the SADC Protocol on Gender and Development (ACHPR, 1990).
- iv) **Compulsory education for all until the age of 16:** Teenage pregnancy is often linked to high dropout rates from school. Teenage mothers attain low educational level which inevitably impacts on the socio-economic aspect of their family. It must be ensured that the right to education of pregnant girls and adolescent mothers under 16 years old are promoted and these young people should be supported to attend school as far as possible until the age of 16. Schools should be sensitised to become more compassionate and accepting environments for these young girls. By fear of 'bad influence' or 'disrepute', some schools might become a source of discrimination by not allowing these girls to come to school or sending them home due to their pregnancy. When resuming school following child birth, the concerned authorities and school communities should work together to enable the mothers to fulfil their right to education along with upholding the rights of their newborn to good nutrition (e.g. through breastfeeding), love and care among others. Psychological support would be necessary for both the mother and her child. A gap year from school, the use of outreach tutoring or distance education facilities for teenage mothers could also be considered within future educational reforms.

- v) **Sexual education should be normalised:** Sexuality at a young age should not be trivialised since it has a tremendous impact on the lives of the adolescents mainly in terms of their emotional, mental and physical health, education and their quality of life in general. With this line of thought, sexual education should be comprehensive and holistic, and carried out in an age-appropriate manner within schools and families. It is not enough for sexual education programs to include discussions on abstinence and contraception to help young people avoid unintended pregnancy or disease. Comprehensive sexual health education must go beyond these initiatives. It must provide young people with honest, age-appropriate information and healthy choice-making skills necessary to help them take responsibility for their health and overall well-being.
- vi) **Parental controls on access to adult material on the media:** Media has a massive influence on the sexuality of adolescents. Nowadays, through computers, tablets, smart phones and internet television sets, adolescents have easier, and sometimes unrestricted, internet access to explicit sexual content, sexual violence and even pornographic material. Exposure to these inappropriate visual contents largely affects the teenagers' perception of and attitudes towards sexuality. Parents should be educated on exercising their authority and placing appropriate controls on the use of these electronic devices and the internet. Open dialogues on sexuality between parents and their young person remain an important way of preventing secretive online behaviour and early sexual activity.
- vii) **Reinforcing the family structure:** Some research suggest that teenage pregnancy and parenthood might have an intergenerational component, whereby some pregnant teenagers and adolescent mothers may originate from families where a lack of family planning, early parenthood, single parenting and/or absence of a father figure may have been present across generations. This can indicate that well-functioning family environments can play a key role in preventing these early adverse circumstances in the life of young teenagers. The relevant State and non-State actors should ensure that educational and skills-based strategies to reinforce the family structure are continuously developed and improved.
- viii) **Child protection:** If, for any reasons, it is assessed by authorities that the teenage mother will not be able to take adequate care of her child or keep the latter safe, authorities have to first prioritise a kinship care approach, whereby the responsibility of the child might be transferred to eligible close family members until circumstances change for the biological mother. Formal foster care might be the second point of call and residential care should remain a last resort.
- ix) **A better system for adoption:** Some teenage mothers might wish to give their babies away for adoption. In addition, teenage mothers' children who are in alternative care can be declared as adoptable if this is in their best interests. It is therefore necessary to

ensure that local adoption procedures are less complicated and more comprehensive to avoid any delays in providing a family to these children.

- x) **A whistleblowing procedure for the Civil Status Division:** The Civil Status Division must be provided with an established protocol on alerting authorities regarding any suspected cases of sexual abuse during birth registrations from adolescent girls. For instance, an adolescent girl who appears dishevelled and is unaccompanied by her parents for a birth registration might be grounds for suspicion. Another example of potential concern could be a middle-aged adult man registering as the father of the baby of a 13-year old adolescent mother.
- xi) **Law reform on the 'attestation of birth' document:** The Civil Status Act 1982 should be amended to provide that all hospitals and private clinics issue a standardised 'attestation of birth' with all the required information and that parents should produce this document at the time of registration of birth at a Civil Status Office.
- xii) **Networking among relevant stakeholders:** All relevant State and non-State actors such as MAM, MFPWA and AF should continue working together to conjoin their experience and expertise in the field of teenage pregnancy and motherhood. These organisations should be empowered with more financial support and human resources to enable the implementation of larger-scale sensitisation, education and skills-based programmes for adolescents and young mothers.

CHAPTER 3:

CHILD SEXUAL ABUSE

**Consultative meetings on child sexual abuse
entitled “A safer childhood: A milestone for
Mauritian independence”**

3.1 Introduction

In the context of the Republic of Mauritius's 50th anniversary of independence this year, I invited various high-level representatives from public, parastatal and private sectors and the civil society to renew their commitment in helping the country become a haven free from Child Sexual Abuse (CSA). Three consultative meetings were held at the Ombudsperson for Children's Office (OCO) with the main aim of improving networking relationships among relevant stakeholders in the fight against CSA. The sections in the present chapter constitute a summary of the key highlights of this initiative.

There is no doubt that children are the foundation and future of any society. Adults owe them their innocence and children deserve their trust. Authorities in Mauritius estimate that a minimum of one child per day becomes victim to CSA and it is likely that cases are under-reported. Combatting CSA should be on the agenda of all responsible societies worldwide and this is reinforced by article 34 of the Convention on the Rights of the Child (CRC; United Nations [UN], 1989)⁴⁶, which states that:

State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;*
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;*
- (c) The exploitative use of children in pornographic performances and materials.*

In relation to the above article, the Committee on the Rights of the Child (2011)⁴⁷ stated in paragraph 65 of its Concluding Observations on the Republic of Mauritius that:

*In light of Article 34 and other related articles of the Convention, the Committee recommends that the State Party **further strengthen the implementation of policies and programmes for the prevention, recovery and reintegration of child victims** in accordance with the Declaration and Agenda for Action and the Global Commitment adopted at the 1996 and 2001 World Congress against Commercial Sexual Exploitation of Children.*

I noted that there are certain shortcomings at an organisational level in the following areas related to the protection of CSA victims:

1. an insufficient collaboration and consultation among important stakeholders working on the prevention of CSA and the rehabilitation of victims;
2. a lack of technical knowledge among stakeholders on the impact of sexual abuse on children, their families and the society; and

⁴⁶ United Nations (1989). *Convention on the Rights of the Child*. Geneva: Author.

⁴⁷ Committee on the Rights of the Child (2015). *Concluding observations on the combined third to fifth periodic reports of Mauritius*. Geneva: United Nations.

3. the fact that existing rehabilitation programmes are not necessarily based on robust local and international evidence.

As a country that has ratified the UNCRC in 1990, we have to uphold our commitment to the provisions of this international law within our policies, legislation and practices in all areas concerning children, including CSA. Building a safer childhood is all stakeholders' responsibility, including children themselves, and we believe that it is important to reflect this in the conceptualisation of the upcoming Children's Bill.

3.2 Overview of the consultation process

I chaired consultations with different stakeholders both in Mauritius and Rodrigues on the following dates:

- Mauritius: February 14, 21 and 28.
- Rodrigues: April 3 and 4.

The main objectives were to:

1. improve partnership and networking among all the relevant stakeholders in the area of CSA;
2. learn from one another's experience and improve interventions with victims or potential victims of CSA; and
3. propose recommendations collaboratively formulated by participants to the relevant authorities.

From impressions and feedback gathered, the meetings allowed the participants to come together and discuss pressing issues concerning CSA. The Key Performance Indicators were three-pronged:

1. Successful networking amongst stakeholders.
2. Attendance to at least one of the scheduled meetings.
3. Constructive and active participation through "prises de parole", presentations, etc.

We noted:

1. An exchange of contact details and, in the realisation of common interests, the reinforcement of relationships amongst stakeholders;
2. A healthy and regular attendance of nearly 70 stakeholders across Mauritius and Rodrigues, as shown in Appendix C;
3. Five presentations (one video, three PowerPoint and one oral) by representatives from the OCO, the Office of the Director of Public Prosecutions (ODPP), Pedostop, the Child

Development Unit (CDU) and the Law Reform Commission (LRC) respectively, along with numerous interventions by almost all participants in the meetings. The main areas of discussion are summarised in section 3.3 of the present chapter.

During the final consultative meetings, each participant was asked to provide specific recommendations “to improve the lives of children who are sexually abused or at risk of being sexually abused”. The exercise consisted of short essay-type questions as follows:

- **Question 1:** What needs to be done to promote collaboration among stakeholders working on the prevention of Child Sexual Abuse and rehabilitation of victims?
- **Question 2:** How to improve the legal framework to better protect the rights of victims of sexual abuse?
- **Question 3:** How to decrease the occurrence of Child Sexual Abuse in the Republic of Mauritius?
- **Question 4:** How to rehabilitate victims of Child Sexual Abuse effectively?

An open discussion then followed regarding the above questions. This process allowed the OCO to gather potential solutions on CSA prevention and rehabilitation of victims, which are thematised and presented in section 3.4 of the current chapter.

It is important to add that participants were also invited to join a sub-committee at the OCO for the purpose of contributing to the validation of the present chapter before publication. In this context, six stakeholders along with four OCO’s investigators, as enlisted in Appendix D, attended two further meetings which I chaired on 16 April 2018 and 07 June 2018 respectively.

3.3 Summary of main issues discussed across meetings

3.3.1 Understanding CSA

All stakeholders agreed to the definition of CSA as formulated by the World Health Organisation (WHO; 1999, pp.15-16)⁴⁸ :

Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person. This may include but is not limited to:

- *the inducement or coercion of a child to engage in any unlawful sexual activity;*
- *the exploitative use of a child in prostitution or other unlawful sexual practices;*
- *the exploitative use of children in pornographic performance and materials.*

⁴⁸ World Health Organisation (1999). *Report on the Consultation on Child Abuse Prevention*. Geneva: Author.

CSA may include touching or non-touching activity. It does not only involve 'sexual harm', but it can also consist of other forms of harm such as physical, emotional or moral injury, neglect, or impairment of health or development. CSA can be split into two categories, namely 'horizontal abuse' among people of similar statuses such as siblings and peers, and 'vertical abuse' when the victim has a subordinate relationship to the perpetrator. It is well known that CSA is most commonly inflicted by someone in the family such as a parent or sibling, and/or someone who is trusted by the child, his/her family and relatives. Perpetrators can use several grooming tactics to silence their victims (e.g. being kind to victims and their families, providing special gifts and privileges to the victims, bullying, etc).

In the Republic of Mauritius, according to section 13 of the Child Protection Act 1994, *"any person who ill-treats a child or otherwise exposes a child to harm shall commit an offence"*. Regarding sexual offences, section 14 of the same Act provides that:

*(1) Any person who causes, incites or allows any child –
(a) to be sexually abused by him or by another person;
(b) to have access to a brothel;
(c) to engage in prostitution,
shall commit an offence.*

*(2) For the purposes of subsection (1)(a), a child shall be 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 –
(a) another person's gratification;
(b) any activity of pornographic, obscene or indecent nature;
(c) any other kind of exploitation by any person.*

A child often may not be able to disclose whether he/she has been sexually abused by another child or adult, largely owing to the coercive and secretive nature of the abuse, an intense fear of shame and disbelief, their lack of developmental maturity to understand this traumatic situation, and at times love for the abuser. There are also a number of high-risk environments where children may be easily targeted for grooming, and sexual harassment, exploitation and abuse, for instance, in deprived and secluded regions, in violence-prone and promiscuous areas, in the tourist industry, and on social media and chat rooms on the internet.

CSA is known to have damaging short-term and long-term outcomes on the physical, emotional, psychological and social functioning of a child, for example, low self-esteem, feeling worthless, mental health problems, drug and alcohol issues, teenage pregnancy, homelessness and at times continuity of abuse towards others. It is important that communities and professionals involved with children and their families are trained to identify the signs of CSA and alert the authorities as early as possible.

Figure 1 below provides some (but is not limited to) examples of potential signs that can indicate that a child might be a victim of CSA. These signs often present in different combinations and not in an isolated manner.

Physical	Sexual	Emotional	Behavioural	Social
• Sleep problems, nightmares • Recurrent pain, bleeding, soreness or bruises in the genital areas, anus or mouth • Urinary tract infection • Teenage pregnancy	• Unusual interest in or avoidance of all things of a sexual nature • Acting out in a sexually inappropriate manner (with toys, objects, other children or adults) • Using unexpected sexualised language and behaviour • Seductiveness • Sexually active at a young age	• Withdrawn or clingy • Depressed • Extreme fear and anxiety • Anger outbursts and mood swings • Unusually aggressive	• Unusually secretive • Bedwetting or soiling • Changes in eating habits • Self-harm • Absconding • Statements that their bodies are dirty or damaged • Conduct problems • Substance use/abuse • Suicidal thoughts or attempts	• Receiving unexplained money or gifts from any person • Not wanting to be alone with a particular person • Spending much more or much less time online, texting, gaming or using social media • Unusually secretive about their social circles and online behaviour

Figure 1. Examples of possible signs indicative of CSA

3.3.2 Child protection services in the Republic of Mauritius

Many discussions during the consultative meetings revolved around the existing local child protective systems that deal with cases of CSA. Currently, these are handled by the CDU, the police and the Office of the Director of Public Prosecutions (ODPP) through two referral pathways differentiated by the type of perpetrator (family or non-family member). Both pathways involve similar processes such as filing the child's statement, doing a medical examination, carrying out individual and/or joint interviews as appropriate, sharing of information between the police and the CDU, referring cases to the ODPP for prosecution, and producing the appropriate psychosocial reports and rehabilitation plans.

Referrals are obtained from several sources including statutory authorities, non-state actors, community-based organisations, schools and the public. During the consultative meetings at the OCO, the CDU representative reported receiving on average 6,000 new child abuse cases annually with approximately 15,000 open cases running throughout the year. They operate a hotline number (113) through which they receive anonymous referrals on alleged abuse cases against children. Table 4 below shows the overall number of child abuse cases that had been reported yearly at the CDU from January 2015 to April 2018 as well as the number and proportion of these cases that have been registered as CSA.

Table 4. *Number of child abuse and CSA cases reported at the CDU*

Year	Overall number of child abuse cases reported	Number and proportion of reported CSA cases only
2015	6035	428 (7.1%)
2016	5904	352 (6.0%)
2017	5104	260 (5.1%)
2018 (Jan-April)	1789	102 (5.7%)

The Ministry of Gender Equality, Child Development and Family Welfare currently has in place ‘Community Child Watch Committees’ operating in different regions of Mauritius which provide for surveillance of children exposed to any form of violence at local levels. There is also a Drop-In Centre for the rehabilitation of child victims of commercial sexual exploitation, which is managed by the Mauritius Family Planning and Welfare Association. Nevertheless, several structural problems regarding the protection of victims of CSA in our Republic were raised by participants in the meetings, as outlined below:

1. Understaffing issues in CDU outstations which result in high caseloads for officers and affect the quality of service delivery – CSA victims do not receive adequate individualised attention and follow-up;
2. Crowding in government-run places of safety when children are removed from their families through an Emergency Protection Order – this is not an appropriate circumstance for the rehabilitation of CSA victims;
3. Limited capacity in NGO-run residential care institutions for the long-term placement of children who have been victims of CSA;
4. Lack of background information on victims of CSA which may lead to inappropriate or inadequate interventions by caregivers or other professionals working with them;
5. Unavailability of child-friendly spaces for taking statements of CSA victims in police stations;
6. Lack of training among police officers on how to engage CSA victims in a safe conversation to obtain their statements about the abuse;
7. Lack of highly specialised social workers and mental health professionals who can work with CSA victims;
8. No current provision in child legislation that mandates professionals such as psychologists, social workers or other qualified child welfare specialists to report cases of sexual abuse – as of now, only medical, para-medical and school staff have a duty to report (section 11 of the Child Protection Act 1994);
9. Inadequate protection of the identity of CSA victims from the media in some cases; and
10. Lack of screening for a history of CSA among children and young people in conflict with the law, among others.

3.3.3 The local justice system in dealing with cases of child sexual abuse

During the consultation, the representative of the ODPP highlighted some statistics which indicated that, similar to global trends, more child sexual abuse (CSA) offences are committed against girls than boys in Mauritius⁴⁹. For instance, in 2016, 282 girls were reported to be victim to at least one form of sexual abuse upon minor (e.g. rape, sexual intercourse, attempt upon chastity, sexual harassment, etc) compared to 16 boys in the same period.

Every year, the CDU refers about 300-400 CSA cases to the ODPP for further investigation. It is often observed that many cases remain unresolved for long periods of time. This may have a detrimental impact on the mental health, relationships, social life and access to educational and career opportunities of the victims. At the ODPP, while some of these cases go through Court processes, a good proportion of them are dropped at some point. One of the main reasons cases are sometimes dropped is because 'the child is not speaking'. Different possible explanations were advanced by participants to make sense of this situation, which included among others:

1. the court waiting areas and atmosphere not being child-friendly;
2. a lack of child victim or witness support;
3. cross-examinations being at times intimidating;
4. the child's privacy not sufficiently protected;
5. delays in medically examining the child to collect evidence;
6. absence of specialist/forensic interviewers trained in child psychological and legal matters;
7. inadequate fast-track procedures for CSA cases;
8. too much reliance on children's verbal communication on abuse events and not sufficient consideration to non-verbal communication (e.g. drawings, body posture, eye contact, etc.);
9. possible re-traumatisation of the child by expecting him/her to constantly retell the abuse events with different professionals at different times, which may result in the child withdrawing or refusing to speak; and
10. a lack of alternatives to hearing the child's statement in Court such as through video-recording.

Lengthy court proceedings and the above-listed shortcomings can lead to secondary victimisation of children, their families and all those assisting the victim. All stakeholders have the duty to increase efforts, improve archaic systems and innovate their practices in the fight against CSA. Section 3.4 below provides numerous recommendations that emerged from the consultations with our group of participants who work in various fields of expertise.

⁴⁹ Source: Office of the Director of Public Prosecutions (2018). *Child Sexual Abuse seen from a psycho-socio-legal perspective*. Mauritius: ODPP. (Powerpoint Presentation by Mrs Johan Moutou-Leckning, Senior Assistant Director of Public Prosecutions on 21 February 2018 at the Ombudsperson for Children's Office).

3.4 Summary of gathered recommendations

The answers to the short essay-type questions cited in section 3.2 of this chapter have been synthesised under various themes as follows:

3.4.1 Promoting collaboration among stakeholders in the prevention of child sexual abuse and the rehabilitation of victims

Several recommendations fell under the banner of **creating and improving facilities for stakeholders to work better together**. For instance, it was mentioned that:

1. All first responders combatting CSA should be operating under the same roof. A single centre could be created that acts as a “one-stop shop” for victims of CSA. In other words, in the event of abuse, victims would head to that centre where they would:
 - i. file a declaration/statement in front of a special police officer and a CDU officer;
 - ii. undergo a medical examination (check-up and forensic);
 - iii. be interviewed by a police officer and a CDU officer in the presence of a social worker and a psychologist; and
 - iv. be provided with food and shelter as appropriate.
2. This “one-stop shop” would also consist of a multi-disciplinary team of qualified professionals, such as clinical psychologists, social workers, lawyers and specialised police officers, who would provide immediate protection as well as medical, psychological and social assistance as long as necessary to the child victim and his/her family. This team would also intervene in cases where children might be at risk of being sexually abused.
3. Child-friendly spaces should be made available in any building that can welcome children in the mishap of abuse or in any other adverse event (e.g. non-governmental organisations, police stations, courthouses, community welfare centres, municipal/district councils, health centres/hospitals, etc). The personnel can then refer the victim and his/her family to the “one-stop shop”.
4. Legal assistance should invariably be provided to all victims of CSA and their responsible parties from the very beginning.
5. Training facilities and sessions should be conducted with stakeholders and their representatives on collaboration, abuse-detection and abuse-prevention, while underlining the contact information of relevant authorities. These sessions could also help every stakeholder in understanding the difficulties encountered by one another and discussing possible ways of conjoining efforts to overcome these obstacles.
6. A register with a list of professionals dealing with child sexual abuse cases (e.g. therapist, social workers, clinical psychologists, educators and other stakeholders) should be created to enable sharing of practices and expertise.

7. At least one officer/individual from every concerned organisation – public, private or civil society – should be designated to be part of a committee specially dedicated to CSA under the aegis of the Ministry of Gender Equality, Child Development and Family Welfare, which would meet regularly to share information and actively combat CSA.
8. Technology and communication facilities should be employed to reinforce networking among relevant stakeholders, for instance, through phone calls, emailing, audio/video conferences, social media, website or other e-platforms.
9. Multi-stakeholder case conferences, comprising of legal advisors, clinical psychologists, social workers, medical professionals, school managers or teachers, and relevant State representatives, should be organised regularly for complicated CSA cases. These conferences should aim at ensuring proper and timely interventions and harmonising an effective course of actions.
10. The standardised protocol for CSA cases used by the State should be continually reviewed to improve working relationships among the different stakeholders and to adapt with the evolving realities in Mauritius and Rodrigues.

Other themes that were salient in the recommendations were awareness at all levels of society and research:

1. Multiple awareness campaigns about CSA should be geared towards children, parents, the civil society, government officers and law enforcers.
2. State and non-State actors should educate the population on preventive measures regarding CSA.
3. Information should be shared ethically and confidentially among all relevant stakeholders.
4. Regular meetings and workshops about CSA could enable stakeholders to continually share their expertise and mutually improve their knowledge and skills.
5. Victims of CSA should be followed up over time with their informed consent so as to check in on their wellbeing and to assess for any difficulties that might be affecting their overall functioning and health. They also should have the choice of withdrawing their consent at any point in time.

3.4.2 Improving the legal framework to better protect the rights of victims of sexual abuse

Numerous recommendations were received about the nature of legal proceedings with regards to children, namely:

1. Video recordings of children's declaration/statement should be admissible in Court.
2. Within a child-friendly space at the police station or at the specialised "one-stop shop" for CSA victims and families (as recommended in subsection 3.4.1), the police officer and

a qualified professional such as a Clinical/Forensic Psychologist could video-record the child's statement. The concerned stakeholders could then view and evaluate the video and submit a report for court procedures.

3. Following the report of the abuse, the child and the family should be entitled to:
 - i. psychological support;
 - ii. free medical and legal assistance; and
 - iii. the services of a lawyer *pro bono*.
4. Cases of CSA in the court of law should fit within a defined time-frame that should not exceed, for example, 2-3 years. This could prevent the occurrence of 'withdrawals' of cases from the victim and family.
5. Medical/forensic examinations of the child should be undertaken as soon as an alleged case of CSA is reported.
6. A pre-defined referral, assessment and intervention protocol in cases of CSA should be followed by all concerned institutions.
7. The types of sexual offences within our legislation should be better defined.
8. Ratified conventions such as the UNCRC should be domesticated in the relevant local laws of Mauritius.
9. Legal officials should undergo a training programme on CSA to better serve victims and prosecute perpetrators.
10. The police should be adequately trained on forensic interviewing techniques with children. Inappropriate and humiliating questions by police interviewers should be condemned.
11. The law, namely the Child Protection Act 1994 and the Allied Health Professionals Council Act 2017, should be amended so that professionals trained in child mental health and social welfare, including clinical psychologists and social workers, must report on cases of abuse without any fear of being prosecuted for breach of confidentiality. Genuine reporters and witnesses should also be protected by the law.
12. Disclosure of information to the media on cases of CSA should be restricted. No mudslinging of persons involved and no sensationalism of information should be allowed.
13. A Children's Court with a panel of lawyers, clinical psychologists, sociologists, medical officers and family support officers among others dedicated to cases involving children should be established. This court should be able to:
 - i. fast-track delicate cases involving CSA to establish evidence such as the DNA report from the Forensic Science Laboratory in a timely manner;
 - ii. provide emotional support and psychologically prepare child victims and witnesses for court processes;
 - iii. provide child-friendly activities in the court premises as well as assistance to children with disabilities;

- iv. ensure that there is no direct contact between child victim/witness and the alleged perpetrator at any point in the judicial process; and
- v. provide safeguards to protect the privacy and identity of child victims and witnesses.

The representative of the Law Reform Commission (LRC), an independent statutory body mandated to reform and to develop laws in Mauritius, also brought forward in his presentation at the OCO several recommendations regarding CSA based on a review paper published in 2016⁵⁰. Recommendations relevant to sexual offences from this paper can be found in Appendix B.

3.4.3 Decreasing the occurrence of child sexual abuse in the Republic of Mauritius

There were many recommendations regarding perpetrators:

1. Perpetrators who have been convicted of CSA and who are at-risk of re-offending with minors should figure in a barred list of people who cannot work with children and young people. Similar to the UK, an enhanced Disclosure and Barring Service (DBS) check could be requested by employers who recruit individuals to work with children and young people.
2. Perpetrators could be monitored and supervised to prevent relapse after their conviction.
3. Intensified “sting operations” should be carried out in a stealthily and unsuspecting manner to effectively arrest perpetrators and procurers, or “pimps”, involved in child sex tourism.
4. The alleged abuser should be removed from the immediate environment of the child. If this person is provided with bail, this should be to the condition that he/she has no contact with the child.

Several recommendations recognised **the need for the rehabilitation of perpetrators**:

1. Rehabilitation programmes for perpetrators need to be built in consultation with clinical psychologists, medical officers, social workers, lawyers and specialised educators.
2. Rehabilitation programmes should stretch across several years to ensure the holistic follow-up of perpetrators – continuous rehabilitative support and constant evaluation of treatment for better results.
3. Psychological rehabilitation should become a legal requirement for released sexual offenders to prevent relapse and repeated offences

Most importantly, the participants emphasised on **Governmental, societal and policy actions** that might help deter CSA:

1. The family structure should be consolidated and necessary tools should be provided to parents, immediate relatives and peers to sensitise children about abuse. Much can be

⁵⁰ Law Reform Commission (2016). Review Paper: *Criminal Protection of Children's Rights*. Mauritius: Author. Retrieved on 28 February 2018 from lrc.govmu.org/English/Documents/Reports%20and%20Papers/Review%20Paper%20Criminal%20Protection%20of%20Childrens%20Rights.pdf

accomplished if adults communicate frequently, openly and constructively to children about issues that concern them, while encouraging them to express themselves and listening to them without any judgement.

2. Similar to the UK, a “Children Safeguarding Network” co-run by health, social and judiciary services should be created to inform, monitor, report and research on cases of CSA in the Republic of Mauritius.
3. Sexual education in schools should be implemented with professionals (psychologists, trained social workers, etc.) or with specially trained teachers – clear guidance will help children to become aware of looming dangers and empower them in such situations. A specialised and adapted curriculum should be implemented in accordance with children’s age and level of comprehension.
4. Schools should get better at becoming a place where students feel more listened to, safer and increasingly supported. This could be done, for instance, through:
 - i. establishing drop-in counselling and psychological services within schools;
 - ii. training of teaching and non-teaching school staff on how to identify signs of CSA and how to alert authorities;
 - iii. additional training for security guards and support staff on detecting and alerting on the presence of potential perpetrators within the school community and vicinity;
 - iv. installing cameras in unsupervised areas to improve safety within the school premises;
 - v. investigating irregular situations such as excessive lateness or absenteeism among particular students; and
 - vi. reinforcing respect for school ethics and supervising staff to discourage potential inappropriate staff behaviours towards students.
5. Healthy leisure activities and facilities should be set up for children and young people across the Republic of Mauritius after school hours and during the week-ends, and to decrease the incidence of situations that may jeopardise their safety.
6. “Parental Education Programmes” and “National Prevention Programmes” should be developed to sensitise citizens about CSA and their role in its prevention. These programmes could include modules on:
 - i. educating children on how to stay safe (good touch/bad touch) and recognising grooming tactics;
 - ii. how all stakeholders, including children, can identify signs of CSA;
 - iii. how to listen to children’s report of abuse and how to become a whistle-blower and alert concerned authorities;
 - iv. educating parents on how to inculcate values and positive discipline to their children and inform them of the dangers of exposing children to sexual acts/sexualised behaviours; and
 - v. developing a societal culture free from sexual abuse.

7. Better awareness of CSA and whistle-blowing procedures (e.g. anonymous calls to child protective services or police reports) among citizens could help with reporting cases that otherwise go unnoticed.
8. The media should be encouraged to broadcast child-friendly and age-appropriate videos or cartoons about CSA to enable children to understand this issue.
9. Policies and programmes for the prevention of CSA and the rehabilitation of victims or potential victims should be based on local and international evidence. It is highly indicated that local research studies should be carried out to understand the underlying factors (psychological, health, educational, environmental, economic and sociocultural) associated with CSA within the Republic of Mauritius.

3.4.4 Effectively rehabilitating victims of child sexual abuse

Several proposals on the rehabilitation of victims of CSA were made mainly in relation to psychological support, education, logistics and social responsibility.

Agglomerated under the **psychological element of rehabilitation** were the following:

1. Victims should undergo individual therapy with clinical psychologists and be supported to understand and overcome their trauma. Family therapy should also be provided to enable family members to support their child in a non-blaming way. It is important that CSA victims do feel neither like a burden to their family nor undeserving of their love and care.
2. Victims could also be referred to child-friendly support groups facilitated by a psychologist or therapist that could potentially help them feel understood by other people with similar experiences.
3. The holistic therapy and rehabilitation of victims should be handled by a multidisciplinary therapeutic team. One psychologist would not be enough.
4. The proposed “one-stop shop” centre (refer to subsection 3.4.1) should provide a host of therapies and rehabilitation programmes, personalised to the needs of the victim and his/her family. Home visitation programmes should also be made available for those who cannot travel to the centre.

Under the banner of education and social responsibility, stakeholders suggested that:

1. Teachers, educators and school counsellors should be provided with tools to help victims manage their distress, and attention and memory difficulties which often stem from cases of CSA.
2. Children who have witnessed sexual abuse being committed on another child or an adult should also be provided with regular therapy to help them overcome their trauma.

3. If placed in alternative care, children should benefit from small “family units” to emulate a healthy environment that fosters and ensures their proper development.
4. Child victims of CSA should be entrusted to carers who have been trained in handling symptoms and consequences of trauma.
5. In places of safety or residential care institutions, CSA victims should not co-habit with children victim of other forms of abuse as their rehabilitation would not be the same.
6. CSA victims living in residential care institutions should not be deprived of their fundamental rights to education, religion, good nutrition, freedom of expression and so on.
7. Whenever this is in their best interests, children in alternative care should be reunited with their families.
8. Local rehabilitation programmes for CSA victims should be informed by local and international research on best practices.

Finally, the **logistical and legal aspect** of rehabilitation was underlined and reiterated in recommendations:

1. Child-friendly spaces should be made available in buildings, especially those that welcome victims of CSA.
2. It would be important for the victim that the perpetrator is prosecuted by law – this might have a positive therapeutic impact on the victim.
3. Specialised and accredited NGOs working for the rehabilitation of victims should be allocated more funds, support and assistance to improve their practices.
4. There should be trained staff/carers working in residential care institutions to allow for proper individualised care and rehabilitation of child victims.

3.5 Conclusion

I would like to thank all stakeholders who participated and contributed immensely in these consultative and sub-committee meetings. Their input created an enriching and empowering synergy that made it possible to critically reflect on the intricate issue of CSA. Several themes including the different aspects of CSA, the role of child protective services and the justice system in the fight against CSA, and the need to revise outdated child legislations were discussed. I believe that the wealth of recommendations which emerged from this consultation should be considered when formulating national policies and laws related to the prevention of CSA and the rehabilitation of victims. This initiative provided a platform for stakeholders to improve their networking relationships and learn from one another’s experiences with the vision of building a safer childhood in our Republic.

CHAPTER 4:

CHILDREN WITH SEVERE MENTAL HEALTH ISSUES

Setting up of a therapeutic residential mental healthcare facility for children and young people with severe mental health difficulties in Mauritius

4.1 An important gap in children's mental healthcare

During an official meeting on 26 December 2017 between the Minister of Gender Equality, Child Development and Family Welfare⁵¹, Mrs Roubina Jadoo-Jaunbocus, and I, we discussed important matters regarding the promotion and protection of the rights of children in Mauritius. We noted with concern that so far there existed no residential mental healthcare facility in Mauritius which could cater for the intensive therapy needs of children and young people with severe mental health conditions such as high levels of anxiety and panic attacks, phobias, depression, personality disorders, bipolar disorders, obsessive-compulsive disorders and psychotic problems among others.

The World Health Organisation's (2014)⁵² defines mental health as *"a state of well-being in which every individual realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community."* With regards to children's right to quality health including mental health, article 24 of the Convention on the Rights of the Child (United Nations, 1989) stipulates that:

States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

4.2 Children and young people with severe mental health difficulties

In Mauritius, children and young people with severe mental health problems are usually sent to general hospitals or to the Brown Sequard Hospital (BSH) for mainly outpatient and medical treatment. Those presenting high risk to themselves and/or others are often admitted to psychiatric beds and discharged back to the community after a stay in hospital. According to the data collected by the Department of Mental Health and Substance Abuse (DMHSA; 2011)⁵³ of the World Health Organisation regarding Mauritius's profile on mental health, the country had a capacity of 28 beds reserved for children and young people in mental hospitals. However, there was no indication in the report on the profile of the children who would use these beds or their lengths of stay upon admission. The DMHSA (2011) also highlighted the lack of mental health policies, legislation and research in Mauritius which limits understanding on the gaps and areas of improvement in this sector.

There are often no arrangements made for continuity of care where families can be empowered to support the treatment and recovery of their children at home. These families are themselves a highly vulnerable group and they may be subject to, for example, their own mental health

⁵¹ The Minister of Gender Equality, Child Development and Family Welfare will be referred to as the 'Minister' for the rest of the current chapter.

⁵² World Health Organisation (2014). *Mental health: A state of well-being*. Retrieved 03 January 2018 from www.who.int/features/factfiles/mental_health/en/

⁵³ Department of Mental Health and Substance Abuse, World Health Organization (2011). *Mental Health Atlas 2011*. Geneva: WHO.

problems, social and financial difficulties, domestic and community violence or even legal issues such as incarceration.

Some of these children may also display behaviours which are in conflict with the law. In Mauritius, these children are usually sent to rehabilitation youth centres where psychological difficulties may go unassessed and untreated. In addition, there may be a considerable number of children and families who do not access necessary help due to a lack of awareness on mental health issues. Within a cultural context of taboo around mental health in Mauritius, these children may easily fall through the gaps and remain undiagnosed to the detriment of their own and families' growth and potential for the future.

Within hospitalised and institutionalised environments, there might be little scope for intensive therapeutic input by trained mental health professionals. The lack of these resources may result in a 'revolving door' situation, whereby families with children and young people suffering from severe mental health and associated risk issues may heavily rely on recurrent hospital admissions to manage crises. Without intensive therapy in an environment that facilitates recovery, it might be very difficult to improve long-term psycho-social outcomes within this target group.

4.3 Proposal for a residential mental healthcare facility for these children

In reference to the above context, the Minister believed that the country needed a service complementary to mainstream general and psychiatric hospitals and rehabilitation services, to cater for the specialised mental health needs of children and young people. We discussed that the setting up of a therapeutic residential mental healthcare facility for the assessment, treatment and recovery of these children's difficulties, and the empowerment of their parents or carers, are highly indicated in Mauritius. According to paragraph 6 of the Ombudsperson for Children's Act 2003, I have the duty to

- 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.

In the following subsections, I discuss the potential components and operational procedures of such a facility including recommendations which could contribute to the setting up of such a project.

4.3.1 The beneficiaries

The children and young people who would be referred to the therapeutic residential mental healthcare facility would be aged between 10 and 18 years old. They might present a range of

neurotic disorders (e.g. obsessive-compulsive disorders, acute or chronic anxiety, depression, various phobias, eating disorders, personality disorders or anger problems) and psychotic disorders (e.g. schizophrenia or delusional disorders). The severity level of their mental health difficulties would be assessed as high, which would refer mainly to significant levels of difficulty for their families or carers to manage them within their homes and communities. They might also be presenting with risks to themselves, their families and/or communities such as self-harm and violence.

The children would continue to benefit from other services, for instance, hospital appointments or visits from social workers, alongside their therapy package within the residential mental healthcare facility.

4.3.2 The infrastructure

On 26 December 2017, the Minister and staff members of the Ombudsperson for Children's Office including me visited a building. We identified that the building and its premises had a lot of potential for refurbishment and development into a child-friendly therapeutic residential environment. Its strategic location near the sea would inevitably enhance the therapeutic experience of its beneficiaries.

The current building is already equipped with dormitories. These could be adapted in a way that would be conducive and stimulating to the treatment and recovery of the beneficiaries. I recommended that each dormitory must not exceed a capacity of 5-8 children. Children with complex and severe mental health issues necessitate an environment where they can feel safe and stable, have individualised attention and develop therapeutic alliances with staff members. This can be possible within small therapeutic units.

I also recommended that the dormitories must not be mixed-sex but separate residential units for boys and girls. Since mental health conditions are complex in nature, the placement of children within these units should be made with care, based on thorough psychiatric and psychological assessments as well as research evidence.

Furthermore, the yard could be converted into a therapeutic garden including water fountains, trees, flowers and spacious green areas for multiple activities. Green spaces play a role in decreasing cognitive fatigue, promoting emotional recovery and reducing the impact of stressors on concentration, anxiety or mood (Branas et al., 2011)⁵⁴. The therapeutic context can undoubtedly enhance the physical, mental and emotional health of the children.

I advised the Minister to hire the services of a Quantity Surveyor, an Architect, a Civil Engineer and an Interior Designer for the purpose of planning the setup of this residential mental healthcare facility. For a more cost-effective approach, I also recommended that a team of

⁵⁴ Branäs, C.C., Cheney, R.A., MacDonald, J.M., Tam, V.W., Jackson, T.D. & Ten Have, T.R. (2011). A Difference-in-Differences Analysis of Health, Safety, and Greening Vacant Urban Space. *American Journal of Epidemiology*, 174(11), 1296–1306.

professionals from the Ministry of Public Infrastructure and Land Transport could be solicited to conduct this piece of work.

4.3.3 Resources and service pathway

Human resources: I suggest that this residential facility must consist of a multi-disciplinary team (MDT) of qualified and trained mental health professionals as well as non-mental health professionals (MHP). The MDT should include Psychiatrists, Clinical Psychologists, Mental Health Nurses, Therapists, Social Workers, Qualified Animators, Carers, Administrators, Drivers, Gardeners, Cleaners and Cooks. The centre can also be open to volunteers who are assessed to be safe to work with vulnerable children in order to support the centre's activities and groups.

Referral: Children and young people who meet the eligibility criteria of the residential facility can be either referred by their parent(s), guardian(s) or carer(s), their schools, community health centres, general hospitals, BSH, Social Workers, local authority, voluntary sector organisations or private bodies.

Assessment: Upon referral, the MDT will conduct an in-depth assessment of the child with the family, the referrer and all relevant agencies to obtain a comprehensive picture of the difficulties, needs and strengths of the child and his/her family. If indicated, designated professionals could carry out preliminary home and school visits and observations to gather more information on the child's difficulties and situation. If the child is in crisis, he/she might be temporarily admitted to local hospitals or BSH until he/she is stable enough to complete the assessment.

Treatment and recovery: Based on the outcome of the assessment and the formulation of the presenting difficulties, a personalised residential treatment package will be designed by the MDT with the child and the family. A range of interventions will be made available to the child according to his/her needs (see subsection 4.3.4). This centre will promote the active involvement of families, schools and communities to provide a wrap-around care approach to treatment. This could be facilitated through families, teachers and other stakeholders regularly visiting and working with the child to achieve their treatment goals. The facility will also work in close collaboration with local hospitals and voluntary sector organisations and access free recreational resources in the community to enhance the therapeutic experience and socialisation of the children.

As goes the saying, "it takes a village to raise a child", the same can also apply to healing a child. With children suffering from severe mental health difficulties, a systemic therapeutic framework can provide better chances for improved outcomes, recovery and social reintegration.

Discharge and relapse prevention: A mechanism needs to be put in place so that a rough timeframe for the treatment of the child can be estimated at the assessment stage, although

this may vary based on the severity of his/her difficulties and social circumstances. Regular systemic reviews involving the MDT and the family, need to be organised. Plans and preparations for discharge, post-discharge, follow-up and relapse prevention must also be clearly elaborated during treatment.

4.3.4 Potential range of therapy services

This residential mental healthcare facility could propose a range of psychological therapies, alternative therapies and psychiatric monitoring to cater for the severe and complex mental health needs of children and young people. For example (this list is not exhaustive):

- **Individual psychological therapies:** These could include among others cognitive behavioural therapy, behavioural activation, narrative therapy and compassion-focused therapies. Brief descriptions of some of these therapies are provided in Appendix E. The child would be provided with the opportunity to engage and build a confidential and trustful therapeutic relationship with his/her Clinical Psychologist or Therapist to facilitate his/her understanding of his/her difficulties, treatment and recovery, and to motivate him/her to achieve his/her therapy goals.
- **Systemic and family therapy:** This form of therapy will be carried out primarily with the children and their parents or carers. The aim will be to identify and drive resources and strengths from the families and wider systems to enable positive changes in the treatment process.
- **Group therapies:** Facilitated by the MDT, group therapies can allow different children and young people with similar difficulties to come together and share their experiences in a safe way.
- **Support groups:** These groups could provide a space for the beneficiaries, the MDT, and volunteers to share information, experiences and activities associated with different themes on mental health awareness. This could be done using creative methods such as art, sculpture, story-telling and puppetry among others.
- **Alternative therapies:** The centre can propose a host of alternative therapies that are known to have a calming effect on the mind and body, for example, massage therapy, guided meditation, singing bowl therapy, dance, music, singing, drama and corporal expression.
- **Empowerment and skills-based groups for parents and families:** Groups and training workshops could be organised by the MDT for parents only, so that they could be educated about their children's mental health, share their experiences with other parents and learn skills to support their children during and after the latter's residential treatment.
- **The therapeutic environment and surroundings:** The location of the residential facility near the sea and the creation of a therapeutic garden for the beneficiaries will provide a powerfully healing context to facilitate treatment and recovery.

- **Psychiatric monitoring:** As part of their treatment package, children and young people would receive psychiatric monitoring (e.g. medication reviews and physical and mental state examinations) by the Psychiatrists and/or Mental Health Nurses. A crisis management and resolution protocol should also be outlined to handle cases where a child requires an emergency admission to BSH or the local hospital.

4.4 The way forward

I strongly believe that this project can bring a revolutionary approach to mental health in Mauritius for children and young people with severe mental health difficulties. I recommended to the Minister to elaborate a full project proposal at the level of her Ministry on the planning, setting up and implementation of this therapeutic residential mental healthcare facility for children. It would also be necessary to solicit the expertise and supervision of mental health specialists working at the Brown Sequard Hospital for the conceptualisation and success of this project. As it is stated in article 3 of the CRC (UN, 1989),

States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Finally, the present chapter is an important call to the Republic of Mauritius to highlight the message that there is **‘no health without mental health’**. It is high time for our country to define and reinforce its policies, legislation and regulatory framework with regards to mental health. I think that the Allied Health Professionals Council Act 2017 is an important step in enabling the close monitoring of titles, qualifications and performance of local mental health professionals. I believe that quality service delivery will come through the teamwork of qualified, ethical and committed professionals.

CHAPTER 5:

CHILDREN OF INCARCERATED MOTHERS

5.1. Introduction

In the Preamble of the Convention on the Rights of the Child (United Nations [UN], 1989), it is stated that *“in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special treatment”*. One of these at-risk children populations are children of incarcerated mothers. These mothers find themselves in prison for different types of offences including thefts, illegal drugs trafficking and homicides among others. Upon remand or conviction, it is likely that they might have left behind one or more children under the care of other family members or the State. Some of these mothers might still be lactating smaller children, while others might be pregnant and will be giving birth during their time in prison. In some cases, incarcerated mothers even live with their infants in specialised units within the prison.

These circumstances inevitably impact on the growth and development of children of incarcerated mothers. According to an American study, the effects might vary depending on the child’s age, the alternative care arrangements and the course of the mother’s incarceration (Myers et al., 1999)⁵⁵. Children of incarcerated mothers are known to be at high risk of adverse outcomes such as disrupted physical, social, emotional or cognitive development, insecure attachments with significant others and peers, low educational achievement or school failures, poverty or eventual criminal activity and imprisonment (Myers et al., 1999; Poehlmann, 2003)⁵⁶. At an individual level, they are likely to suffer from fear, anxiety, depression, low self-esteem, concentration difficulties or even post-traumatic stress disorder. Some children might manifest their distress externally through anger, fighting, substance abuse or stealing among others. They might also face stigma and discrimination at school and within society at large on having an incarcerated parent.

The African Charter on the Rights and Welfare of the Child (ACRWC; African Union Commission, 1990)⁵⁷ clearly advanced in its article 30 on ‘children of imprisoned mothers’ that:

States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular:

- a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers;*
- b) establish and promote measures alternative to institutional confinement for the treatment of such mothers;*
- c) establish special alternative institutions for holding such mothers;*
- d) ensure that a mother shall not be imprisoned with her child;*
- e) the essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.*

⁵⁵ Myers, B.J., Smarsh, T.M., Amlund-Hagen, K. & Kennon, S. (1999). Children of incarcerated mothers. *Journal of Child and Family Studies*, 8(1), 11-25.

⁵⁶ Poehlmann, J. (2003). New study shows children of incarcerated mothers experience multiple challenges. *Family Matters: A Family Impact Seminar Newsletter for Wisconsin Policymakers*, 3(2).

⁵⁷ African Union Commission (1990). *African Charter on the Rights and Welfare of the Child*. Ethiopia: Author.

5.2 The local context

The OCO was informed that as at 31 May 2018, there were around 115 incarcerated women in the different female penal institutions in Mauritius and Rodrigues, including 5 mothers living with their babies in a Mother and Child Unit⁵⁸. The Reform Institutions Act 1988 provides in its section 27(2) on the ‘accommodation of detainees’ that:

The infant child of a female detainee may be received into an institution with his mother and may be supplied with clothing and necessities at public expenses until –

- a) he attains the age of 5 years.*
- b) arrangements for his proper care outside the institution are made whichever is the earlier.*

The Republic of Mauritius has signed and ratified the UNCRC and the ACRWC in 1990 and 1992 respectively. This conferred important responsibilities upon the Government to adhere to these international provisions. In 2015, the UN Committee on the Rights of the Child⁵⁹ pointed out in their Concluding Observations on the Republic of Mauritius that

Children under the age of 6 can live with their imprisoned mothers. However, it is concerned that the best interests of the child are not always taken into account, including when sentencing parents, that incarcerated parents are not guaranteed systematic contact with their children and the Child Development Unit, and that there is insufficient psychological treatment or social support to children of incarcerated parents who do not reside in institutional care.

The Committee (2015) recommended that

*the **best interests of the child** be taken into account as a primary consideration when sentencing parents, avoiding, as far as possible, sentences for parents which lead to their being separated from their children. It also recommends that the State party give due consideration to the child’s best interests when deciding whether the child should live with his or her incarcerated parent. In doing so, due consideration to the overall conditions of the prison context and the particular need for parent-child contact during early childhood should be taken into full account, with the option of judicial review. The Committee further recommends that the State party ensure that **incarcerated parents are guaranteed systematic contact with their children and the Child Development Unit, including in cases of adoption**, and that children of incarcerated parents who do not reside in institutional care are provided with **sufficient psychological treatment and social support**.*

There are very few local studies or reports available on the situation of children of incarcerated mothers in our country. As a way of partly addressing this gap and to determine whether the rights of these children are being duly respected and protected in line with the UNCRC

⁵⁸ Information provided by Mrs. A. Jeetun, Prison Welfare Officer of the Women’s Prison, Beau Bassin, on 19 June 2018.

⁵⁹ Committee on the Rights of the Child (2015). *Concluding observations on the combined third to fifth periodic reports of Mauritius*. Geneva: United Nations.

and the Committee's recommendation, I, the Ombudsperson for Children (OC), opened an own motion investigation as per section 7(1) of the Ombudsperson for Children Act 2003. The present chapter outlines the objectives and method of the investigation, a summary of the findings and recommendations made.

5.3 Objectives of the investigation

The two main objectives of the investigation were to

- assess the extent to which institutional support is adequate and effective for children of incarcerated mothers; and
- make recommendations related to safeguarding the rights of children whose mothers are incarcerated.

5.4 Method

The investigation included several procedures namely surveys, focus group discussions, one-to-one interviews, studying local legislations and international documents and site visits. To obtain a more comprehensive picture of the situation of children of incarcerated mothers, the Ombudsperson for Children's Office (OCO) approached a varied range of relevant stakeholders as listed below:

- Incarcerated mothers whose children were living with them in prison;
- Incarcerated mothers whose children lived in the community;
- Children of incarcerated mothers living in detention centres;
- Children of incarcerated mothers living inside the prison;
- Children of incarcerated mothers living in the community;
- Foster parents catering for children of incarcerated mothers;
- Pre-primary educators who have taught children of incarcerated mothers;
- The Reintegration and Counselling Coordinator of the non-governmental organisation (NGO) 'Ki Nou Eté';
- The Senior Social Security Officer of the Ministry of Social Security, National Solidarity and Environment and Sustainable Development; and
- The Director of the NGO 'Terre de Paix'.

The investigators of the OCO and I enquired into the different perspectives of these individuals and groups of people. Interactive meetings were organised with the incarcerated mothers and their children (both those living inside and outside the prison), with the assistance of Mr Vijay Ramanjooloo, Clinical Psychologist. The participants were given the opportunity to voice on their difficulties and experiences.

In addition, a focus group discussion was conducted with foster carers living with children of incarcerated mothers to discuss their situation. The OCO's team also spoke with two pre-primary educators regarding two children who lived in prison with their detained mothers to reflect on the children's right to education. The Senior Social Security Officer was consulted on the different legislation and provisions in place for children of incarcerated mothers in Mauritius. In addition, the NGO members were interviewed about their experience of working with these children through socio-educational projects and their thoughts on the strengths and gaps of the current system in catering for this target group.

5.5 Summary of findings

5.5.1 Children's voices

The following are some quotes gathered in French and Mauritian Creole from children interviewed during the OCO's investigation, which illustrated their concerns and helplessness about their mothers' incarceration:

- *"Souvent je me sens seul. Elle n'est pas là et ça m'affecte. J'aimerais beaucoup la prendre dans mes bras et la serrer très fort."*
- *"Media inn fini dir nom mo mama. Be aköz sa zot tou fini kone kisannla mo ete."*
- *"Mo pa kapav get mo mama ki lor rimann aköz mo al leköl ek dan wikenn nou pa gagn vizit."*
- *"Lapolis aret dimounn brit, pena okenn konsiderasyon pou bann zanfan. Ziz ti bizin demann pou koz ar nou avan rann zizman."*
- *"Lakaz kot mwa li pa parey kouma kan mo mama ti la ek depi mo papa inn mor, mo santi mo pe fer tou detraver. Nou gagn bokou problem finans."*
- *"A l'école, je me sens triste. Parfois quand il y a une réunion, personne ne peut venir, parce que tout le monde travaille à la maison chez moi. J'aimerais que ma mère vienne à la maison."*
- *"Mo al get mo mama de fwa par semenn. Mo koz ar mo mama lor telefonn. Zot dir pa gagn drwa zwenn."*
- *"Mo mank mo mama bokou. Li difisil pou mo viv mo lavi san li. Mem dan leköl, kan ena bann program, zot tou ek zot paran, mwa mo tousel. Mo gagn plore. Kan mo mama inn al dan prizon, monn bokou strese. Mo ena diabet tip enn, mo bizin fer pikir kat fwa par zour. Me selma, ena kout mo pa fer parski mo pena person ki la pou gid mwa. Toulezour mo plore mo mazinn mo mama mem inn fer de-zan li dan prizon. Mo pa kapav anprann. Mo bliye tou zafer. Mo ti pou extra kontan si kan mo al lor vizit mo kapav kozar li fas-a-fas, may li, ser li for. Mo pa kav partaz mo soufrans zis pou pa fer lezot strese."*

5.5.2 Incarcerated mothers' voices

The OCO's team collected the following quotes in Mauritian Creole from some incarcerated mothers who voiced on different issues with regards to lack of social assistance for their children, lack of contact with their children, and concerns about their children's education and psychological wellbeing.

Lack of social assistance:

- *"Mo tifi ena diabet tip enn ek li al lekol. Li gagn enn led sosyal me pa kote pansion invalid."*
- *"Mo finn adopte zanfan mo ser depi ki li ti ena dis mwa, biento li pou gagn set-an, li pa gagn okenn led sosyal. Se mo paran ki okip li."*
- *"Zame mo zanfan finn gagn sak, iniform ek liv depi NEF."*

Lack of contact with their children:

- *"Si nou zanfan ti pou vini, ti kapav ser li, ti pou bon."*
- *"Selman zanfan ki mwins dizan ki gagn lotorizasion zwenn zot mama dan prizon ek saosi zis dan Fet De mer ek Lanwel."*
- *"Mo pa tro gagn vizit mo zanfan ki dan shelter, mo prefer mo zanfan ar mwa ki li kot CDU."*
- *"Mo ti anvì gagn kontak avek mo zanfan pou ki mo kav rekonfort li."*

Worries about the child's education:

- *"Mo zanfan fer krwar li al lekol, li met iniform gramatin, me li al Plaza. Kan mo demann li kifer li pa rod al lekol, li dir so bann kamarad takinn li aköz so paran dan prizon."*
- *"Enn garson tap mo tifi sink kou. Personn pa dir nanye. Kan mo tifi retourn li ennkou, lekol sispann li pou trwa zour ek garson la pa gagn okenn sanksion. Kifer ? Parski so mama dan prizon. Kifer sa diskriminasion la ?"*
- *"Mo tifi li al so lekol, me so rezilta bien feb. Kan demann li kifer so rezilta la feb, li dir aköz mo pa la pou ed li."*

Concerns on the psychological and overall wellbeing of children:

- *"Mo tifi inn tromatize bokou. Li bizin enn sikolog pou koz ek li pou li kapav defoul li ek pou li kav explik so soufrans."*
- *"Mo zanfan reazir violaman avek mwa. Li pa dir seki li resanti. Li dir kan to sorti, lerla mo va apel twa mama."*
- *"Mo zanfan so mouvman restrikte dan Mother-Child Unit. Zot pa les li zwe deor, mo zanfan plore. Zot viv kouma enn deteni ek li pini ansam ar mwa."*
- *"Media bizin fer atansyon kan zot divilge nom kriminel ki ena zanfan mwins ki dizwit-an aköz zot tou fini kone kisannla zot ete. Bann zanfan bien afekte par sa."*

5.5.3 A summary of the OCO's findings with regards to UNCRC

The OCO's findings with regards to the rights of children of incarcerated mothers and with reference to the relevant provisions of the Convention on the Rights of the Child (UN, 1989) are presented in Table 5 below:

Table 5. Summary of the OCO's findings with reference to the UNCRC

CHILD'S RIGHT	OCO'S FINDINGS	UNCRC PROVISION
1. Right to maintain personal relations and direct contact with both parents	- Only children less than 10 years old are allowed to have physical contact with their mothers in prison for a fixed duration of half an hour per visit. - Children of 10 years and above were not allowed physical contact with their mothers which affected their emotional wellbeing. - Only 15 minutes are allowed for communication through phone calls between mother and child. - Children as well as their mothers reported that that they would like to be able to meet one another more often. - Some children reported that they were unable to visit their mothers who were on remand because they had to attend school during weekdays.	Article 9(3): States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
2. Right to education	Several children reported that they often skipped school out of fear of being asked questions about their mothers, or of being bullied and discriminated by others.	Article 28(1)(e): [The State shall] take measures to encourage regular attendance at schools and the reduction of drop-out rates.

CHILD'S RIGHT	OCO'S FINDINGS	UNCRC PROVISION
3. Right to non-discrimination	• Children faced discrimination and stigmatisation as a result of parental imprisonment. • They suffered from trauma, fear, shame, guilt and low self-esteem. While some children became withdrawn, others became aggressive. • Some children were affected by health problems and increasing school difficulties. • A few children talked about being bullied at school due to the incarceration of their mothers. • Teachers in school at times failed to intervene in cases of bullying among children leading to children losing trust in their institution. • Children from certain ethnic groups perceived themselves as being doubly stigmatised because of their parent's imprisonment and their ethnicity.	Article 2 (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.
4. Right to be heard	• When a parent was arrested, children whose lives were already chaotic often felt even more alienated by their circumstances and found it difficult to express their feelings to others. • Usually, adults decided where the children would live without consulting them.	Article 12(2): 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 appropriate body, in a manner consistent with the procedural rules of national law.

CHILD'S RIGHT	OCO'S FINDINGS	UNCRC PROVISION
	Some participants suggested that the judiciary should take more into account the effects that parental imprisonment might have on the children's welfare, development and longer-term outcomes.	
5. Right to benefit from social security	Some foster care parents complained that there was inadequate or even no social aid granted to children of incarcerated parents.	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 realisation of this right in accordance with their national law.
6. Right to preserve their identity	At times, the media stigmatised children by publicising the name of the mother, and therefore indirectly revealing children's identities.	Article 8(1): States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
7. Right to special protection in the absence of parents	- When a child's single parent is incarcerated, the child is often placed in residential care institutions. - Some children who were in residential care complained that they were not regularly brought to visit their incarcerated mother/parent.	Article 20(1): A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

CHILD'S RIGHT	OCO'S FINDINGS	UNCRC PROVISION
8. Right to physical, mental and social development	- Children reported that they are psychologically affected by the incarceration of their mothers. - They said that they are not visited by social workers who ask about their wellbeing.	Article 27(1): States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

It came out from the OCO's findings that there are systemic shortcomings in various areas, such as irregular contact with their incarcerated parent(s), inadequate psychological and social support, and stigma and discrimination at school and in the society. These obviously impact on the children's overall stability and wellbeing. It is important that these issues are given due consideration by the State, non-State actors and all those involved, and that areas of improvement are collectively identified and tackled.

5.5.4 Good practices at the Women's Prison regarding children of incarcerated mothers

Despite the difficulties reported by the participants in subsection 5.5.3, it was promising to note that several practices for the welfare of children living with their incarcerated mothers were already in place at the Women's Prison in Mauritius. Some of them are described below:

- Material resources:
 1. The 'Mother and Child Unit' in the prison provides special amenities to incarcerated mothers and their babies.
 2. Baby's toiletries (e.g. cots, blankets, clothing materials, nappies, feeding bottle, milk powder, cereals, fruits, toilet soaps, baby cream, baby oil and other sundries) are arranged for by the Prison's Administration.

- Identity of the child:

The Prison Administration and Welfare Division facilitates the registration of the birth of the baby within the delay set by the Civil Status Office.

- Physical and mental health of the child:
 1. Medical and paramedical services are accessible on a 24/7 basis. The children and the mothers are also visited by Specialist Doctors in prison. They may also be referred to the public hospital to receive treatment in the community.
 2. The baby is sent for vaccination and follow-up to the community health centre of the locality.
 3. Children living in prison are followed by the Prison's Psychologist on a regular basis. The Psychologist also visits the children at their pre-primary school to help with their social integration.

- Education:

1. At 3 months of age, the baby is admitted to a day care centre called 'Kids R Kids', which was opened jointly by the NGO 'Terre de Paix' and the Prison Authority. It is reported that qualified carers are employed to work with the babies.
2. Upon attaining the age of 3 years, the child is admitted to the Municipal Pre-Primary School in the vicinity.
3. An officer in civilian dress accompanies the child daily to and from the Pre-Primary school in a transport provided by the prison.

- Social activities:

NGOs, religious bodies and other civil society organisations organise social activities for women detainees and their children during Mother's Day, International Women's Day and Christmas Celebrations.

5.6 Recommendations

In light of the above findings, I recommend the **setting up of a dedicated unit** which would work with all the children of incarcerated mothers in the Republic of Mauritius. It could be managed by the Ministry or a non-governmental organisation, or even be co-run by both, and staffed with psychologists and other professionals.

The objectives of this unit would be to:

- support the child through the judicial process of their parent;
- ensure quality contact between the parent and the child; and
- ensure that the rights of children of incarcerated parents are being duly respected.

It is important that this unit operates as a new service. It should not duplicate the role of the Principal Prisons Welfare Officers and the Prison Psychologist. The unit should be specialised to work with children of incarcerated mothers/parents, both those living within the prison and in the community. The children would be supported from the point where their mother/parent is going through the judicial process, during the mother's/parent's incarceration and, in some cases, following the imprisonment period of the parent. The subsections below provide more detail on how the above-mentioned objectives could be achieved:

5.6.1 Support the child through the judicial process of their mother

- i. All children of the arrested parents would be referred to this dedicated unit for assessment and follow-up.
- ii. The social workers and the psychologists would ensure that the child is given comprehensible explanations on what is happening to the parent during the judicial process (arrest, pre-trial detention, trial and sentencing) and they would provide to the child the appropriate psychosocial support.

5.6.2 Ensure quality contact between the mother and the child

- i. The dedicated unit would be responsible to liaise with and sensitise prison officials on providing adequate access and quality time to the child when they visit their incarcerated mother (or parent).
- ii. The unit's staff could also sensitise and support prison authorities on how to improve the child-friendliness of their parent-child meeting spaces (e.g. through the inclusion of games and activities in the room and allowing privacy if it is safe to do so).
- iii. The unit could assess families who have difficulties bringing their children to visits (e.g. due to transport, accompaniment, cost or other difficulties) and collaboratively work on solutions with the families and the relevant authorities.
- iv. Apart from face-to-face visits, the communication of the incarcerated parents to their children could be facilitated by the social workers through letters, phone calls or other innovative ways of maintaining contact (e.g. having parents giving gifts or audio recordings to their children). This could help reduce the pain of separation and maintain relationships.
- v. The unit could assist incarcerated parents whose families are unable to visit or contact their children in other ways such as through the internet.
- vi. This unit could also organise day-long visits at the prison for children. The main purpose would be to maintain parent-child relationships during incarceration and to decrease the negative effects of parental separation and imprisonment on children.

5.6.3 *Ensure that the rights of children of incarcerated mothers are being duly respected*

- i. The life of children living in prison with their parent should be as similar as possible to how it would be in regular conditions. Their nutrition, education, play, relationships and other aspects of their lives should be taken into consideration. The dedicated unit's staff could ensure that these rights are being respected and that the appropriate facilities are being provided by prison authorities.
- ii. The clinical psychologists of the unit could sensitise managers and teachers of schools attended by children of incarcerated parents on the effects of parental imprisonment on the child's behaviours and academic achievement. School management should consider offering these children special support and remedial services as part of their educational plan. Scholarship schemes for children of incarcerated parents could also help in preventing them from dropping out of school.
- iii. During the incarceration of a parent, it is often the case that the other parent or another family member would be bearing additional responsibilities for the child. It would be important for the dedicated unit's staff to regularly assess and review the needs of these families to help them access the necessary support, such as special care allowances for low-income families and psychological help.

- iv. Children of incarcerated mothers might not always have another parent or family member who could take care of them. In such cases, the child would potentially be placed in alternative care (e.g. foster care or residential care). The unit's staff would have to regularly review these care arrangements and support the child's transition and adaptation in their new environment. They would have to ensure that minimum disruption is caused to the child's education, health and social life and that siblings are kept within the same home as far as possible. Regular visits to the incarcerated parent should also be facilitated.

5.6.4 Additional recommendations

In addition to the above-described dedicated unit for children of incarcerated mothers, I propose some more recommendations with regards to social aid, research, the judicial process, coordinated efforts between State and non-state actors and the media.

i. Social aid

It is important to ensure that children of incarcerated families benefit from social aid, special allowances and educational support. This could be one way of preventing the continuity of an intergenerational cycle of poverty or criminal involvement.

ii. Research

There should be in-depth local cross-sectional and longitudinal research on children of incarcerated parents. Research is necessary to come up with strategies that can cater for these children's and young people's social and emotional needs and that can support them to achieve their educational and life goals.

iii. Considerations during the judicial process

- a) A full range of measures should be considered when dealing with offenders, including the use of restorative or transformative justice programmes both as a form of sentencing and as an alternative to traditional judicial process.
- b) The provisions of the African Charter on the Rights and Welfare of the Child (African Union Commission, 1990) regarding 'children of imprisoned mothers' should also apply and non-custodial sentence should be considered first when sentencing such mothers.
- c) In addition, sentencing decisions should take into account the effects of imprisonment on all aspects of children's lives, especially their welfare and the likelihood of future criminality.
- d) Principles of proportionality⁶⁰ and subsidiarity⁶¹ must prevail at every stage of the

⁶⁰ Proportionality requires that action be no more than is needed to achieve the intended objective. This means that the need for action, and the costs and benefits that can be expected must be examined.

⁶¹ Subsidiarity is a principle which governs the choice of who should act, in situations where potentially more than one actor is able to act.

Source: HM Government (2014). Review of the Balance of Competences between the United Kingdom and the European Union: Subsidiarity and Proportionality. UK: Crown copyright. Retrieved on 28 May 2018 from assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/388852/BoCSubAndPro_acc.pdf

judicial process and each time decisions need to be taken with respect to the best interests of children and their family life.

- iv. Coordinated efforts of the State and civil society to improve the situation of children of incarcerated parents
 - a) The State and civil societies should implement a collaborative approach in order to substantially improve outcomes for children of incarcerated parents and their families and to help them grow into healthy and productive individuals.
 - b) A number of therapy and educational programmes and services should be designed to promote the well-being of these children.
 - c) Stigma surrounding the incarcerated parent, the child and the family should be acknowledged and addressed in any programme or service intended to engage with them. The wider public may also need to be sensitised on the issues related to children who have incarcerated parents and to be made aware of the fundamental rights and freedoms of these children on an equal basis with any other child.

v. Media

It is important that the media adopts a sensitive approach in how they portray news about parents who are in conflict with the law. The revelation of parents' or children's identities must be prevented under all circumstances.

5.7 Conclusion

The rights of children of incarcerated parents should be protected as put forward by article 2(1) of the UNCRC:

*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**.*

As discussed in the current chapter, parental incarceration affects children in multiple ways, and these children are known to be a vulnerable group who are at high risk of facing adverse physical, educational, psychological and social outcomes. Preventive strategies could help mitigate an intergenerational culture of criminal involvement, especially through the reinforcement of the family structure so as to foster an environment that can promote the growth and development of children to their full potential. Vulnerable families could be educated on the adverse effects of domestic violence, abuse, parental incarceration and substance abuse among others on the emotional wellbeing of their children. They have to receive adequate protection and assistance when necessary. Finally, they need to be sensitised on how to prevent these social problems from disrupting their family lives and on how to seek support as early as possible when issues arise.

CHAPTER 6:

THE RIGHT TO ADEQUATE HOUSING FOR CHILDREN

**Poor Housing Conditions Impact on
Children's Wellbeing: A Case Analysis on
Asbestos and Deplorable Construction**

6.1 Introduction

The fundamental human right to adequate housing is commonly viewed as the “*right to live somewhere in security, peace and dignity*” (UN, 2009)⁶². A good, warm and safe home is crucial to all aspects of children’s well-being, yet a significant number of children in certain regions of the world, including parts of the Republic Mauritius, have to cope with waking up every day in dangerous and deplorable housing states.

Research has shown that children’s development, and current and future life chances can be largely affected by the quality of their housing. For example, in the United Kingdom, it is known that “poor housing conditions increase the risk of severe ill-health or disability by up to 25 per cent during childhood and early adulthood” (Shelter, 2006)⁶³. The same report (Ibid., 2006) provided an overview of the several negative effects of low quality housing on children’s physical health, mental health, education and opportunities in adulthood, which included respiratory problems, anxiety, depression, school absenteeism, homelessness, unemployment and an increased risk of offending behaviour among others (see Appendix F for more information).

According to the Sustainable Development Goals, by 2030, the international community targets to “reduce at least by half the proportion of men, women and children of all ages living in poverty in all its dimensions according to national definitions” and to “ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums” (United Nations Development Programme [UNDP], 2018)⁶⁴. Our Republic is no exception and the State has the prime duty to address poor quality housing as a key component in tackling child poverty.

In their Concluding Observations of the reports submitted by the Republic of Mauritius, the Committee on the Rights of the Child (2006⁶⁵, 2015⁶⁶) welcomed the continued efforts by the State party towards poverty alleviation, for instance, the provision of meals, free transport and education to children. The Committee (2006) however expressed concerns about the “*living conditions of vulnerable groups particularly with regards to access to adequate housing, education and health-care facilities*”. They recommended that “*the State party strengthen its efforts to ensure that the needs of all children are met, in particular those from socially disadvantaged families and those living in remote areas, so that they do not live in poverty and their rights to adequate housing, education and health are respected*” (Ibid., 2006).

In light of the above, it is urgent that the all relevant stakeholders undertake the necessary actions to improve housing conditions for the wellbeing of all children of our Republic. If the right to safe and decent housing is not respected, this will inevitably hinder children from

⁶² United Nations (2009). *The Right to Adequate Housing: Factsheet No. 21 (Rev. 1)*. Geneva: Office of the United Nations High Commissioner for Human Rights.

⁶³ Shelter (2006). *Chance of a Lifetime: The impact of bad housing on children’s lives*. United Kingdom: Author.

⁶⁴ United Nations Development Programme (2018). *Sustainable Development Goals*. Retrieved on 02 April 2018 from www.undp.org/content/undp/en/home/sustainable-development-goals.html

⁶⁵ Committee on the Rights of the Child (2006). *Concluding observations: Mauritius*. Geneva: United Nations.

⁶⁶ Committee on the Rights of the Child (2015). *Consideration of reports submitted by States parties under article 44 of the Convention: Combined third to fifth periodic reports of States parties due in 2011, Mauritius*. Geneva: United Nations.

enjoying a wide range of other rights, such as their rights to education, health, social security, privacy and so on. This year, I investigated a case where the right to adequate housing of children had allegedly not been respected. The present chapter provides an overview of the complaint, the investigation process, a discussion of the identified issues and recommendations made based on the findings.

6.2 The complaint

On 30 November 2017, a Joint Committee comprising of Civil Society and Local Inhabitants of Residence Richelieu, Ste Catherine, Residence European Development Community (EDC) Rose Belle and Residence Telfair made several written complaints to the OCO concerning the living conditions of children in Government-constructed housing. Among these grievances, one highlighted the presence of asbestos walls in many houses. Another one referred to deplorable housing made with blocks and slabs without the support of columns.

In this context, I opened an investigation with the following objectives:

1. to understand the impact of housing conditions on children;
2. to report on any systemic failings or concerns that are identified; and
3. to make recommendations on how the situation could be improved.

6.3 The socio-historical climate of housing estates in Mauritius

In 1960, many people had lost their homes during the passage of Cyclone ‘Carol’. In response, the State’s housing ministry had built 59 housing estates funded by the European Development Community (EDC), commonly known as “Cité EDC”, in different regions of Mauritius. These houses, made of asbestos panels, were leased to those who could not afford housing. At that time, the dangers of asbestos to human health were not widely known. When this chemical hazard came to light over the years, EDC householders who could afford it rebuilt their houses with blocks and concrete. However, those who could not pay for replacement material, carried on living in asbestos houses.

In the early 1990s, the State took the decision to give EDC/ex-CHA (Central Housing Authority) house leasers the option of buying the house and the land they live on. The Government then amended the State Lands Act 1856 to allow State land to be sold to EDC/ex-CHA house owners. Therefore, in all 59 EDC estates (Government Information Service [GIS], 2015)⁶⁷, asbestos house dwellers have either bought the house and land or are still leasing it. Furthermore, EDC householders who are not affected by asbestos deal with another major issue, that of deplorable housing. In 1982, the Government had built houses made of blocks and cement without the support of columns. Today, some families are still living in ruined houses, with pieces of concrete falling onto people’s beds or in kitchen/dining areas.

⁶⁷ Government Information Service (2015). *News: National Committee on removal of asbestos recommends immediate destruction of 18 unoccupied EDC houses*. Mauritius: Author. Retrieved on 02 April 2018 from www.govmu.org/English/News/Pages/National-Committee-on-removal-of-asbestos-recommends-immediate-destruction-of-18-unoccupied-EDC-houses-.aspx

According to the Joint Committee, the National Empowerment Foundation (NEF) has provided each EDC household with 6 corrugated iron sheets to replace the roof slabs, but it is impossible at this stage to repair the houses, including the roofs.

6.4 Investigation process of the OCO

6.4.1 Literature search

Given the complexity of the issue, the OCO's investigators conducted a literature search to understand the complaint theoretically and to map out the existing local and international laws and policies relevant to housing in Mauritius.

6.4.1.1) Maslow's Theory of Hierarchy of Needs

It is important to understand housing or shelter as an essential basic human need. Maslow's well-known theory on the hierarchy of needs demonstrated just how crucial adequate housing is for children's safety and development. Housing is considered to fall under the categories of physiological and safety needs (Sutton, 2018)⁶⁸, as shown by the bottom two levels in Figure 2 below. This is because shelter is a basic requirement to enable people to fulfil other physiological needs such as hunger, thirst and sleep. Having a home and the necessary resources then can promote a sense of physical and emotional safety. As per Maslow's theory, people are motivated to fulfil the more basic needs before moving onto other more advanced needs. Thus, it makes sense that without decent housing, it is unlikely that children would be able to realise their rights to survival, health and education, and their needs to love, grow and develop in an atmosphere of moral and material security.

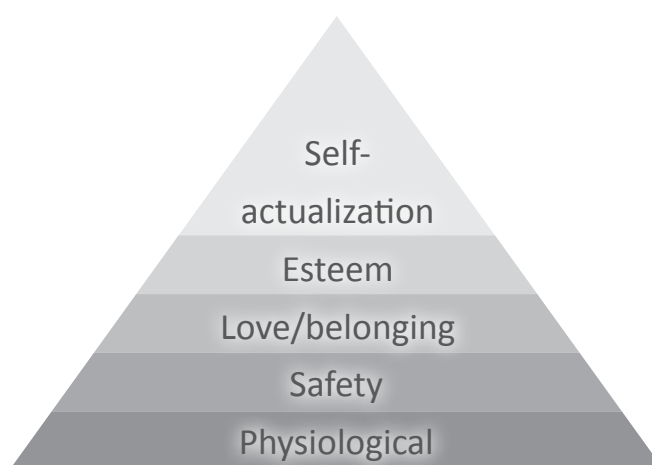


Figure 2. Maslow's Hierarchy of Needs

6.4.1.2) Asbestos and its dangers

"Asbestos is a naturally occurring mineral substance that can be pulled into a fluffy consistency. Asbestos fibers are soft and flexible yet resistant to heat, electricity and chemical corrosion"

⁶⁸ Sutton, S. (2018). *Housing and Maslow's Hierarchy of Needs*. Retrieved on 02 April 2018 from infogram.com/housing-and-maslows-hierarchy-of-needs-1g57pr4qd19v201

(Povtak, 2018)⁶⁹. In the past, asbestos had been widely used as a chemical to strengthen construction material, but it had to be banned because it was found to be highly toxic and hazardous for health (Povtak, 2018).

Unfortunately, old buildings still contain asbestos and its adverse effects continue to impact those who are exposed to this chemical. Asbestos fibres and dust are easy to inhale and swallow because they cannot be seen, smelled or tasted. Once deposited in the body, it never dissolves and this may cause several health disturbances. According to the World Health Organisation (2017)⁷⁰, “all forms of asbestos are carcinogenic to humans. Exposure to asbestos, including chrysotile, causes cancer of the lung, larynx and ovaries, and also mesothelioma (a cancer of the pleural and peritoneal linings). Asbestos exposure is also responsible for other diseases such as asbestosis (fibrosis of the lungs), and plaques, thickening and effusion in the pleura.”

6.4.1.3) Convention on the Rights of the Child (CRC)

In July 1990, the Republic of Mauritius had ratified the CRC (United Nations [UN], 1989) which meant that the Government bears the responsibility to ensure that the requirements of this international law are applied within our policies and practices. In line with article 27 of the CRC (UN, 1989), the State should ensure that every child in the country enjoys the right to a standard of living adequate for his/her physical, mental, spiritual, moral and social development. Therefore, appropriate measures need to be taken to assist parents and other responsible parties in implementing this right for their children. If needed, they should be provided with material assistance and access to support programmes particularly with regards to nutrition, clothing and housing.

6.4.1.4) State Lands Act 1856

Section 5(3) of the State Lands Act 1856 states that:

Notwithstanding the other provisions of this Act, where the owner of a house standing on a portion of State Land, which was built as part of a housing estate commonly known as an ex-CHA Housing Estate, is willing to buy the portion of land, the Minister may sell it to him by private contract at the price of 2,000 rupees.

6.4.1.5) National Plan on Asbestos (Ministry of Health and Quality of Life, 2002)⁷¹

Chaired by the then Deputy Prime Minister and Minister of Finance, an inter-ministerial committee was set up in June 2001 to look into the health issues associated with asbestos in Mauritius. A National Action Plan on Asbestos (MHQL, 2002), commonly known as the “Addison Report”, was produced. Some important measures were taken to prevent asbestos-related health dangers, for instance, the import and use of all types of asbestos fibres became

⁶⁹ Povtak, T. (2018). What is Asbestos? Retrieved on 02 April 2018 from www.asbestos.com/asbestos/

⁷⁰ World Health Organisation (2017). *Asbestos: elimination of asbestos-related diseases*. Retrieved 02 April 2018 from www.who.int/mediacentre/factsheets/fs343/en/

⁷¹ Ministry of Health and Quality of Life (2002). *National Action Plan on Asbestos*. Mauritius: Author. Retrieved on 02 April 2018 from health.govmu.org/English/Documents/asbestos.pdf

prohibited under the Dangerous Chemicals Control Act 2004, and products containing blue asbestos were banned. Within this Action Plan, although measures by the Ministry of Housing and Lands referred to safely disposing of asbestos wastes and reducing the risk of exposure in EDC housing estates, no clear actions were formulated at the time specific to the removal of asbestos panels from these houses (MHQL, 2002).

6.4.1.6) Report on the ‘Health Dimension of Asbestos in Mauritius’ (Sibartie, 2006)⁷²

Dr R. Sibartie published a report in 2006 on the ‘Health Dimension of Asbestos in Mauritius’, in his capacity as the Head of the Occupational Health Unit, Ministry of Health, and made the following recommendation:

There are still many private buildings with asbestos materials. The asbestos panels in the Housing Estates will have to be replaced by Government. This will be a very costly project, but the health of the inhabitants should be a major concern for the Government. Identification of disposal site is another problem. The present cell for hazardous waste in the landfill site is reaching saturation point and the authorities will have to look for alternative sites.

6.4.1.7) Report of the Truth and Justice Commission (2011)⁷³

Regarding housing, the Truth and Justice Commission (2011) conducted a multi-disciplinary survey of an EDC estate in La Mivoie, Grande Riviere Noire, and they strongly recommended the removal and replacement of asbestos housing. The following is an extract from their report (Ibid., 2011, p.12):

The Commission recognises that successive administrations have provided low-cost housing to those who need it most. However, it is clear that many of the citizens of Mauritius are living in degrading circumstances. Some well-intentioned schemes have failed and some families are living in overcrowded, unkempt housing, and many in absolute squalor.

The Commission recommends that immediate plans be introduced to audit existing housing estates with a view to upgrading and, where necessary, to embarking on new decent (not low-cost) housing projects.

Many housing estates have buildings constructed with asbestos, a toxic substance which is damaging to health. These houses should be pulled down on a phase to phase basis and other units constructed with proper material. Many housing estates, now known as residences, are devoid of kindergarten, playgrounds and some are without community centres. These shortcomings should be addressed.

⁷² Sibartie, R. (2006). *The Health Dimension of Asbestos in Mauritius*. Mauritius: Ministry of Health. Retrieved on 02 April 2018 from pdfsr.com/pdf/health-dimension-of-asbestos-in-mauritius

⁷³ Truth and Justice Commission (2011). *Volume 1: Report of the Truth and Justice Commission*. Mauritius: Government Printing. Retrieved on 02 April 2018 from www.usip.org/sites/default/files/ROL/TJC_Vol1.pdf

6.4.1.8) National Committee on Removal of Asbestos (2015)

In July 2015, a National Committee on Removal of Asbestos chaired by the then Vice Prime Minister and, Minister of Housing and Lands, was set up (GIS, 2015). This Committee consisted of other Ministers namely that of health, environment, social integration and local government as well as representatives from the Parliament, public bodies, civil societies, non-governmental organisations (NGOs) and trade unions. Its aim was to come up with appropriate solutions for families living in EDC/Ex-CHA houses which still contain asbestos. The National Committee had announced a few measures as follows:

- The destruction of 18 unoccupied EDC houses containing asbestos.
- The provision of temporary accommodations and/or housing facilities to the residents of EDC houses by the Ministry of Housing and Lands and the Ministry of Social Integration and Economic Empowerment.
- The establishment of a time frame to closely monitor recommended actions.
- The disbursement of the appropriate funds by the Ministry of Finance for undertaking the removal of asbestos in EDC/Ex-CHA houses.

6.4.2 Meeting with the complainants

On 11 January 2018, I chaired a meeting with representatives of the Joint Committee at my office. Their written complaints were discussed and the representatives emphasised the deplorable housing conditions that several children and families were living in. The complainants claimed they had identified that approximately 151 houses, in the 3 EDC housing estates, were made up of asbestos panels, while 16 non-asbestos houses in one particular locality were built with blocks and slabs without column support. The detailed figures are provided in Table 6 below.

Table 6. *Number of deplorable housing estates identified by the Joint Committee*

Presence of Asbestos / Deplorable housing conditions	No Asbestos / Deplorable housing conditions
45 houses in Rose Belle	16 houses in Cite Richelieu
38 houses in Telfair (St Pierre)	
68 houses in Ste Catherine	

6.4.3 Convocation of public officers

On 26 January 2018, I convened two officers of the Corporate Social Responsibility (CSR) Foundation, namely the Research and Development Manager, and the Program Manager, to discuss their approach to funding projects for children living in poor housing. I was apprised that the CSR Foundation works with NGOs to undertake programmes and projects in ten priority areas of intervention, including Social Housing, for the benefit of individuals and families listed on the Social Register of Mauritius and other vulnerable groups.

On 15 February 2018, I convened representatives of the CSR Foundation to discuss the following queries:

- i) Does the National CSR Foundation adopt a human-rights based approach to funding projects for vulnerable children?
- ii) How does the Foundation promote transparency?
- iii) The right to adequate housing has particular significance for children. How many housing projects have been funded by the Foundation?
- iv) Does the Foundation intend to take into consideration the United Nations Convention on the Rights of the Child?

6.4.4 Field visits

I delegated an investigator to carry out field observations in several houses at Ste Catherine, Richelieu, Telfair and Rose-Belle EDC, where she observed the condition of the buildings, and interviewed several residents including children. It is worth mentioning that two site visits were conducted in cyclonic conditions when a cyclone warning Class 2 was issued.

6.4.4.1) Meeting parents in their locality

The investigator spoke with several parents. Many of them were appealing to the Government to accelerate their actions on eliminating asbestos housing from their localities in the best interests of their children. It was striking to hear one of them saying passionately (in Mauritian Creole):

“Si Gouvernman donn nou kas, nou pas pou pran. Mo pu dir gouvernman lamem vinn kraz lacase la e aranz limem, parski nou panvi gagn kit infeksyon ar sa lamyant la. Monn trouve kouma bann ofisye ti vini dans zot teni de proteksyon pu kraz enn lakaz lamyant dan vwazinaz. Alor kifer zot p tarder pou vinn kraz nou lakaz ek re-aranz li ek beton?”

6.4.4.2) Listening to children’s voices

The investigator also met children who expressed their concerns on their conditions of living. The following photographs provide a pictorial overview of what the investigator saw during her visits and how children shared their experiences of living in these houses (see quotes in Mauritian Creole below the photographs).



"Dal kraze, miray pe fane. Kouma kav reste dan lakaz koumsa. Mo prefer al lekol ki res dan sa kalite lakaz la!"



"Pa kav dormi kan lapli tonbe, matla mouye. Bizin kol plastik lor plafon pou pa gagn mouye."



"Partou ena dezord e tou inn abime. Mo pa kone ki mo pou fer."



"Tou zafer inn gagn delo. Mo pa santi mwa bien ditou dan sa kalite lanvironnman la."



"Tou matla inn mouye, zanfan zwe dan malpropte."



"Seo ena tou kalite kouler kot nou aköz nou bien servi seo pu ramas delo."



"Kan lapli vini, lakaz bien mouye. Bizin met serviet ou fons moket ou matela pou bous trou pou anpes delo rantandan lakaz."



"Mo pa kontan res dan lakazkase. Enn ros ti tonbe depi plafon lor mo lipie kan mo ti pe bengne. Mo per pou bengnandan aster. Akoz sa, mo mama bengn mwa deor mem kan fer fre."



"Siklonn pe vini, pa kav mem mont lao pou dres li, si monte, tol kav grene aköz li pouri ek kav provok aksidan".



"Monn kone ki lamiant kozkanser kan mo ti ena douzan. Mo pa trouv sa korek pou res dan enn lakaz parey. La mo pe gagn touse souvan. Me mo gagn traka parski mo pa kone, mo lasante kouma pou ete plitar. Demin apre-demin, mo kapav gagn kanser."



"Kan alim take lalimier, kapav gagn kouran. Mo per."



"Kisannla pou ramas sa bann lamiant la? Kamion salte mem pale pran."



"Mo pa ti kone ki tou sa letan la mo ti pe viv dan lanfer aköz konsekans lamiant."



"Si lera rantre e mor dan sa lamiant la, zot pouri anplas, pa kapav tir li, loder la res lamem. Mous zonn osi fer nik andan. Pa kapav fer nanye."

6.5 Summary of findings

The findings of this investigation are synthesised by the different areas of concern that emerged, namely housing conditions, health issues and education.

6.5.1 *Housing conditions*

- The housing systems in all the localities, especially Richelieu and Rose Belle EDC are not responsive at all to the basic requirements of a safe 'home' where children and their families could evolve decently.
- In Richelieu, the constructions are faulty, with blocks and concrete but without the support of columns.
- Some houses even appear on the verge of collapse.
- The houses look like 'sieves', with water seeping through the cracks and leaving families to remain in appalling wet conditions.
- With heavy rains, the leaky houses become even more uninhabitable.
- Babies and children living in these environments are constantly exposed to damp and mould, and they may face physical injury from pieces of concrete falling off.
- Slippery floors are a constant hazard.
- Electric installations are exposed to the water and residents face elevated risks of electrocution.
- Food and school books are recurrently damaged by water.
- Plywood furniture does not resist the water damage and have to be thrown away.
- People make use of big plastic dustbins to store their clothing to keep them from becoming wet.
- Many households place several types and dimensions of buckets and containers in different corners of the house to catch rain water on beds, chairs, the floor, and on top of electric appliances such as refrigerators, televisions and washing machines.
- The asbestos houses are made of asbestos panelling, that is, a two-layered sheeting used for roofing or siding of houses, one on the outside, and one on the inside, with an empty space between the two. This means that asbestos fibres from between these two panels can still float out of the empty space and get into the house.
- Additionally, in many of these houses, the asbestos panels have cracked, are partly broken and/or have become friable (or easily crumbled), thus exposing children and adult residents to even more health and life hazards. There are some occupants of asbestos houses who have had the means to replace asbestos panels with block and concrete material. A portion of these panels have been disposed of by local scavenging services. Some EDC inhabitants

have noted that no special protective suits were worn by the workers. Some asbestos panels are still lying around in peoples' yards or in unused land on the estate. Other locals have constructed border walls adjacent to the streets with these panels where children usually play. This means that the inhabitants of all the EDC estates, including children, are exposed in different ways to asbestos contamination within the community.

6.5.2 Health issues

Within such dangerous and poor housing conditions, it is not surprising that a lot of children experienced different health issues. Several children suffer from fever and chest- or lung-related problems. This is mainly due to the presence of asbestos within the houses, the lack of hygiene, the dampness in rooms and air pollution. Some people reported that they have been diagnosed with cancer as a result of being exposed to asbestos for long periods of time. Moreover, living in cold, damp housing can have an impact on children's mental health, increasing their chances of experiencing stress, anxiety and depression. In conditions of rainfall, the children often sleep on wet mattresses and this is commonly associated with allergies, skin problems and sleep difficulties. Whether they live in deplorable housing conditions or in houses made of asbestos panels, children are at high risk of having acute and chronic health issues.

6.5.3 Education

Different areas of child development including children's capacity to learn and perform at school can be negatively affected by poor housing conditions. Children in inappropriate housing suffer from higher rates of poor health, both physical and psychological, and declines in life chances and educational achievement (Foster, 2015)⁷⁴. Children living in bad housing also may feel marginalised, discriminated or bullied at school. They may manifest the distress of their living environment at school in the form of different behaviours including withdrawal, verbal and physical aggression, defiance, lying, stealing among others. They often have to bear the label of 'zenfans cités' from their classmates, which can have a profound impact on their identity formation and self-confidence.

6.6 Analysis

It is paradoxical that, while the need to improve social housing, including the dismantling of asbestos housing in pockets of poverty, appears in the priority areas of the 2016 Marshall Plan Against Poverty of Mauritius (Ramkhalawon, n.d.)⁷⁵, there does not seem to have been much concrete action in this regard. It is commonly read in the local press (e.g. Le Mauricien, 2015)⁷⁶

⁷⁴ Foster, D. (2015) *How are children affected by poor housing?* UK: The Guardian. Retrieved on 02 April 2018 from www.theguardian.com/housing-network/2015/nov/11/children-poor-housing-temporary-accommodation-health-education

⁷⁵ Ramkhalawon, V. (n.d.) *Marshall Plan Against Poverty*. Retrieved on 02 April 2018 from www.csrmeetup.org/uploads/6/4/4/3/6443959/marshall_plan_presentation.pdf

⁷⁶ Le Mauricien (2015). *Labour and the Truth and Justice Commission*. Retrieved on 02 April 2018 from www.lemauricien.com/article/labour-and-truth-and-justice-commission/

that the relevant authorities have so far provided little feedback on their asbestos removal projects and on the implementation of the recommendations made by the Truth and Justice Commission (2011). However, I wish to put on record the commitment of the Government to build more houses for people of lower income groups. These measures were announced in the Budget Speech of 2018-2019.

6.7 Recommendations

In line with section 6(e) of the Ombudsperson for Children Act 2003, I recommend the following:

1. There is a need to ensure that every child in all housing estates enjoys the right to a standard of living adequate for his/her physical, mental, spiritual, moral and social development as stipulated in the CRC (UN, 1989).
2. Asbestos houses in all EDC estates across the country should be replaced with safe and sustainable houses that are affordable to residents who do not have the finances to build a house to live in.
3. Asbestos panels that are lying around or are being used unsafely in all EDC housing estates should be disposed of.
4. The existing faulty and dangerous houses in Richelieu should be urgently demolished and new houses rebuilt for the occupants while providing them with adequate temporary housing facilities.
5. The demolition and reconstruction of all faulty and hazardous houses in the other estates should be carried out while providing temporary shelters as proposed by the National Committee on Removal of Asbestos (GIS, 2015).
6. Houses should be built in ways that can withstand destructive climatic conditions.
7. Regular consultations should be held with NGOs, civil societies and the inhabitants who are affected by the problem of bad housing to provide them with timely feedback and collectively review the progress made.
8. In-depth research should be undertaken to assess the impact of bad housing on children in Mauritius.

6.8 Outcome and follow-up

On 01 June 2018, the Permanent Secretary of the Ministry of Housing and Lands wrote to me informing that owners of EDC/ex-CHA houses who either wish to upgrade or reconstruct their respective housing unit can benefit from the following facilities:

- i) assistance from the Ministry of Social Security, National Solidarity and Environment and Sustainable Development (Solid Waste Management Division) and the Ministry of Local Government and Outer Islands for removal and carting away of asbestos wastes;

- ii) the owner may benefit from grant for the casting of roof slabs or for the purchase of building materials through NHDC Ltd, in cases of reconstruction of their housing units;
- iii) subsidised loan facilities from the Mauritius Housing Company Ltd; and
- iv) assistance from NEF for the construction of a housing unit as these occupiers are also owners of the plot of land on which stand their houses.

6.9 Conclusion

As a Welfare State, it is crucial for our country to review the status, development and implementation of the Marshall Plan of Poverty in line with the Sustainable Development Goals (UNDP, 2018). We have to tackle the underlying issues of inadequate housing in a proactive way. The negative impact of bad housing on child development and the fulfilment of their rights is no secret. We, as a nation, have to ensure that the current and next generation of our child population have access to the necessary opportunities to achieve their full potential and become constructive and productive citizens.

CHAPTER 7:

MATERNITY AND BREASTFEEDING

Maternity and breastfeeding: Advocating for better policies for mothers and their infants

7.1 Listening to the concerns of Mauritian citizens

This year, I have been receiving quite a few verbal and written grievances from mothers and fathers of infants, on the particular matters of maternity leave and breastfeeding. Many parents complained about issues such as:

- insufficient provisions in place to facilitate parents' choice of exclusively breastfeeding their infants for the first 6 months of life;
- a lack of clarity and coherence on how employers apply laws and recommendations of the Pay Research Bureau (PRB) with regards to maternity leave entitlements; and
- frustration on the lack of incorporation of international recommendations and research in our country's legal frameworks on maternal and infant health.

This led me to investigate more on the local and international provisions related to the above concerns. According to section 6(a) of the Ombudsperson for Children Act 2003, I have the duty to *"make proposals to the Minister on legislation, policies and practices regarding services to, or the rights of, children"*. Within the present chapter, I therefore address the subject of the international and local context on maternity and breastfeeding and I also provide some recommendations on possible ways of improving our domestic laws and policies with regards to mothers and infants.

7.2 The importance of breastfeeding

In 2016, 5.6 million children worldwide under the age of 5 years lost their lives and 2.6 million of them died in the first month post-birth – the underlying contributing factor being malnutrition (World Health Organisation [WHO], 2017)⁷⁷. Many of these losses of infant life are also associated with poor feeding practices during the first 12 months. The first natural food for babies is breastmilk and it acts as a whole food providing for all the energetic and nutritional requirements in the first months of life (WHO, 2018a)⁷⁸. It has multiple benefits on contributing to the sound physical, cognitive and emotional development of infants and young children. Mothers who breastfeed are known to have a lower risk of ovarian and breast cancer which are two leading causes of death among women (WHO, 2018b)⁷⁹. Breastfeeding has also been recognised worldwide as one of the fundamental ways of achieving the Sustainable Development Goals (SDGs) on nutrition, food security and poverty reduction for the year 2030 (World Alliance for Breastfeeding Action, 2018)⁸⁰.

⁷⁷ World Health Organisation (2017). *Children: Reducing mortality*. Retrieved on 10 February 2018 from www.who.int/news-room/fact-sheets/detail/children-reducing-mortality

⁷⁸ World Health Organisation (2018a). *Breastfeeding*. Retrieved on 05 February 2018 from www.who.int/maternal_child_adolescent/topics/child/nutrition/breastfeeding/en/

⁷⁹ World Health Organisation (2018b). *Babies and mothers worldwide failed by lack of investment in breastfeeding*. Retrieved on 08 February 2018 from www.who.int/mediacentre/news/releases/2017/lack-investment-breastfeeding/en/

⁸⁰ World Alliance for Breastfeeding Action (2018). *Breastfeeding: Foundation of Life*. Retrieved on 08 February 2018 from worldbreastfeedingweek.org/

7.3 What does research evidence tell us about exclusive breastfeeding?

WHO (2018c)⁸¹ defines exclusive breastfeeding as providing to infants “no other food or drink, not even water, except breast milk (including milk expressed or from a wet nurse) for 6 months of life, but [allowing] the infant to receive oral rehydration solutions, drops and syrups (vitamins, minerals and medicines)”- a practice that they strongly recommend to all mothers. The WHO (2018a) also recommends that breastfeeding should continue for infants up to 2 years of age or beyond along with receiving adequate complementary foods. However, in an evaluation of 194 countries, only 40 per cent of infants under six months of age were being exclusively breastfed (Global Breastfeeding Collective [GBC], 2017a)⁸². Owing to the several benefits of breast milk, the GBC has set the target of increasing worldwide the practice of exclusive breastfeeding in the first six months of life to at least 60 per cent by 2030.

According to a review conducted by the WHO’s Department of Nutrition for Health and Development, and Department of Child and Adolescent Health and Development (2002)⁸³, adopting a general policy on exclusively breastfeeding in the first 6 months of life presented no significant risk to infants’ physical development. The researchers also found that this feeding practice significantly decreased the risk of one or more episodes of gastro-intestinal infection in infants. Nevertheless, they noted that this practice might be easier in contexts where sufficient nutritional and social support is provided to lactating mothers. They recognised that this recommendation may also depend on the mother’s choice.

7.4 International provisions on maternity and breastfeeding

Adopted in 2000 by the International Labour Organisation (ILO), the Maternity Protection Convention⁸⁴ was recommended to all Member States to ensure that the maternity rights of all “employed women, including those in atypical forms of dependent work” (article 2(1)) were respected. It was created as a safeguard to promoting equality for all women in the labour force and the health and safety of the mother and child. It provides a framework to developing the protection of maternity in national laws and practices. For example, the said convention brings attention to the following areas:

Maternity leave

“On production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks.” (article 4)

⁸¹ World Health Organisation (2018c). *The World Health Organization’s infant feeding recommendation*. Retrieved on 08 February 2018 from www.who.int/nutrition/topics/infantfeeding_recommendation/en/

⁸² Global Breastfeeding Collective (2017a). *Global Breastfeeding Scorecard, 2017: Tracking progress for breastfeeding policies and programmes*. New York & Geneva: UNICEF & WHO. Retrieved on 10 February 2018 from www.who.int/nutrition/publications/infantfeeding/global-bf-scorecard-2017.pdf?ua=1

⁸³ Department of Nutrition for Health and Development and the Department of Child and Adolescent Health and Development (2002). *The optimal duration of exclusive breastfeeding: A systematic review*. Geneva: WHO.

⁸⁴ International Labour Organisation (2000). *Maternity Protection Convention*. Geneva: Author.

Breastfeeding mothers

“A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.” (article 10(1))

“The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work shall be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly.” (article 10(2))

Periodic review

“Each Member shall examine periodically, in consultation with the representative organizations of employers and workers, the appropriateness of extending the period of leave referred to in Article 4...” (article 11)

So far, 34 out of 195 countries in the world have ratified this Convention (ILO, 2017)⁸⁵. It is interesting to note the wide variation of paid maternity leave granted by these countries, starting with a minimum number of 14 weeks (e.g. Benin, Mali, Switzerland, etc.) as per the Convention up to 12 months in some States (e.g. Albania, Montenegro, etc.) and even 18 months for twins and subsequent children in Bosnia and Herzegovina. Among the majority of countries that have not ratified the Convention, a considerable range in maternity leave is also present. For instance, the United Kingdom provides 39 weeks of paid maternity leave (GOV.UK, n.d.)⁸⁶. India has recently modified its Maternity Benefit (Amendment) Bill 2016 to increase its paid maternity leave allowance for the first two children from 12 weeks to 26 weeks (The Times of India, 2017)⁸⁷.

Another important international provision which was advanced in response to limiting the incidence of infant deaths and impaired development due to poor nutrition was the International Code of Marketing of Breast-milk Substitutes (ICMBS; WHO, 1981)⁸⁸. The aim of the ICMBS is to “contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast-feeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution.” The Global Breastfeeding Collective (GBC; 2017b)⁸⁹, which is an international strategy led by the United Nations Children’s Fund and the WHO, also advocated for the full implementation of the ICMBS in all countries, along with other important recommendations as provided in Appendix G.

⁸⁵ International Labour Organisation (2017). *Ratifications of C183 - Maternity Protection Convention, 2000 (No. 183)*. Geneva: Author. Retrieved on 08 February 2018 from www.ilo.org/dyn/normlex/en/f?p=1000:11300::NO::

⁸⁶ GOV.UK (n.d.). *Maternity pay and leave*. UK: Crown. Retrieved 08 February 2018 from www.gov.uk/maternity-pay-leave/pay

⁸⁷ The Times of India (2017). *Parliament passes bill to raise maternity leave to 26 weeks*. India: Author. Retrieved on 08 February 2018 from timesofindia.indiatimes.com/india/parliament-passes-bill-to-raise-maternity-leave-to-26-weeks/articleshow/57565644.cms

⁸⁸ World Health Organisation (1981). *International Code of Marketing of Breast-milk Substitutes*. Geneva: Author.

⁸⁹ Global Breastfeeding Collective (2017b). *Nurturing the Health and Wealth of Nations: The Investment Case for Breastfeeding*. New York: UNICEF & WHO. Retrieved on 08 February 2018 from www.who.int/nutrition/publications/infantfeeding/global-bf-collective-investmentcase.pdf?ua=1

7.5 Local provisions on maternity and breastfeeding

7.5.1 What is locally known about breastfeeding and exclusive breastfeeding?

The Republic of Mauritius has not ratified the Maternity Protection Convention 2000 as of yet (ILO, 2017)⁹⁰, but they have expressed an intention to do so (2015)⁹¹. I believe this will be an important step for our country to better protect our lactating mothers and new-borns. Using this international framework to systematically review our legal provisions in relation to breastfeeding practices and the length of maternity leave, is necessary.

All stakeholders have a duty to improve their understanding and interventions to ensure the highest attainable standard of health among this target group. It is important to point out that the Conventions on the Right of the Child (CRC; United Nations, 1989)⁹², ratified by the Republic of Mauritius in 1990, provides in article 24 that State Parties shall:

- *ensure appropriate pre-natal and post-natal health care for mothers;*
- *ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents; and*
- *take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.*

A local study on breastfeeding practices in Mauritius (Ministry of Health and Quality of Life & Mauritius Institute of Health, 2017)⁹³ revealed interesting findings on a sample of 480 mothers of babies aged between 6 and 12 months. Of note,

- 98 per cent of the mothers declared to have breastfed their babies of which 76 per cent did so within the first hour following child birth;
- 60 per cent of the mothers were assisted to start breastfeeding;
- 39 per cent of the 480 babies were exclusively breastfed in the first four months of their lives and only 25 per cent were so during the first six months of life;
- Unemployed/job seeker mothers and housewives were significantly more likely to have exclusively breastfed their babies during the first four months of life than employed mothers, due to their availability and time;
- Around 56 per cent of babies aged between 6 and 12 months were no longer being breastfed at the time of data collection and 34 per cent of their mothers attributed the main reason to perceived insufficient breast milk, which is known to be a common misunderstanding;

⁹⁰ International Labour Organisation (2017). *Countries that have not ratified this convention: C183 - Maternity Protection Convention, 2000*. Retrieved 08 February 2018 from www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_ID:312328:NO

⁹¹ Government of Mauritius (2015). *National Assembly votes legislation to extend maternity leave to 14 weeks*. Retrieved on 08 February 2018 from www.govmu.org/English/News/Pages/National-Assembly-votes-legislation-to-extend-maternity-leave-to-14-weeks.aspx

⁹² United Nations (1989). *Convention on the Rights of the Child*. Geneva: Author.

⁹³ Ministry of Health and Quality of Life and Mauritius Institute of Health (2017). *Report of study on knowledge, attitudes, beliefs and practices of breastfeeding in the island of Mauritius*. Mauritius: Author

- 77 per cent of the mothers reported having received information on breastfeeding. 96 per cent of them were informed on the benefits of exclusive breastfeeding and 89 per cent were advised on the benefits of colostrum⁹⁴ ;
- 33 per cent of the mothers declared that facilities to breastfeed their babies do exist at their workplaces; and
- 68 per cent of the mothers considered breastfeeding in public places as normal.

The report (Ibid., 2017) made several recommendations to sustain and improve breastfeeding practices in Mauritius which were related to capacity building and staff training, sensitising the population through the media, organising related outreach activities, meeting applicable international standards and establishing a child health information system.

Another Mauritian study highlighted that 26.1 per cent of a sample of 500 surveyed mothers breastfed their children until two years of age and only 17.9 per cent of mothers had practised exclusive breastfeeding for the first 6 months (Motee et al., 2013)⁹⁵ . The average duration for exclusive breastfeeding within this particular sample was found to be 2.1 months, which was very low. Both these studies strongly indicate that there is a pressing need to encourage lactating mothers to exclusively breastfeed their infants to be able to attain the worldwide target of at least 60 per cent by 2030 (GBC, 2017a).

7.5.2 Maternity leave and benefits

In 2015, paid maternity leave was extended from 12 weeks to 14 weeks by our country (Government of Mauritius, 2015)⁹⁶ to match the international recommendation of the Maternity Protection Convention 2000. The Employment Rights Act (ERA) 2008 provides in section 30 on maternity benefits that:

Notwithstanding any other enactment or Remuneration Regulations, a female worker who remains in continuous employment with the same employer for a period of 12 consecutive months immediately preceding the beginning of leave under this section shall, on production of a medical certificate, be entitled to 14 weeks' maternity leave on full pay to be taken either—

- (a) before confinement, provided that at least 7 weeks' maternity leave shall be taken immediately following the confinement; or*
- (b) after confinement.*

⁹⁴ A sticky white or yellow fluid secreted by the breasts during the second half of pregnancy and for a few days after birth, before breast milk comes in. It is high in protective antibodies that boost the newborn's immune system. Definition source: www.medicinenet.com/script/main/art.asp?articlekey=2798

⁹⁵ Motee, A., Ramasawmy, D., Pugo-Gunsam, P. & Jeewon, R. (2013). An assessment of the breastfeeding practices and infant feeding pattern among mothers in Mauritius. *Journal of Nutrition and Metabolism*, 1-8.

⁹⁶ Government of Mauritius (2015). National Assembly votes legislation to extend maternity leave to 14 weeks. Retrieved on 08 February 2018 from www.govmu.org/English/News/Pages/National-Assembly-votes-legislation-to-extend-maternity-leave-to-14-weeks-.aspx

Part-time female workers who have been in continuous employment with the same employer for a period of 12 consecutive months can also benefit from 14 weeks of maternity leave on pro-rata pay. Currently, female workers who have been in continuous employment for less than 12 months obtain the same amount of leave with no pay. However, it was announced in the Budget Speech of 2018-2019, that the ERA 2008 will be amended to provide remuneration during maternity leave for female workers employed less than 12 months (Jugnauth, 2018, p.56)⁹⁷. Within the ERA 2008, following maternity leave, workers are entitled to either two nursing breaks of half an hour or one break of an hour within working hours for the first six months after birth, or longer if medically advised.

It is necessary to highlight that section 3 of the ERA 2008 explains that, with the exception of a few clauses, this law is not applicable to public officers, which includes section 30 on 'maternity benefits'. The conditions for service for workers in the public sector including the civil service, parastatal and other statutory bodies, and local authorities are reviewed by the Pay Research Bureau (PRB; n.d.)⁹⁸ under the aegis of the Prime Minister's Office. Regarding maternity leave, the latest PRB Report (2016)⁹⁹ appreciated the increase in the number of weeks from 12 to 14 in an effort to meet international standards. The following is an extract of the recommendations made by the PRB (2016):

Recommendation 11

18.4.63 We recommend that:

- (i) A female officer should be eligible **for 14 weeks' maternity leave** in the event of a confinement. If the officer holds a substantive appointment or has completed one year's continuous service, the leave should be on full pay.*
- (ii) Where the officer does not satisfy the criteria for leave on full pay, the maternity leave to be granted to her should be on no pay.*

Recommendation 12

18.4.64 We also recommend that:

- (i) maternity leave with full pay should be granted to officers for three confinements while in service and any leave required for subsequent confinements be reckoned against vacation leave or leave without pay, as appropriate;*
- (ii) on giving birth to a stillborn child, the officer may either (a) take maternity leave out of her entitlement or (b) take sick leave in which case her entitlement of confinements would not be affected;*
- (iii) for pre-natal treatment, an officer may take either sick/casual/annual or vacation leave; and*
- (iv) prior to childbirth, an officer may take a maximum of four weeks of maternity leave.*

18.4.65 The above provisions also apply to female officers who are employed on contract and who have served for a minimum period of 12 months (.)

⁹⁷ Jugnauth, P.K. (2018). *Budget Speech 2018-2019: Pursuing our transformative journey*. Republic of Mauritius. Retrieved on 20 July 2018 from budget.mof.govmu.org/budget2018-19/2018_19budgetspeech.pdf

⁹⁸ Pay Research Bureau (n.d.). *Functions of PRB*. Retrieved on 08 February 2018 from prb.pmo.govmu.org/English/AboutUs/Pages/Function.aspx

⁹⁹ Pay Research Bureau (2016). *Leave*. Mauritius: Author. Retrieved on 08 February 2018 from prb.pmo.govmu.org/English/PRB%20Reports/Documents/report2016/vol1/leave.pdf

Recommendation 13

18.4.68 We recommend that a Female Officer who gives birth to twin or more in one confinement should be granted six weeks' special leave in addition to her normal maternity leave entitlement.

Leave after Confinement

18.4.69 At present, female public officers may, subject to the exigencies of service, in the period of 12 months following the expiry of maternity leave, be granted in addition to vacation leave, either:

- (a) a maximum of nine months' leave without pay; or*
- (b) six months' leave without pay followed by six months' leave on half pay computed on the basis of half the working time per day on half pay.*

18.4.70 We recommend that the above provisions should prevail.

Therefore, both the ERA 2008 and the PRB (2016) recommendations corroborate on the 14-week maternity leave provision. However, unlike the ERA 2008, **the PRB (2016) recommendations do not refer to the provision of an hour-long daily nursing break to the female worker when they resume work following maternity leave.** On the other hand, there is no specific provision in the ERA 2008 regarding maternity leave associated with the birth of twins or more children within one confinement. There is also no reference in this law to the number of confinements per female worker that are eligible to the 14-week paid maternity leave period.

On balance, a 14-week maternity leave period and hour-long daily nursing breaks do not necessarily facilitate or guarantee the choice of mothers to exclusively breastfeed their infants for the first six months of life (approx. 24-26 weeks). According to paragraph 18.4.69 of the PRB (2016) recommendations, female public officers who have used up their maternity leave and vacation leave and who wish to take further leave to take care of their babies must do so on leave without pay conditions. The post-birth period is known to incur significant costs to families for meeting their babies' needs. It is likely that leave with no pay may create financial insecurity during this time, especially within economically vulnerable households.

As mentioned earlier in this chapter, the Ombudsperson for Children's Office (OCO) regularly receives complaints on matters regarding maternity leave and breastfeeding, which are directly linked to the rights to survival, good nutrition, health and adequate care of the newborn child. In this regard, we have provided as follows two selected cases to illustrate the specific difficulties encountered by some parents. The cases have been anonymised to protect the individuals' identities.

Two anonymised cases to illustrate difficulties with maternity leave and breastfeeding

Case 1:

Mr. C, a medical professional, and Mrs. D, an educator in a public school, are a married couple who recently had their second child. The couple wanted to exclusively breastfeed their second baby, just like they did for their first child. To be able to do so for their first child at the time, Mrs D. had used up her vacation leave followed by leave after confinement (leave without pay) on top of her 14-week paid maternity allowance.

For her second child, Mrs. D's maternity leave ended half way through the summer school holidays. Since she was exclusively breastfeeding her baby, she was planning to request for vacation leave exceeding 19 days following the school holidays. This is stipulated as a special condition for educators in the clause 22.141(d)(iii) of the PRB Report (2016) which allows them to request for **vacation leave exceeding 19 days during term time immediately after maternity leave entitlement**. The couple therefore thought that it would be unwise for Mrs D. to apply for vacation leave during the summer holidays. Besides, they remembered that for their elder child, Mrs D's maternity leave also ended during a summer school holiday and she was granted vacation leave on resumption of duty on the next working day, which was the first day of the next school calendar.

However, upon application to the concerned authority, Mrs. D was not granted vacation leave following her maternity leave entitlement for her second child. The concerned authority alleged that the phrase '*immediately after maternity leave*' in the PRB (2016) clause meant the very next day. Mr C. and Mrs D. appealed this decision based on the PRB (2016) clause 18.4.69 which provides that within one year following maternity leave expiry, leave without pay can be requested after vacation leave has been depleted.

Nearly five months following their second child's birth, Mrs D. had still not been provided with the requested leave without pay. The couple reported being frustrated on the fact that the same PRB regulations applied differently to their two children. They told us that, in such circumstances, it had been very hard to maintain exclusive breastfeeding for their second child. Owing to his medical background, Mr C. explained that the female breasts produce about 50 to 60 ml of milk each, which yield about 100 to 120 ml per feed. As the baby grows, the demand for milk increases and can be 180 to 220 ml per feed or even more depending on the weight of the child. He also said that it is difficult to extract breastmilk using pumps for feeding as the pumping effect the child has is very different from the machine.

Nevertheless, Mr C. and Mrs D. had not given up. They solicited the help of other relevant stakeholders to influence the concerned authority's decision in favourably supporting working mothers like Mrs D. who wish to exclusively breastfeed their children.

Case 2:

Mrs. E is a working mother of three children all aged under 5 years old, who had requested leave without pay for a period of one year from the concerned authority. Her youngest child is less than 2 years old, is still being breastfed and requires her special attention due to some health issues. Her husband does not have a fixed schedule of work, which decreases his availability in sharing the care and nursery/school runs of their children. Her in-laws occupy a business and she could not solicit their help for child care. Mrs. E finds it hard to cope with her work and family life demands. She has already exhausted all her local and sick leaves for the year. She feels she is not being able to give enough time to her children that she observes is having a negative impact on their behaviour. She reports feeling depressed.

To her surprise, her leave request was rejected verbally by the concerned authority on the basis that there was a shortage of staff at her workplace. Five months later, she filed a second request, explaining how impossible the situation had become for her. Mrs. E also contested the grounds of staff shortage because she claimed that nearly 20 new employees were recruited at her workplace over the past year.

Mrs. E is currently awaiting a response from the concerned authority on her new request and has informed other relevant stakeholders of her situation.

7.5.3 Where are we heading in the areas of maternity and breastfeeding?

I would like to reiterate that the number of infant deaths worldwide in the first year of life mainly due to poor nutrition is alarming (WHO, 2017). We, as a nation, must leave no stone unturned to provide to every child the best start in life and to improve the quality of the mothering experience. In the context of the World Breastfeeding Week 2018, the Republic of Mauritius commemorated this event during a one-day workshop with non-governmental organisations on 07 August 2018. On this occasion, they emphasised on their commitment to promote breastfeeding as an important public health intervention and foundation of life (GIS, 2018)¹⁰⁰. It is important to acknowledge the ongoing efforts of authorities to sensitise the population on the multiple benefits of breastfeeding, to create breastfeeding corners in many health service points to ensure privacy and comfort to breastfeeding mothers, and to improve the monitoring of breastfeeding practices through the drafting of a breastfeeding action plan.

According to Statistics Mauritius (2018)¹⁰¹, the country has seen a decrease in its fertility rate (i.e. the average number of live births per woman) from 2.03 in 1997 to 1.37 in 2016. We are also nationally experiencing the phenomenon of an ageing population. Along with encouraging couples to have more children, **it will also be important to review relevant laws, regulations and conditions of service from a developmental perspective, so that parents**

¹⁰⁰ Government Information Service (2018). *Government committed to promote breastfeeding, says Health Minister*. Retrieved 12 August 2018 from www.govmu.org/English/News/Pages/Government-committed-to-promote-breastfeeding,-says-Health-Minister.aspx

¹⁰¹ Statistics Mauritius (2018). *Population and Vital Statistics – Year 2017*. Mauritius: Author. Retrieved on 08 February 2018 from statsmauritius.govmu.org/English/Publications/Documents/2018/EI1367/Pop_Vital_Yr17.pdf

could be supported to provide the necessary nurturing and care to their infants for at least the first six months after birth.

7.6 Some recommendations

Taking into consideration the above discussion, I would strongly recommend the following:

1. Revise current legislations and provisions regarding maternity and breastfeeding with a potential view of increasing the length of paid maternity leave to at least 24-26 weeks to cover for the exclusive breastfeeding period of 6 months.
2. Allow for exclusive breastfeeding to be dependent on the context and choice of lactating mothers.
3. Meet international standards on maternal and infant health, for example, through the ratification of the Maternity Protection Convention 2000.
4. Continue to sensitise the population on child health, nutrition and the advantages of breastfeeding.
5. Invest more in improving local breastfeeding practices, and nursing support and counselling for mothers and infants.
6. In view of increasing the national fertility rate, reconsider the PRB's (2016) Recommendation 12 regarding the fact that 14-week **paid maternity leave** is **only applicable to the first three confinements** of the mother and that **further confinements** would require her to take **maternity leave with no pay**.

I believe that, by reinforcing networking and concerted actions between State and non-State actors, we will better respond to the evolving needs of mothers and infants of our Republic, and ensure respect of their fundamental rights to life, protection and a high standard of health.

CHAPTER 8:

HANDLING OF CASES

**Understanding the process of investigation
at the Ombudsperson for Children's Office**

8.1 Introduction

This chapter summarises cases/complaints that were dealt with by the Ombudsperson for Children's Office (OCO) during the period July 2017 to June 2018. It outlines the approach that was used to look into the complaints and also includes appropriate recommendations. As stipulated in sections 6 and 7 of the Ombudsperson for Children Act (OCA) 2003, investigations constitute one of my core functions as the Ombudsperson for Children (OC). I can initiate an investigation on my own motion and/or carry out an inquiry in response to complaints made by the public.

At the OCO, 'smart power' is strategically employed to explore the movement of systemic change through an investigative process. 'Smart power' is a term coined by Joseph Nye which signifies a skilful combination of hard power and soft power (Wilson, 2008)¹⁰². For instance, a single case can detect the gaps in any given system/mechanism; thereby extending the scope of our intervention from a micro to a macro level. The ultimate aim of investigative procedures is to make recommendations to relevant authorities in order to promote the best interests of children.

In 2017-2018, an increase in the number and complexity of complaints has been observed. These could be potential outcomes of our office's increased sensitisation campaigns and proactive initiatives. More people are coming forward to denounce violations committed against children's rights. Other factors that have contributed to our visibility have been the support of the media, an enhanced networking with organisations dealing with children, an increased community support and regular field visits by our team of investigators.

8.2 Violation of children's rights and investigation procedures

We investigate into cases where the rights of a child have been allegedly violated. Complaints at the OCO can be lodged when public or private organisations or any individual have faltered or failed in providing appropriate support to a child. The following are a few examples of cases which have been investigated at the OCO:

- alleged violation of the right to education of children with multiple disabilities;
- an authority failing to take actions to protect a child from abuse or neglect;
- rights and freedom of children at the level of teaching and learning are not being respected;
- potential abuse against children in CYC;
- impact of major infrastructural changes on children, among others.

¹⁰²Wilson, E.J. (2008). Hard power, soft power, smart power. *The Annals of the American Academy of Political and Social Science*, 616, 110-124.

8.2.1 Guiding principles for investigations

Investigations are carried out in

- an independent and impartial manner;
- a non-discriminatory way;
- the best interests of the child;
- confidentiality and transparency; and
- consideration of the child's opinion according to his/her age and maturity.

According to section 7(4) of the OCA 2003, we do **not** investigate into cases which are pending before Court.

8.2.2 Determining the scope of the investigation

Any case begins with a **preliminary investigation** which determines whether a full investigation is warranted or whether the case can quickly be resolved. A **full investigation** consists of requesting case file records and documents from the Court, various Ministries and institutions dealing with children. The investigators conduct interviews with key people, carry out field visits and write reports. In certain cases, I carry out mediation, review the report of findings and align it with existing policies. I also submit special reports to authorities whenever necessary and make recommendations to appropriate bodies.

8.2.3 Monitoring and evaluation

The follow up of complaints and that of the remedial actions undertaken form an integral component of my role as the OC. It is equally important for me to ensure that regular visits as well as spot checks are effected to residential care institutions and rehabilitation youth centres to assess the effectiveness of the rehabilitative services. Depending on the complexity of the complaint, I demand feedback from concerned parties on the progress of the remedial actions within a timeframe of one week to three months.

8.2.4 Training of investigators

I recognise fully the pertinence of training for the investigators and the added value that capacity building would bring to the OCO. I, therefore, arrange both local and international training which undoubtedly improve their investigative skills.

8.3 Cases handled by the OCO in 2017-2018

Table 7. Cases handled by the OCO during the period from 01 July 2017 to 30 June 2018

Case Status	Number	Percentage (approx. %)
Cases Closed	417	90%
Cases in Progress	4	1%
Cases Awaiting Report	44	9%
Total	465	100

As shown in Table 7 above, out of the 465 new complaints registered and investigated from 01 July 2017 to 30 June 2018, the OCO successfully resolved and closed 417 cases (approx. 90%). Some cases (approx. 9%) are still awaiting reports from various stakeholders and the remaining (approx. 1%) of cases are in progress.

The OCO registers complaints from people and organisations from a vast range of backgrounds. The OCO also pursues own motion investigations based on identified areas of concern. Table 8 below provides a breakdown of these profiles for the reporting year 2017/2018.

Table 8. Profile of complainants from 01 July 2017 to 30 June 2018

Complainant	Number
Mother	131
Father	87
Group of parents	12
Anonymous	67
Grandparents	19
Education professionals	26
Ministries/Departments	21
Media	3
Relatives/Friends	38
Child	17
Medical social workers	13
NGO	10
Neighbours	13
Own motion inquiries	8
Total	465

Furthermore, the types of complaints vary from basic school problems to complex societal issues including family conflicts, domestic violence, severe abuse, neglect and poverty, as showcased in Table 9 below. It is to be noted that most of these complaints as indicated by 'Others' in the table represent those that are complex in nature and that involve compounding difficulties. The second biggest category of complaints emanate from educational institutions followed by family-related complaints as the third category.

Table 9. Types of complaints

Types of complaints	Number of cases
• School Problems/Transfer/Admission/Transport/Infrastructure	88
• Corporal Punishment/Harassment/Verbal Abuse by Personnel at School/Bullying/Violence/Assault at School	15
• Child Neglect	23
• Family Conflict/Custody/Right of Access	30
• Institutional Abuse and Neglect/Police brutality	3
• Sexual Abuse and Harassment	24
• Behavioural Problems	18
• Poverty – lack of means/Social Aid/Lack of school materials	5
• Physical Violence in family/Domestic Violence	24
• Children with Disabilities/Social Aid	6
• School Absenteeism/Drop out	6
• Suicidal Tendencies	2
• Prostitution/Child Trafficking	5
• Child Abduction	1
• Drug Abuse	9
• Sale of cigarettes and alcoholic drinks to minors	1
• Adoption	1
• Tardy Declaration	1
• Others	203
Total	465

Overall, in comparison to the reporting year 2016/2017, there is an approximately 34% increase in the number of cases received at the OCO in 2017/2018, as shown in Table 10 below.

Table 10. Number of cases received at the OCO over the last two reporting years

Reporting year	2016/2017	2017/2018
Number of cases received at the Ombudsperson for Children's Office	346	465

Over the course of 2017/2018, the OCO carried out more than 135 field visits including about 60 visits to residential care institutions for investigation purposes. These enabled investigators to

- interact with children in their residential care and/or educational setting;
- quickly obtain information from children and relevant people;
- give advice, as necessary; and
- establish contact with headteachers, rectors, parents, carers and other professionals working with children and/or students, thereby improving their awareness of the role of the OCO.

Examples of cases investigated during this reporting year are presented in the following pages to illustrate how investigation work is carried out by the OCO.

Case 1: Advocating for the right to education of children with multiple disabilities

1. Introduction

Every child has a fundamental right to education without discrimination as stipulated by articles 28 and 29 of the Convention on the Rights of the Child (CRC; United Nations [UN], 1989). The Convention on the Rights of Persons with Disabilities (CRPD; UN, 2006)¹⁰³ also clearly advanced in its article 24 that persons, including children, with disabilities should be guaranteed access to *“an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live”*. The Republic of Mauritius has ratified both of the above-named UN conventions and has committed itself to promote the rights of all Mauritian children with or without disabilities, including their right to education.

The present case was referred to the OCO in 2017 regarding a potential violation of the right to education of some children with disabilities. This violation has been allegedly caused by two local branches of an international service club organisation which will be referred to as S1 and S2 in this case. The following sections consist of an overview of the complaint, the investigation procedures employed by the OCO, areas of concern identified and recommendations.

2. The complaint

The children concerned attended a day care centre managed by a non-governmental organisation (NGO) in Mauritius which caters for the treatment, education and rehabilitation of children and young people who have physical and intellectual disabilities, with a majority of them suffering from cerebral palsy. On 27 July 2017, the OCO received a written complaint from the NGO against S2. The NGO runs its services within a building situated on a land leased by S1 from the Government. The complaint was against S2 who was restricting the access of staff and students of the NGO to two rooms, namely the multipurpose/conference room and the staff toilet. For clarity, the timeline below provides a chronological sequence of events that led to the complaint:

Year	Events
1992	In 1992, S2 approached the NGO and proposed to build a centre adapted to the particular needs of its children.
2003	On 27 June 2003, S1 received a plot of land from the State for the sole purpose of <i>“setting up a multipurpose training and educational centre for physically and mentally handicapped children”</i>.
2005	On 26 September 2005, S1 made an appeal to potential donors through a project written by S2 to raise funds for the construction of a day care centre for the physically and mentally challenged children of the NGO.

¹⁰³United Nations (2006). Convention on the Rights of Persons with Disabilities. Geneva: Author.

Year	Events
	In the same year, the NGO contributed Rs 100,000, which was collected from a concert and Teledon, for the construction of the Day Care Centre.
2006	- The Day Care Centre became functional in September 2006, consisting of a conference/multipurpose room, an office, a therapy room, four classrooms, a kitchen and two toilets. - On 20 September 2006, a mutual agreement with specified terms and conditions regarding the use of the building were agreed and covenanted between S1 and the NGO, in the presence of S2. In this agreement, S1 allowed both S2 and the NGO to use the conference/ multipurpose room and the staff toilet as and when required for their activities.
2010	In 2010, there was an extension of the building to be used as an Occupational Therapy Department for the NGO.
2012	Photovoltaic cells were installed to generate electricity in 2012.
2015	A projector was sponsored by S2 in 2015.
2016	- In 2016, each time the NGO had to use the multipurpose room and the staff toilet for the benefit of their children, they had to seek prior permission from S1 and S2. - In 2016, the toilet was closed and the lock of the multipurpose room was changed without any prior notice from S1 and S2. According to them, these actions were taken due to the apparent 'misuse' of these rooms by the NGO. - The said toilet contains the CEB meter and the internal alarm box is installed in the multipurpose room, which the NGO can no longer access due to the closures, thus giving rise to potential hazards. - In spite of formal meetings among these parties and a petition being sent by the NGO, access to the two rooms was denied by S1 and S2.
2017- Present	- Access to the multipurpose room and staff's toilet are still being denied to the NGO. - On 20 February 2017, the NGO served a "<i>mise en demeure</i>" to S1 putting an obligation to - comply with the objects of the original lease agreement for which State assistance and public funds were obtained; - hand over copies of the keys of both the multipurpose/conference room and that of the toilet; and - not hinder the NGO from enjoying or putting to use the conference room and the toilet to all physically and mentally handicapped children of their day care centre.
	On 18 August 2017, S1 served a "<i>mise en demeure</i>" to the NGO to vacate part of the building within 6 months. This was due to having allegedly breached a clause of a proposed agreement dated 18 December 2007, which stipulated that the NGO shall have no right to make any renovation and/or alteration to the building without the express written consent of S1.

According to the NGO, it was important for children with severe disabilities to access the multipurpose room which provided a multi-sensorial environment that improve and maximise the well-being of children with multiple disabilities. Following the above course of events, the NGO reiterated its complaint to the OCO because it was highly concerned that the wellbeing of its beneficiaries would be compromised within a reduced availability of physical space and amenities.

3. International and local frameworks relevant to the complaint

It is important to consider existing international and local provisions, legislation and policies which are applicable to the present complaint. The main frameworks are outlined as follows:

- **Conventions on the Rights of the Child (CRC; UN, 1989):** The complaint concerned violations of the UNCRC with respect to these children's rights pertaining to their disabilities (article 23), their best interests (article 3), their education (article 28) and their access to leisure (article 31).
- **Convention on the Rights of Persons with Disabilities (CRPD; UN, 2006):** Article 7 of the UNCRPD also states that:
 1. *States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.*
 2. *In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.*
 3. *States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.*

Article 24 of the UNCRPD regarding education is also of relevance to this case whereby States Parties shall ensure that:

- (c) *Reasonable accommodation of the individual's requirements is provided;*
 - (d) *Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;*
 - (e) *Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.*
- **Education Act 1957:** Pursuant to section 5A(2)(c) of the Education Act 1957, the National Curriculum Advisory Board advises on curriculum development for children with special needs and for remedial education. Creating positive improvements within the physical educational environment of children, young people and adults with disabilities are also an integral way of developing the curriculum.

- **Nine Year Schooling policy (Ministry of Education, Human Resources, Tertiary Education and Scientific Research, 2016)¹⁰⁴** : The policy document acknowledges that “physical infrastructure is crucial” (p.13) and that the “*learning environment must support the emotional, social and physical well-being of learners*” (p.13).

4. The investigation

As per section 5(a) of the Ombudsperson for Children Act 2003, the OC “*shall ensure that the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and association of individuals*”.

Therefore, I opened an investigation because I believed that from a child rights’ perspective:

- a. the right to education of the children attending the day care centre was not given full consideration by S1 and S2; and
- b. the best interests of the children, as per article 3 of the UNCRC, were being overlooked when S1 asked the NGO to vacate part of the building by 28 February 2018.

4.1 Method

4.1.1) Field visit

On 23 August 2017, two investigators conducted a site visit to the NGO’s day care centre where they found that the multipurpose room was locked. It was noted that the multipurpose room had a large spacious area which could have been utilised for the benefit of the children. It was also observed that, due to a lack of space, many wheelchairs and games were carelessly left outdoor in the premises; and children had to stay in the same classroom for lunch, activities and singing time.

4.1.2) Convocation

On 24 August 2017, I convened the Presidents of S1 and S2. After listening to their versions of the events, I reminded them that the purpose of the State land lease was “solely for the setting up of a multipurpose training and educational centre for physically and mentally handicapped children”.

4.1.3) Mediation

On 16 December 2017, I carried out mediation between the NGO and S1/S2. The President of the NGO, while acknowledging that the NGO had got this building following the intervention of S2, she argued that the NGO was in fact the beneficial owner¹⁰⁵ and had the right to the entire

¹⁰⁴Ministry of Education, Human Resources, Tertiary Education and Scientific Research (2016). *Inspiring every child: Nine Year Schooling*. Republic of Mauritius: Open University. Retrieved on 05 May 2018 from ministry-education.govmu.org/English/educationsector/nys/Documents/NYCBE%20Booklet.pdf

¹⁰⁵A beneficial owner is a person who enjoys the benefits of ownership (e.g. use of the property) even though title to some form of property is in another name. Source: www.investopedia.com/terms/b/beneficialowner.asp

premises. On the other hand, S2 stated that other children and adults made use of the multipurpose room and the toilets during the weekends. I informed both parties that children with disabilities CANNOT fight their own battle. They CANNOT advocate for their rights themselves. I pointed out that within conflictual situations between two adult parties often the welfare of children is overlooked. I advised both parties to resolve the matter amicably in the best interests of the children.

4.2 Areas of concern

4.2.1) Anomalies regarding documents furnished for the investigation

- **The State Land Lease (27 June 2003):** On 27 June 2003, S1 was given on lease a piece of land valid for about 19 years by the concerned Ministry *“to be used **solely** for the setting up [of] a multipurpose training and educational centre for physically and mentally handicapped children”*. Therefore, it can be argued that S1 may have already breached this agreement by allowing their members and those of S2 to use part of the building (i.e. the multipurpose room and the staff toilet) for meetings and activities other than the initial purpose of the lease. If the lease agreement was adhered to, the ONLY user(s) of the premises should have been the NGO and/or other authorised organisation(s) who are involved in the operation of the training and educational centre for children with physical and mental disabilities.

According to the same lease, “the lessor may cancel the lease *“de plein droit” and without payment of any compensation if... the lessee fails to comply with any of his other obligations or conditions of the lease*”. If it is found that the S1 has actually breached this lease condition, the necessary actions should be taken by the Government.

- **The mutually signed agreement between S1 and the NGO (20 September 2006):** This agreement specifying terms and conditions between S1 and the NGO about the use of the building was signed in the presence of S2. Although S2 seemed to be acting as a witness in this process, it is clear within these terms of agreement that S1 also conferred to S2 supervision responsibilities, and the rights to use the premises and to authorise its use.

For instance, the S2 is part of the Joint Operations Committee which would supervise the activities of the NGO and the use and occupation of the premises. S1 and S2 reserved the fourth classroom for their sole use. They also reserved rights to make use of the premises as and when required for their activities or meetings. In addition, it was agreed that members of S1 and/or S2 would have free access as and when required to the conference room, toilets and kitchen and that the NGO shall raise no objection to this. S1 and/or S2 may also authorise the use of the conference room to any other organisation upon prior notice to the NGO.

This particular agreement raises two important concerns:

- i. The use of the premises for reasons other than the original purpose of the State land lease (e.g. for S1’s or S2’s activities/meetings or unspecified activities) can be considered as a breach.

- ii. If S1 was the State land lease holder, all executive and regulatory responsibilities should have lain upon them. For this mutual agreement, S2 signed as a witness, therefore a separate entity from S1. However, the fact that S2 was also given supervisory, usage and authorisation rights with regards to the premises was incomprehensible. In a meeting with the OC on 23 August 2017, S1 and S2 explained that they had more or less the same members. This may actually be revealing a potential conflict of interest because these two parties signed as separate entities on the mutual agreement.
- **The proposed agreement between S1 and the NGO (18 December 2007):** The documents furnished to the OCO included a **proposed but unsigned** agreement between S1 and the NGO. Therefore, all the terms and conditions of this document could not be considered as valid because they have never been mutually signed by both parties.
- **The “mise en demeure” served by S1 upon the NGO (18 August 2017):** The averments made by S1 against the NGO in this legal document was based on the proposed but unsigned agreement (18 December 2007) between the two parties. This in itself can potentially invalidate this “mise en demeure”.

Furthermore, both the mutually signed (20 September 2006) and unsigned (18 December 2007) agreements between S1 and the NGO authorised the NGO to occupy the multipurpose/conference room and the staff toilet free of charge, and as and when required, during school terms as defined by the Ministry of Education. In contrast, S1’s “mise en demeure” (18 August 2017) referred differently to the use of rooms as “*authorisation to occupy part of the aforesaid building (save and except the conference room and toilet), free of charge during the school term time as defined by the Ministry of Education*”. It is surprising that S1 quoted an exception that never figured in writing in any of their prior agreements.

- **Difference between the NGO’s and S1’s “mises en demeure”:** In the “mise en demeure” that the NGO served to S1 (20 February 2017), the main issue brought up was access restrictions imposed by S1 to the multipurpose room and one toilet. However, S1’s “mise en demeure” served upon the NGO on 18 August 2017 concerned another matter, that of alleged alterations of the premises apparently made without consent from S1. S1 indicated this as a breach of terms, which resulted in a six-month notice to vacate **part of the building** containing the multipurpose room and one toilet by 28 February 2018.

Nevertheless, according to both the signed (20 September 2006) and unsigned agreements (18 December 2007), the breach of any terms or conditions should result in a notice to vacate the “**premises, therefore as a whole and not part of the building**”. Again, this shows an inconsistency in the application of terms and conditions by S1. This may also indicate potential vested interests among the members of S1 and/or S2 in securing the conference/multipurpose room and the staff toilet for their activities.

4.2.2) Deprivation of children’s rights

From a child rights perspective, access restrictions to the multipurpose room and staff toilet are having considerable effects on several rights of the children with disabilities of the NGO, as described below:

- **Right to education and best interests of the child:** Children with disabilities have special needs and require wider space to support their development at different levels. The multipurpose room is the only room which has a large space area as compared to the rest of the classrooms at the Day Care Centre. The closure of the multipurpose room has a significant impact on the performance of the children as this is withholding the space and adaptations that they required to meet their needs for a quality education.
- **Right to good quality school infrastructure:** It has been observed that, due to lack of space, several school equipment like wheelchairs and educational equipment are left outside the classrooms exposed to sun and rain. This shows disrespect towards children with disabilities in that efforts are not being made to improve their physical environment for more efficient use of pedagogical materials.
- **Right to leisure and play:** Children with disabilities have the right to leisure and play. However, the frequency of social gatherings, birthday celebrations and leisure activities significantly decreased due to a lack of space at the centre. Previously, these gatherings took place in the multipurpose room.
- **Right to health:** With the multipurpose room being locked, children are more likely to be in the open areas of the premises during breaks and lunch. Therefore, they are more exposed to environmental conditions (such as wind, heat, dust in the air, etc) which can put their health at stake.
- **Right to social integration and socialisation:** With no access to the multipurpose room, the NGO is having difficulties to provide the support needed for the social integration of the beneficiaries. As children do not have a proper place to interact with their friends, it becomes challenging for them to develop social skills and meaningful relationships. It is also commonly known that poor socialisation can result in behaviour problems such as social withdrawal, inability to interpret social cues and low frustration tolerance among others.

5. Recommendations

I recommended in this particular case that

1. the Ministry of Housing and Lands looks into this matter urgently and give due consideration to the best interests of the children of the NGO so that their rights are safeguarded;
2. S1 becomes well versed on child rights matters so they could inform their decisions and actions in light of the Convention on the Rights of the Child (UN, 1989) and existing child-related local legislation; and
3. State and non-State actors should collaboratively carry out continuous awareness campaigns on disability so as to educate the public on the value of recognising the rights and fundamental freedoms of children with disabilities on an equal basis with any other human being.

Case 2: Positive discrimination regarding a child with visual impairment

1. Introduction

Following an article published in a local weekly newspaper about Child PD¹⁰⁶ who has a visual impairment and who was denied the school of her choice, I opened an investigation on my own motion, as provided by the Ombudsperson for Children Act (OCA) 2003¹⁰⁷. She was not given an offer of admission to the State Secondary School (SSS)¹⁰⁸ of her choice which led my office to enquire on the matter from a rights-based perspective.

Child PD, a 13-year-old girl, successfully completed Grade 6 with a Primary School Achievement Certificate (PSAC), scoring grade aggregate 11. The father, Mr DD, was restricted from the choice of Secondary School for his daughter due to the latter being overaged. He expressed his disapproval of alternative offers to private colleges and requested a transfer of his child to her first-choice school from the concerned authority.

It is crucial to begin by highlighting that Mauritius has ratified in 2011 the Convention on the Rights of Persons with Disabilities (CRPD; United Nations [UN], 2006)¹⁰⁹. We therefore have the prime duty to uphold all the fundamental rights of persons with disabilities, including children. In addition, an important provision of the Convention on the Rights of the Child (CRC; UN, 1989), that the Republic of Mauritius ratified in 1990, is the right to education of **every child**¹¹⁰ irrespective of their differences. Along the same line, article 24(1) of the CRPD (UN, 2006) recognises *“the right of persons with disabilities to education without discrimination and on the basis of equal opportunity [...]”*. Also, article 24(2) of the same Convention stipulates that *“States Parties shall ensure that (b) persons with disabilities can access an inclusive, quality and free primary education and secondary education [...]”*. Owing to the country’s commitment to these international Conventions, the relevant stakeholders had the obligation to unite all the necessary conditions to give Child PD adequate access to education on an equitable basis with other students.

Furthermore, it is interesting to note that in the report submitted by the Republic of Mauritius (2012)¹¹¹ on the implementation of the UN CRPD, article 24.2 regarding a legislative framework for the education of persons with disabilities, explained the conditions in which neither a person nor a student can be discriminated by an educational institution. Paradoxically, the same report then brought forward in article 24.3 a clause of the Equal Opportunities Act 2008 which stated that

¹⁰⁶Only initials have been used for individuals’ names to protect their privacy.

¹⁰⁷Article 6 of the OCA 2003: In carrying out the duties of his office, the Ombudsperson for Children shall – (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 the child.

¹⁰⁸The full name of the State Secondary School has been concealed for privacy and referred to as ‘SSS’ throughout the case study.

¹⁰⁹United Nations (2006). *Convention on the Rights of Persons with Disabilities and its Optional Protocol*. Geneva: Author.

¹¹⁰Article 23(3) of the CRC (UN, 1989): “[...] ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.”

¹¹¹Republic of Mauritius (2012). *Implementation of the UN Convention on the Rights of Persons with Disabilities: Initial report submitted by States parties under Article 35 of the Covenant*. Mauritius: Author.

an educational institution may discriminate against a person on the basis of impairment where (a) in order to participate or continue to participate in, or to derive or continue to derive substantial benefit from the educational programme of the institution, (i) the person requires or would require special services or facilities; and (ii) it is not reasonable in the circumstances for those special services or facilities to be provided. (section 17(3))

I am of the view that a 21st-century Mauritius cannot include a discriminatory clause or exception in any legal document, especially in a situation involving education, disability and children. A discriminatory law cannot be used to deny a child access to an educational institution of her choice. I also note that “special services or facilities” are undefined and vague which puts in jeopardy the application of essential rights in the context of a social model of disability.

The objectives of my investigation were to determine the following:

- 1) Why was the State not allocating the first choice SSS to Child PD?
- 2) Why were Mr DD and Child PD refusing the alternatives to the SSS?
- 3) What could we recommend in view of resolving the matter in accordance with the CRC (UN, 1989), the CRPD (UN, 2006) and the Constitution?

2. Case study

2.1 Profile of the child

Child PD is blind since birth and resides with her father. Child PD’s mother had passed away when she was 10 years old. She started her primary schooling in a specialised school for children with visual impairment and was later transferred to a special class in a public school. Despite having issues with the educational material in Grade 6 – most books were not transcribed in Braille – Child PD managed to achieve grade aggregate 11 at the PSAC. It was her wish to pursue her secondary-level studies at the SSS of her choice, which is close to her residence. In a meeting with Child PD at the OCO, she stated in Mauritian Creole that:

Mo anvi al dan sa lekol la. Mo ti al dan enn lekol pre ar sa lekol la. Mo santi ki mo pou bien dan lekol [SSS].

Before delving into this matter from a rights-based perspective, it is important to understand the nature and ramifications of Child PD’s total visual impairment, as well as to define relevant parameters that need to be considered in this case.

2.2 Relevant concepts

2.2.1) Disability

According to article 1 of the CRPD (UN, 2006), “persons with disabilities are those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

It is important to note the social implication of this definition – contrary to the medical model of disability (Disability Nottinghamshire, 2018)¹¹², which “looks at what is ‘wrong’ with a person and not what the person needs”. The UN’s definition of disability invites States Parties not only to reassess the physical environment in which a person with disabilities navigates every day, but also to calibrate human interactions such that every member of the community can better accommodate all other individuals of the population into a functional social dynamic. The International Paralympic Committee (2012)¹¹³ stated that “[...] the Convention seeks to alter social attitudes by ensuring that governments, individuals and organisations recognise that we have the same human rights and fundamental freedoms as all other persons.”

2.2.2) Visual impairment and blindness

There are several strata of visual acuity, from normal vision to total lack of light perception. According to the World Health Organisation (WHO; 2017)¹¹⁴, out of 253 million people that live with visual impairment, 36 million are blind. WHO posits that visual impairment encompasses both “low vision” and blindness. While visual impairment is medically measurable (WHO, n.d.)¹¹⁵, the condition of “no light perception” or blindness is a result of a social construct, as explained by late Dr Kenneth Jernigan (2005)¹¹⁶, President of the National Federation of the Blind. In his opinion, “blindness can best be defined not physically or medically but functionally or sociologically”.

The consideration of a person living with blindness goes beyond the legal framework and that of conventions. In fact, it touches the realm of empathy, where we are brought to feel and understand at a deeper level the living conditions of the person in question. **When the comprehension settles in that Child PD’s intellectual and physical abilities are not diminished due to her blindness, we begin to realise that it is our obligation to ensure that the environment does not hinder the fulfilment of her rights.**

2.2.3) Positive discrimination

Positive discrimination is defined by the Oxford Dictionary (2018)¹¹⁷ as “the practice or policy of favouring individuals belonging to groups known to have been discriminated against previously”. This may involve “special measures [that] aim to foster greater equality by supporting [these] groups of people [...] so they can have similar access to opportunities as others in the community” (Australian Human Rights Commission, n.d.)¹¹⁸.

¹¹²Disability Nottinghamshire (2018). *The Social Model vs The Medical Model of Disability*. Retrieved on 21 February 2018 from www.disabilitynottinghamshire.org.uk/about/social-model-vs-medical-model-of-disability/

¹¹³International Paralympic Committee (2012). *The UN Convention on Rights of Persons with Disabilities*. Germany: Author.

¹¹⁴World Health Organisation (2017). *Vision impairment and blindness*. Retrieved on 21 February 2018 from www.who.int/mediacentre/factsheets/fs282/en/

¹¹⁵World Health Organisation (n.d.). *Change the Definition of Blindness*. Retrieved on 21 February 2018 from www.who.int/blindness/Change%20the%20Definition%20of%20Blindness.pdf

¹¹⁶Jernigan, K. (2005). A Definition of Blindness. *Future Reflections: Special Issue on Low Vision and Blindness*. Retrieved on 21 February 2018 from nfb.org/Images/nfb/Publications/fr/fr19/fr05si03.htm

¹¹⁷Oxford Dictionary (2018). *Positive Discrimination*. UK: Oxford University Press. Retrieved on 21 February 2018 from en.oxforddictionaries.com/definition/positive_discrimination

¹¹⁸Australian Human Rights Commission. *Positive Discrimination*. Retrieved on 21 February 2018 from www.humanrights.gov.au/quick-guide/12078

I believe that it is worth to consider integrating positive discrimination in Child PD's case, therefore favourably allowing her to go to the SSS of her choice, irrespective of her PSAC grade. This will not be a first case of positive discrimination in Mauritius based on disability. Another young woman with visual impairment was denied admission to a local university's law degree course due to not meeting the entry criteria on the basis of her A-level results. Her case was reconsidered and she was admitted to the law degree course irrespective of these results. This institutional flexibility or positive discrimination became a turning point in her education and career pathway. After completing her law degree, she served as a Legal Research Officer in the Court and a prosecution service. She is now completing her postgraduate degree through distance learning.

Similar to this young woman, Child PD can also be given the opportunity to achieve her educational goals in the school of her choice with the support of all agencies involved. I believe we need to overcome institutional barriers and uphold Child PD's motivation and trust in an inclusive education system.

2.2.4) Equality and equity

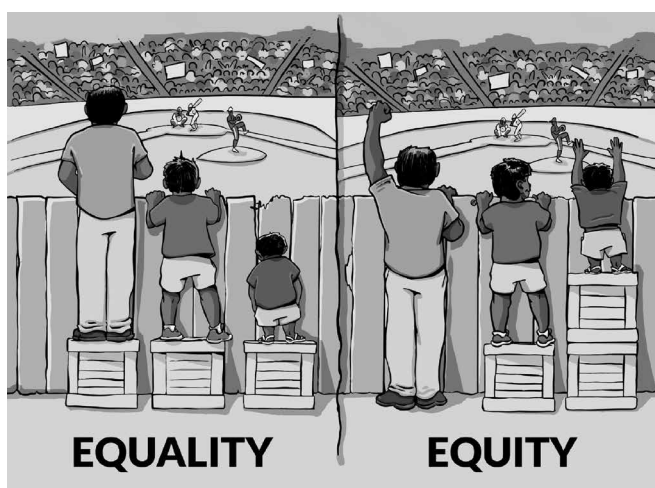


Figure 3. Equality and equity

As illustrated in Figure 3 by artist Angus Maguire¹¹⁹, there is a stark difference between “equality” and “equity”, despite similar etymologies. Equity builds upon the elements of empathy and justice within a system dictated by equality. By considering the initial dispositions or needs of each group or individual in society, more is given to some while less is given to others such that the playing field is levelled for everyone.

In the context of education, the United Nations Girls' Education Initiative (UNGEI; 2010)¹²⁰ advanced that “equity requires securing children's rights to education, and their rights within and through education to realize their potential and aspirations. It also requires implementing and institutionalising arrangements that help ensure all children can achieve these aims”.

It becomes clear then that arrangements need to be made to accommodate every student, living with an impairment or not, in the mainstream educational system, as echoed in section 3.3 of a report on special education needs and inclusive education published in 2006 by the then Ministry of Education and Human Resources (MEHR)¹²¹. However, it seems that this

¹¹⁹Interaction Institute for Social Change | Artist: Angus Maguire (interactioninstitute.org/illustrating-equality-vs-equity/), adapted from the original image by Craig Froehle (medium.com/@CRA1G/the-evolution-of-an-accidental-meme-ddc4e139e0e4)

¹²⁰United Nations Girls' Education Initiative (2010). *Equality and Inclusion in Education: A guide to support education sector plan preparation, revision, and appraisal*. Washington: Author. Retrieved on 21 February 2018 from www.unicef.org/education/files/Equity_and_Inclusion_Guide.pdf

¹²¹Ministry of Education and Human Resources (2006). *Special Education Needs and Inclusive Education in Mauritius: The Policy and Strategy Document*. Mauritius: Author. Retrieved on 21 February 2018 from ministry-education.govmu.org/English/educationsector/Documents/sen.pdf

document (MEHR, 2006) has used the severity of disability as a factor to determine access of children with disabilities to mainstream education using a three-pronged approach as follows:

Approach 1: Mainstream Integration - Children with disabilities will be given access to regular mainstream schools of their region. Upon parental choice and proper assessment and referral, children with mild or moderate intellectual or sensorial disability can be placed with the regular classroom with additional input of a consultancy support service and ancillary staff or support teacher who will provide assistance to the classroom teacher.

Approach 2: Integrated Classrooms/Units in mainstream - Children who have more severe disabilities will be given access to education in specialised educational settings either in public schools or other schools through a special education class or resource room or through a special education unit operating full-time in the mainstream school premises.

Approach 3: Special Education Needs (SEN) or specialised schools – Following proper professional assessment, children who cannot be integrated in the mainstream because of their specific educational needs will attend SEN schools. Such schools will be twinned with a mainstream school in the locality for joint activities.”

Nevertheless, it must be remembered that the severity of disability depends as much on the environment in which the person finds themselves as the nature of the disability. Therefore, the relevant stakeholders need to make provisions to minimise environmental conditions that emphasise a person’s disability.

The CRC (UN, 1989) states in article 3 that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. Further, the Committee on the Rights of the Child (2013)¹²² described, regarding the best interest principle that

the right to non-discrimination is not a passive obligation, prohibiting all forms of discrimination in the enjoyment of rights under the Convention, but also requires appropriate proactive measures taken by the State to ensure effective equal opportunities for all children to enjoy the rights under the Convention. This may require positive measures aimed at redressing a situation of real inequality. (paragraph 41)

2.2.5) Age relaxation

Another concept that I would like to mention is ‘age relaxation’ for children with disabilities, that can be considered as not applying unfair age limits on these children’s access to education and other opportunities. In India, for example, children with disabilities can enjoy this relaxation at all stages of education until they are 18 years old and institutions involved with this target group have to adopt regulations for relaxation of rules as quoted below (Mohit, 2007)¹²³:

*State Governments/UT Administrations/other implementing agencies should also frame regulations for relaxation of rules relating to admissions, minimum or **maximum age limit***

¹²² Committee on the Rights of the Child (2013). *General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*. Geneva: United Nations. Retrieved on 21 February 2018 from www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf

¹²³ Mohit, A. (2007). *Handbook on the Right to Education for Children with Disabilities*. New Delhi: United Nations Educational, Scientific and Cultural Organization. Retrieved on 21 February 2018 from unesdoc.unesco.org/images/0015/001563/156356e.pdf

for admissions, promotions, examination procedures, etc. for improving access of the learners with disabilities to education. Provisions for admission of older learners with disabilities than the normal eligibility (up to 8-9 years instead of 6 years with upper limit till 18 years) is essential.

Although the Constitution of Mauritius does not currently include any clause on age relaxation for the right to education of children with disabilities, I believe it remains a relevant and important consideration when resolving ethical dilemmas in cases involving these children.

2.3 Investigating into the decision-making process of allocating the SSS to Child PD

In the current section, I discussed the concerns and documentation collated by the OCO's team from different parties on Child PD's case. I firstly focussed on the provisions made by the Ministry of Education and Human Resources, Tertiary Education and Scientific Research (MEHRTESR) and some reasons they advanced with regards to Child PD's non-allocation to the SSS of her choice. I then looked at potential explanations as to why Child PD and her father were refusing the alternatives to the SSS. I then provided some recommendations.

2.3.1) What were the provisions of the State in fulfilling the right to education of Child PD and why was the State not allocating to her the SSS of her choice?

2.3.1.1 Material support and care

The MEHRTESR has shown commitment to provide the necessary material and human resources to support Child PD within her educational environment. Several pieces of adapted equipment and school material, along with a support assistant and reimbursement of travel expenses from the MEHRTESR, as well as a monthly financial grant through an Award Scheme would be provided to her, regardless of her choice of school. Additionally, a non-governmental organisation committed to provide her with resources such as a Bookshare membership, a talking MP3 player, a talking calculator and Braille courses and assistive computer training. Since material support and care is secured irrespective of the school, one logistical hurdle was removed from the equation in Child PD's case.

2.3.1.2 Criteria for admission to regional secondary schools

According to the MEHRTESR's (2016)¹²⁴ policy document on nine-year schooling, the criteria for admission to regional Secondary Schools is based on a) parental choice, b) grade aggregate at the PSAC and c) proximity of residence to the Secondary School.

Let us examine each of those in Child PD's situation:

a) Parental choice

In a letter addressed to the MEHRTESR, the father clearly stated that his choice of Secondary School was that of the SSS, which he claimed is very close to his residence.

¹²⁴Ministry of Education, Human Resources, Tertiary Education and Scientific Research (2016). *Inspiring every child: Nine Year Schooling*. Republic of Mauritius: Open University. Retrieved on 21 February 2018 from ministry-education.govmu.org/English/educationsector/nys/Documents/NYCBCE%20Booklet.pdf

b) Grade aggregate at the PSAC

- i. The introduction of regionalisation of admission to Secondary Schools is supposed to create a context of mixed abilities in Grade 7. It seems that a priority list is used to assign secondary school to students. As quoted several times from different conventions, laws and policies in the current case study, it is clear that no child should be discriminated against on any basis in the context of inclusive access to education.
- ii. It is understood that a student's "grade aggregate" is not the sole factor considered to determine admission into a Secondary School. However, in a letter communicated to the OCO from the MEHRTE SR, it was stated that *"all pupils admitted to [SSS] had grade aggregate 4"* and argued that the other schools proposed to Child PD and her father, which they rejected, *"corresponded better to her level of attainment"* (i.e. grade aggregate 11). From these statements, it seemed that undue weight might have been given to the PSAC result of the child and there appeared to be segregation based on grade aggregates in admission among some schools. Within an inclusive education system, this must not be the case and it will be discriminatory if this one criterion overshadows parental choice and proximity of residence.

In such situations, the relevant authorities have the responsibility to correct discriminatory conditions and take "proactive measures [...] to ensure effective equal opportunities for all children to enjoy the rights under the [CRC]" (Committee on the Rights of the Child, 2013). In the spirit of equity and relaxation of institutional rules to favour the right to education of Child PD at the school of her choice, her grade aggregate must not be viewed in isolation or in comparison with pupils with better grades, but rather evaluated in the context of her visual impairment, and the adequacy and quality of Braille material and support provided until Grade 6 and while she was taking her PSAC exams.

c) Proximity of residence to the secondary school

According to the same above-mentioned letter from the MEHRTE SR, the alternative colleges being offered to Child PD were situated in the locality of her residence. It is to be noted that there was no mention in the letter about the SSS of her choice not falling within the geographical zone of her residence, which meant that this admission criteria would have been fulfilled in Child PD's case.

2.3.2) Why were Child PD and her father refusing the alternatives to the SSS?

- a) From the reports of the OCO's investigators, the alternative private colleges were all further from the child's residence than the SSS.
- b) The "parental choice" was based on the proximity of residence, as mentioned above in subsection 2.3.1.2(a).
- c) Child PD was a student of a primary public school which is across the street from the SSS of her choice. The Rector of the SSS and Child PD are acquainted with each other, according to her statement when she visited the OCO. She expressed to an investigator that she would be well taken care of at the SSS.

- d) From field visits accomplished by the OCO's investigators, we had gathered the following information from the different colleges:
- i. The SSS – The management of the SSS was keen on welcoming Child PD to their school, provided that she was assisted by a carer, that adequate equipment was provided and that the teachers and staff were trained to support her. This is the closest school to Child PD's place of residence.
 - ii. Alternative Private College 1 – The management of this school explained that they were not equipped to properly accommodate a blind child – the teachers were not trained, and the school was uncertain about the logistics of having a carer accompany the child in class. Furthermore, the school required a written commitment from the SEN unit of the MEHRTEsr to provide continuous support to her school, financial or otherwise. This school is situated in a remote location where public transport services are sparse.
 - iii. Alternative Private College 2 – The management at this college understands and supports children with disability and makes provision for them at their school. He agreed to the request of the child to learn Hindi language at the school. This school is situated in a remote area that is not easily accessible, except by school bus.
 - iv. Alternative Private College 3 – The management had no objection to integrating Child PD to their school, but asked questions about the logistics of having a carer who would accompany her in school and during recess. This school is the furthest from Child PD's home.

3. Findings and recommendations

It is important to read the current section in a holistic sense since every recommendation sprouts from the background information held in the previous sections of this case report.

1. The MEHRTEsr has recognised Child PD's right to education by providing several facilities and solutions (reasonable accommodation) to improve her access to school, namely:
 - a) a special class in her primary public school;
 - b) a commitment to provide the necessary material and human resources to support Child PD within her educational environment;
 - c) a support assistant; and
 - d) reimbursement of travel expenses.
2. It is important to note here that, although providing reasonable accommodation to meet the needs of a child with disability is necessary, more aspects should be considered to prevent discrimination when decisions are being made regarding the child. In Child PD's case:
 - a) According to the OCO's analysis in subsection 2.3.1.2(b) of the current case study, Child PD had been subject to discrimination when undue weight seemed to have been given to her PSAC result which was the main contributing factor to her declined admission to the SSS of her choice.

- b) In addition, counting Child PD as an ‘overaged’ student appeared to have limited her opportunity to be allocated her first-choice school, where seats were already filled up at the time of processing her admission. I would like to reiterate the concept of age relaxation (refer to subsection 2.2.5 in the current case report), whereby the right to education of a child with a disability should not be discriminated against based on age limits.
 - c) The voice of Child PD is also an important determinant which cannot go unheard. She expressed her wish to study at the SSS (refer to subsection 2.1 of the case study). She is the only one who can fully understand her own situation of blindness. She is familiar with the surroundings of the SSS since her primary school was across the road. Child PD trusted that she would be well taken care of at the SSS (refer to subsection 2.3.2(c)).
3. Our investigation therefore brought attention to a set of rights that require special consideration by the relevant duty bearers¹²⁵ which include actors from the public, private and parastatal sectors. These are provided in Table 11 below to remind all relevant stakeholders of their responsibilities:

Table 11. *List of rights in the UNCRC and UNCRPD that require special consideration in Child PD’s case*

Name of convention	Article number	Quotes
(title)		
Convention on the Rights of the Child (United Nations, 1989)	2 (Non-discrimination)	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.

¹²⁵ According to the UN, duty bearers are “those actors who have a particular obligation or responsibility to respect, promote and realise human rights and to abstain from human rights violations. The term is most commonly used to refer to State actors, but non-State actors can also be considered duty-bearers [...] Depending on the context, individuals (e.g. parents), local organisations, private companies, aid donors and international institutions can also be duty-bearers”.

	3.1 (Best interests of the child)	1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
	12.1 (Respect for the views of the child)	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.
	23.3 (Children with disabilities)	3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.
Convention on the Rights of Persons with Disabilities (United Nations, 2006)	24 (Education)	1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to: (a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity; (b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

Convention on the Rights of Persons with Disabilities (United Nations, 2006)

24 (Education)

(c) Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

*(a) **Persons with disabilities are not excluded from the general education system on the basis of disability**, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;*

*(b) Persons with disabilities can access **an inclusive, quality and free primary education and secondary education on an equal basis with others** in the communities in which they live;*

(c) Reasonable accommodation of the individual's requirements is provided;

*(d) Persons with disabilities receive the **support required**, within the general education system, to facilitate their effective education;*

*(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with **the goal of full inclusion**.*

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

(a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

Convention on the Rights of Persons with Disabilities (United Nations, 2006)

24 (Education)

(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

*4. In order to help ensure the realization of this right, States Parties shall **take appropriate measures to employ teachers**, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall **incorporate disability awareness** and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.*

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

4. Conclusion

About 5-6 weeks following Mr DD's request to transfer Child PD to the SSS of her choice, the MEHRTER allocated to her a seat at the SSS with all the necessary resources in place. Child PD's and her father's motivation and trust in an inclusive education system were preserved. This was the result of a fruitful collaboration among all the relevant stakeholders including the MEHRTER and the Ombudsperson for Children's Office towards finding solutions with the best interests of Child PD at heart. This case has allowed us to become more cognisant of the rights of persons with disabilities; the vocabulary used to address and discuss issues relating to persons with disabilities; and the stereotypes and prejudices at play in attitudes towards persons with disabilities. It was also identified that section 17(3) of the Equal Opportunities Act 2008 should be repealed due to its discriminatory and archaic nature.

In the context of celebrating 50 years of Independence, Mauritius ought to set the tone as an avant-garde nation, one that respects international Conventions that have been signed and ratified, and one that is open to principles of equity, positive discrimination and relaxation of rules when appropriate. I would like to thank the local press for having highlighted Child PD's situation and drawn attention to it. Social media and Facebook played a positive role in raising awareness about an issue that is directly concerned with the fundamental right to education in the UNCRC and UNCRPD. Let us all remember that, despite being devoid of sight, people living with blindness navigate by relying on how they feel the world that surrounds them. The MEHRTER is praiseworthy for the favourable decision they took in Child PD's case.

Case 3: Kreol language in the education system

1. The complaint

The Ombudsperson for Children's Office (OCO) received a complaint from 'Ledikasyon Pu Travayer' (LPT), a registered organisation, founded in 1977, which promotes and defends mother tongue-based multi-lingual education. It also operates educational and literacy services for adults. The LPT requested the OCO to consider opening an inquiry on the question of potential harm being done to children by the 'continued suppression of the mother tongue in the local education system'. According to the LPT, this is a violation of the rights and freedoms of children, especially at the level of teaching and learning.

Given the nature of the complaint, I opened an investigation as per sections 6(g) and (j) of the Ombudsperson for Children Act 2003, which stipulates that the Ombudsperson shall *"investigate cases relating to the situation of children in the family, in schools and in all other institutions, including private or public bodies"* and *"investigate complaints made by a child, or any other person, in relation to the rights of any child"* respectively.

2. The investigation

The objectives of this investigation were to:

- a) review the local and international literature related to the use of the mother tongue as medium of instruction in our local educational system; and
- b) make recommendations based on our findings.

During our investigation, we carried out literature searches and interviewed different groups of people including members of the LPT as well as children, parents and teachers in some primary schools in Mauritius. We have had enriching encounters with our participants who expressed their views on the use of the mother tongue in the education system based on their experiences, roles and beliefs.

3. Findings

3.1 A historical overview on languages in the Republic of Mauritius

The Republic of Mauritius (n.d.)¹²⁶ was a British colony from 1810 to before gaining independence in March 1968. When the British took over from the French in 1810, there were no major changes in the life, customs and traditions of the French colonists and other people living on the island. According to Napal (1962)¹²⁷, a bilingual capitulation treaty laid down the

¹²⁶Republic of Mauritius (n.d.) *Explore Mauritius: History*. Retrieved on 28 July 2018 from www.govmu.org/English/ExploreMauritius/Pages/History.aspx

¹²⁷Napal, D. (1962). *Les constitutions de l'Île Maurice: documents [1723-1961]*. *Mauritius Archives Publications*, 6. Mauritius: Mauritius Print.

conditions necessary for the French language to continue to be used on the island even under the British rule. From 1847, the use of English was made compulsory in the Higher Courts only and was used mainly for administrative purpose (Stein, 1997)¹²⁸.

After Mauritius gained its independence, English continued to be used mostly in formal contexts. Article 49 of the Constitution of the Republic of Mauritius stipulates that, “The official language of the Assembly shall be English but any member may address the chair in French”. The Government Portal of the Republic of Mauritius (n.d.)¹²⁹ describes the languages of the island as such: “English is the official language. French is extensively used and Creole is widely spoken. Asian languages also form part of the linguistic mosaic.”

According to estimates in 2011 about spoken languages in the Republic of Mauritius, it was indicated that 86.5 per cent of Mauritians primarily used Kreol (i.e. Mauritian Creole), 5.3 per cent Bhojpuri, 4.1 per cent French and less than 1 per cent English (Central Intelligence Agency, 2018)¹³⁰. Kreol is predominantly used in private and informal contexts. On the contrary, English is used mostly in formal situations such as within the domains of administration, teaching and sometimes the media.

3.2 Medium of instruction in the local education system

The medium of instruction refers to the language used by someone to impart knowledge. In the education system, it is the language used by a teacher to teach the school curriculum. Section 43 of the Education Regulations on ‘Medium of instruction and teaching of languages’ (Republic of Mauritius, 1957)¹³¹ stated that:

- 1) *In the lower classes of Government and aided primary schools up to and including Standard III, any one language may be employed as the language of instruction, being a language which in the opinion of the Minister is most suitable for the pupils.*
- 2) *In Standards IV, V, and VI of the Government and aided primary schools the medium of instruction shall be English, and conversation between teacher and pupils shall be carried on in English; provided that lessons in any other language taught in the school shall be carried on through the medium of that instruction.*
- 3) *The Minister may make provision for the teaching of languages other than English which are current in Mauritius, and for their study in any Government and aided primary school, and may require an Education Authority to make arrangements for such teaching in any of the primary schools under its control.*

According to Stein (1997), subsection 43(1) of the Education Regulations 1957 (as cited above) stemmed at a time when children who were entering school knew neither English nor French,

¹²⁸Stein, P. (1997). The English Language in Mauritius: Past and Present. *English World-Wide*, 18(1), 65-89.

¹²⁹Republic of Mauritius (n.d.) *Explore Mauritius: Language*. Retrieved on 28 July 2018 from www.govmu.org/English/ExploreMauritius/Geography-People/Pages/Language.aspx

¹³⁰Central Intelligence Agency (2018). *The World Factbook: Mauritius*. Retrieved on 28 July 2018 from www.cia.gov/library/publications/the-world-factbook/geos/mp.html

¹³¹Republic of Mauritius (1957). *Education Regulations 1957*. Republic of Mauritius: The Government Printer.

but they spoke either Kreol or Bhojpuri. As from Grade 4 onwards, English was officialised as the medium of instruction. It is important to note that these regulations have been established about 60 years ago when Mauritius was still under British rule and that, similar to many other sections of these Regulations, the above-quoted section has not been subject to any changes since.

When children enter primary school at the age of 5 or 6 years, all textbooks except for French, Kreol, Bhojpuri and Oriental languages, are in English. For example, Mathematics, Science and Geography are in English. The OCO's investigation has shown that many teachers have recourse to Kreol or French as an oral medium of instruction to facilitate the children's understanding of different English-based subjects. This might be mainly because, even now, most children entering school speak in Kreol. However, course works for these subjects are expected to be written in English.

In their analysis regarding the school system of Mauritius, Meade and his colleagues (1961)¹³² wrote the following:

We do not believe that we exaggerate when we say that the greatest handicap to successful education in Mauritius is that imposed by the multiplicity of language in use.

The same conclusion was made by Ramdoyal (1977, p.139)¹³³ in *The Development of Education in Mauritius*:

Starting three (which includes English, French and Oriental) foreign languages at the same time at age five places an enormous burden on the child. For many children this has led to poor standards in oracy and to functional illiteracy in English.

Furthermore, Ledikasyon Pu Travayer (LPT) carried out a 4-day public hearing in October 2009 where a wide range of witnesses gave testimonies in front of an International Panel. They reported that their main findings were:

- 1) Rate of failure after nine years of schooling is inexplicably high and functional literacy rate is alarmingly low.
- 2) Alongside academic failure, there are closely related problems like high rate of absenteeism, high drop-out rates and a lack of interest and motivation as well as an absence of creativity.
- 3) The language policy which is at the core of the education system fails to develop children's full potential in terms of their cognitive, emotional, psychological and social growth.
- 4) The Prevoc-Bureau de l'Education Catholique (BEC) representative implemented a language policy of using the mother tongue as medium of instruction and they had had positive results.

¹³²Meade, J.E. & Others. (1961). *The Economic and Social Structure of Mauritius: Volume 48*. London: Routledge.

¹³³Ramdoyal, R.D. (1977). *The Development of Education in Mauritius, 1710-1976*. Mauritius: Mauritius Institute of Education.

Given the above-mentioned points, it can be argued that the Mauritian language policy in education requires more specificity and refinement. Most children and their parents do not speak either English or French at home. The fact that children are taught literacy and numeracy in languages that are not their mother tongue can explain the high level of absenteeism, high percentage of illiteracy and the number of failures at the end of the primary education level.

It is important to highlight here that, in 2012, Kreol was introduced as an optional language in Grade I, which is a big step taken by the State to introduce the mother tongue in the school curriculum. Kreol is however not used as the written medium for ‘content subjects’ such as History, Geography and Science, which are mainly in English. Besides, English and French remain compulsory at school and are the core languages for national examinations from Grade I onwards. This can mean that, especially for children in lower Grades, there is a need to keep the level of the subject contents low enough to match the emerging proficiency level of the students in a second language.

3.3 Attitudes towards the use of Kreol in the local education system

During the OCO’s investigation, several teachers and parents provided their views on the use of mother tongue, specifically Kreol, in the local education system. The findings are summarised as follows:

- 1) Some teachers reported using Kreol in the classrooms to facilitate the understanding of students especially for subjects like Mathematics, History and Geography. Other teachers told us that they tried to limit the use of Kreol because they perceived it to be of little utility to students since examinations have to be taken in English and French.
- 2) A large majority of parents were against the use of mother tongue in the classroom stating that it acts as a boundary for their children to do well in English- and French-based examinations.
- 3) Some parents who were in favour of Kreol at primary level were mainly the ones who identified themselves as illiterate in English and French. They reported being better able to help their children with their homework in Kreol.

Furthermore, over the last 40 years, different survey studies have attempted to understand the attitudes of Mauritians towards the use of Kreol in schools as a medium of instruction. Mixed findings against and for the use of Kreol have been observed across studies. For instance, a Mauritian study advanced that, out of its 79 participants, 33 per cent were in favour of the introduction of Kreol in school, 56 per cent opposed it and 11 per cent had no opinion (Rajah-Carrim, 2007)¹³⁴. Another later study used an online survey to gather Mauritian people’s opinions on introducing Kreol in primary level education (Miller, 2015)¹³⁵. Out of

¹³⁴ Rajah-Carrim, A. (2007). Mauritian Creole and language attitudes in the education system of multiethnic and multilingual Mauritius. *Journal of Multilingual and Multicultural Development*, 28(1), 51-71.

¹³⁵ Miller, A. (2015). Kreol in Mauritian Schools: *Mother Tongue Language Education and Public Opinion*. Unpublished bachelor’s thesis, Department of Linguistics, Yale University. Retrieved on 28 July 2018 from ling.yale.edu/sites/default/files/files/AllisonMillerSeniorEssay.pdf

61 participants, 36 per cent agreed, 52 per cent disagreed and 11 per cent had no opinion. These two studies revealed an unfavourable public opinion on the use of Kreol as a medium of instruction in primary schools among more than half of their samples.

On the contrary, surveys conducted by a professional social research firm based in France called SOFRES suggested more favourable opinions among Mauritians in relation to the use of Kreol in education. The first survey was carried out in 1977, where 60 per cent of participants were for the use of Kreol in schools and only 35 per cent were against. At the time, the question in the survey did not differentiate between Kreol as a subject and as a medium of instruction. A second survey commissioned by LPT was carried out in 2009 with a sample of about 600 Mauritians aged 18 years and above. These participants were specifically asked about the use of Kreol as a formal medium to teach subjects such as Science. Sixty-seven per cent voted for this idea and only a minority of 27 per cent were against.

The LPT (2009)¹³⁶ also highlighted from the results of the 2009 survey that:

- 87 per cent of people did not even know that there is a standardised orthography for Kreol language called “*Grafi Larmoni*”;
- 80 per cent of people had no idea that the pre-vocational schools have had an experience with the Kreol language, let alone that this was successful;
- 93 per cent of people did not know that the University of Mauritius has had a Course in and on Kreol; and
- 90 per cent of people did not know that there are Kreol language dictionaries.

I believe that these findings indicate the need to carry out more extensive and evidence-based local campaigns to inform the population on the historical evolution of Kreol from a dialect to a formal language and, where appropriate, challenge educational myths about its use as a medium of instruction.

3.4 International recommendations relevant to the use of mother tongue in our local education system

Following the signature and ratification in 1990 of the Convention on the Rights of the Child (United Nations, 1989), the Republic of Mauritius has taken the responsibility to implement the provisions of this international law. Article 29(1)(c) of the said convention states that:

*State Parties agree that the **education of the child** shall be directed to...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 originate, and for civilizations different from his or her own** (.)*

¹³⁶Ledikasyon Pu Travayer (Ed.) (2009). *Kreol & Bhojpuri: Lang Maternel, A Bilingual Handbook on Mother Tongue Rights*. Mauritius: Author. Retrieved 16 August 2018 from www.lalitmauritius.org/modules/documents/files/LalitMauritius-705f2172834666788607efbfca35afb3.pdf

In its Concluding Observations on the Republic of Mauritius, the Committee on the Rights of the Child (2006)¹³⁷ stated that *“it is...concerned that English as the official language of instruction in schools is not supplemented by educational materials in Creole”*. In this regard the Committee (2006, paragraph 61(b)) recommended to *“develop a policy regarding the use of Creole in the Early Childhood Development (ECD) stage and at primary levels”*.

In their next report on Mauritius, the Committee (2015)¹³⁸ reiterated its concern that *“schools are not adequately provided with educational materials in Creole, which remains an optional language, thereby limiting access to education for Creole-speaking children and resulting in high dropout rates for them, which amount to 20 per cent in primary education.”* The Committee (2015) recommended the State to:

Take measures to improve the accessibility and quality of education, including by limiting the impact of the language of instruction on access to education and on school completion and dropout rates, in particular for Creole-speaking children, children in street situations and those that are deprived of their family environment, through the use of Creole at the early childhood development stage and at the primary and secondary school levels; and provide high-quality training for teachers, with particular emphasis on rural areas.

3.5 Some international evidence on the benefits of using the mother tongue in learning

Mother tongue refers to the language a person learns from birth. It is not only the first language that one learns as a baby, but it is also the first language with which a person develops his or her ability to master its linguistic and communicative aspects (Nordquist, 2018)¹³⁹. Many research studies point to the association between the use of the mother tongue for teaching and learning, especially in the early years, and the quality of education.

In relation to vernacular languages¹⁴⁰, the United Nations Educational, Scientific, and Cultural Organization (UNESCO, 1953, p.11)¹⁴¹ advanced that:

It is axiomatic that the best medium for teaching a child is his mother tongue. Psychologically, it is the system of meaningful signs that in his mind works automatically for expression and understanding...Educationally, he learns more quickly through it than through an unfamiliar linguistic medium.

¹³⁷ Committee on the Rights of the Child (2006). *Concluding observations: Mauritius*. Geneva: United Nations.

¹³⁸ Committee on the Rights of the Child (2015). *Concluding observations on the combined third to fifth periodic reports of Mauritius*. Geneva: United Nations.

¹³⁹ Nordquist, R. (2018). *The meaning of the term ‘mother tongue’*. Retrieved on 28 July 2018 from www.thoughtco.com/mother-tongue-language-1691408

¹⁴⁰ Vernacular languages are those languages spoken naturally, especially in informal situations by a particular group of people. Definition source: dictionary.cambridge.org/dictionary/english/vernacular

¹⁴¹ United Nations Educational, Scientific, and Cultural Organization (1953). *Monographs of Fundamental Education: The use of vernacular languages in education*. Paris: Author. Retrieved on 28 July 2018 from unesdoc.unesco.org/images/0000/000028/002897EB.pdf

The UNESCO (2003, p.30)¹⁴² later took the official position that they support “*mother tongue instruction as a means of improving educational quality by building upon the knowledge and experience of the learners and teachers*”.

Moreover, a comprehensive review paper (Dutcher, 1997)¹⁴³ on the use of first and second languages in education examined the experience of Pacific Island countries like Fiji, the Solomon Islands, Vanuatu and Western Samoa, where there are numerous mother tongues and the language of instruction at school is different from the mother tongues. Dutcher (1997, p.36) reported on the importance of the mother tongue in education in the following words:

The most important conclusion from the research and experience reviewed in this paper is that when learning is the goal, including that of learning a second language, the child's first language (i.e. his or her mother tongue) should be used as the medium of instruction in the early years of schooling...The first language is essential for the initial teaching of reading, and for comprehension of subject matter. It is the necessary foundation for the cognitive development upon which acquisition of the second language is based.

4. Recommendation

Given its colonial history, language in the Republic of Mauritius has its own specificity. Using more than one language in daily life is the normal practice for an average Mauritian. A large majority of Mauritians speak in Kreol. Languages like French and English are utilised mainly in formal contexts. Language plays an important role not only in communication, but also in the transfer of knowledge. Language and education are therefore closely linked.

Education is a fundamental human right and it is the basis to acquire knowledge to promote an individual's mental, social and intellectual development. There is a growing body of evidence which links poor performance and total exclusion from education to the fact that the language used to teach at school is not the same as the language used at home. Sometimes, low performance in a subject could be more due to a lack of mastery of the child in a second language rather than their actual cognitive ability. Paradoxically, some students might outperform their classmates just by being good at memorising facts than by actually understanding the subject matter in a second language. In order to achieve high rates of literacy and language acquisition among a majority of students, relevant State and non-state actors could develop effective language policies in education, which takes into consideration the specific learning needs of children in relation to the language/s they use at home and at school.

¹⁴² UNESCO (2003). *Education Position Paper: Education in a multilingual world*. Paris: Author. Retrieved on 28 July 2018 from unesdoc.unesco.org/images/0012/001297/129728e.pdf

¹⁴³ Dutcher, N. (1997). *The use of first and second languages in education: A review of international experience*. Washington: World Bank. Retrieved on 28 July 2018 from documents.worldbank.org/curated/en/131161468770987263/pdf/multi-page.pdf

Within the Mauritian context, I believe that the programme model of **mother tongue-based bi/multilingual education** (Ball, 2011)¹⁴⁴ could be of relevance. This approach mainly involves the following two aspects:

1. The first language or mother tongue (e.g. Kreol) is used as the primary medium of instruction for the whole of primary school, while a second (or additional) language (e.g. English and/or French) is introduced as a subject of study in itself to prepare students for eventual transition to some academic subjects in the second (or additional) language.
2. After the second (or additional) language has been introduced, all chosen languages are media of instruction. Instruction in the mother tongue is maintained, often as a subject of study, to ensure ongoing support for children to become academically proficient in their first language. It is to be noted that the introduction of the second (or additional) language does not displace the mother tongue.

This model might raise questions such as to what extent should the mother tongue be used as a medium of instruction, at which point would children be expected to begin learning a second (or additional) language, and when should children receive academic instruction in that second (or additional) language (Ball, 2011). Robust local research on these questions may help in elucidating the most suitable way forward to improve the educational experience of the children of the Republic of Mauritius.

Finally, there is enough international evidence to suggest that a strong foundation in the mother tongue can help children develop appropriate cognitive and reasoning skills and strong literacy abilities from an early age, which can then be transferrable to learning additional languages. For instance, the use of Kreol as medium of instruction in primary education in the Republic of Mauritius can facilitate the acquisition of the English and French languages and enhance our children's overall linguistic and academic performance.

¹⁴⁴ Ball, J. (2011). *Enhancing learning of children from diverse language backgrounds: Mother tongue-based bilingual or multilingual education in the early years*. Paris: UNESCO. Retrieved on 28 July 2018 from unesdoc.unesco.org/images/0021/002122/212270e.pdf

Case 4: Mediation in a case of physical and verbal abuse towards a child

1. The complaint

John¹⁴⁵, a 15-year-old boy, reported to his teachers at school that he was being physically and verbally abused by his father. His mother passed away some years ago and he had been living with his father since. The Rector of that school decided to take action, as per section 11 of the Child Protection Act 1994 on the 'Duty to report':

Notwithstanding any other enactment, where a person exercising any medical or paramedical profession or a member of the staff of a school has reason to suspect that a child he is examining or who is frequenting the school, as the case may be, has been ill-treated, neglected, abandoned or otherwise exposed to harm, he shall immediately notify the Permanent Secretary.

He referred the alleged case through a letter to the Child Development Unit (CDU) of the Ministry of Gender Equality, Child Development and Family Welfare. In his letter, the Rector had requested the officers of the CDU to contact him before proceeding with the case since the matter was sensitive and John feared the aftermath.

Nearly two months after the referral, John's father contacted the Rector asking for the release of his son from school to attend a convocation by the CDU. When the minor learnt this, he was afraid to go home because he did not want his father to know that he disclosed about the physical abuse. The Rector contacted the Ombudsperson for Children's Office (OCO) for advice because he did not know how to proceed.

2. The investigation

2.1 Rationale of the investigation

As per section 5(a) of the Ombudsperson for Children Act (OCA) 2003, I, the Ombudsperson for Children, has to "ensure that the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and associations of individuals". The OCA 2003 also provides me with the power to investigate into complaints made by any person or body who considers that an act done or omitted to be done or any decision made by any public or private authority have resulted in a violation of the rights of a child.

I initiated an investigation based on section 6(f) of the OCA 2003 because I considered that, in this case, "there is, has been or is likely to be, a violation of the rights of a child". In the Rector's complaint about John's case, three potential violations caught my attention:

1. The CDU appeared to have failed to intervene promptly when an alleged case of physical and verbal abuse on a child was reported to them;

¹⁴⁵ 'John' is a pseudonym used to protect the identity of the child.

2. When the CDU intervened, the father (the alleged perpetrator) was asked to bring his son (the victim) to the CDU; and
3. This situation seemed to have caused the minor to experience high anxiety levels and trauma, and he did not want to go home.

2.2 Conducting the investigation

The OCO's investigation involved three phases. Firstly, bearing in mind the sensitive nature of the case, I decided to *"act as a mediator to resolve any dispute relating to the rights of the child"*, as per section 7(3)(a) of the OCA 2003. I convened the child and the father separately. A teacher of the school brought John to the OCO. John stated that when he told the teachers about the physical abuse, he did not really want to leave his father because he loves him. However, since his father was now aware that the CDU knew about the violence, he reported that he was afraid to go home and that he would instead prefer to go to a relative's place. One of John's relatives came to the OCO and took the minor to her place after I briefed her.

The father was summoned to the OCO on the same day and I told him about the complaint against him. At first, he denied everything, but eventually admitted to slap his son when he gets angry and frustrated. I told him to let John live at a relative's place as a temporary measure. He was very reluctant at the beginning, but he ultimately agreed when I explained to him that, if this was not done, the CDU could take his children away.

Secondly, regarding the complaint against the CDU, I convened the Officers who were involved in the case. They reported that they were overloaded with cases and there was a shortage of staff. I explained to them that, when dealing with cases of child abuse, there should be prompt investigation and proper follow up. I also deplored the fact that the CDU convened the alleged perpetrator together with the child victim.

Thirdly, I initiated a case conference at my office. The people present were an investigator of the OCO, the Head of the CDU, Officers of the CDU involved in the case and the Rector of John's school. The case was discussed in details from multiple perspectives and it was concluded that:

1. The CDU will take over the case.
2. The Officers and the Psychologist of the CDU will talk with the perpetrator and the children separately.
3. The father and all his children require regular counselling and intensive therapy.
4. The best interests of the minors should be taken into consideration in any decision regarding them.

3. The outcome

John and his father had separate sessions with the Officers and the Psychologist of the CDU. The father admitted to slapping the minors. He was proposed psychotherapy and parental counselling sessions, which he accepted. When assessed as safe to do so, John was returned to his father's place. A follow up with the John's school teachers revealed that he is faring well.

Case 5: Potential abuse against inmates of the Correctional Youth Centre (Boys)

1. The alleged incident

In April 2018, two inmates of the Correctional Youth Centre (CYC) for Boys were allegedly stripped naked and locked in solitary confinement. The matter was raised in the National Assembly by a member of parliament to whom an officer had furnished pictures of the incident. According to press articles reporting on the parliamentary statements published in a daily newspaper, it was stated that the two minors were forced to take off their clothes and to sleep naked in their respective cells. It was also said that they did not have any clothes with them and they were not provided with bed sheets to cover their mattresses.

2. The investigation

In line with section 7(1) of the Ombudsperson for Children Act 2003, I opened an investigation on my own motion. Two investigators of the Ombudsperson for Children's Office (OCO) carried out a site visit to the CYC to enquire on the matter. They interviewed the Superintendent of Prisons responsible for the CYC, the Prison Welfare Officer and the two concerned minors. They gathered the following information:

- The investigators were informed that the two minors have mental health problems.
- Minor A (17 years) has a history of using synthetic drugs. He suffers from withdrawal symptoms. He laughs for no reason and speaks incoherently. He could not provide a sensible reply to the investigators. From the few words he said, it could be deduced that he has a sexualised behaviour. The staff reported that he usually strips naked when he feels hot.
- Minor B (15 years) tried to commit suicide some time back before this incident. He attempted to hang himself with his clothes. He was stopped by the prison officers present on that day and was admitted to the Brown Sequard Hospital (BSH). Minor B stated that, when he came back from BSH, he started to sleep naked on his bed.
- Minor B reported that a Prison Officer had asked him to remove his clothes, to lie on the bed and to wave at him. The latter then took a photograph of him naked.
- To prevent Minor B from attempting suicide again, he was provided with a T-shirt and his underwear only. There were no instructions given to keep Minor B naked in his cell.

The National Preventive Mechanism Division of the National Human Rights Commission also enquired on this case. They shared a copy of their report with me. Many of our findings were similar, especially regarding the deplorable living conditions at the CYC. I have already elaborated on this aspect in a chapter on children living in detention centres in my office's Annual Report 2015-2016 (OCO, 2016, pp.119-129)¹⁴⁶.

¹⁴⁶Ombudsperson for Children's Office (2016). Annual Report 2015-2016. Mauritius: Author. Retrieved on 30 July 2018 from oco.govmu.org/English/Documents/Annual%20Reports/Ombudsperson_Annual_report.pdf

Furthermore, I carried out two visits to the CYC accompanied by the OCO's investigators. I met the Commissioner of Prisons and discussed the matter with him. Several inmates were also interviewed. They denied the allegations that the prison officers acted violently against Minors A and B. However, they said that they did not approve that an officer took pictures of the two minors naked.

3. The outcome

Following the investigation, a report was submitted to the Honourable Prime Minister, the member of Parliament who raised the issue and other stakeholders directly related with the case. I expressed my deep concern about the distressing living conditions of children who are in conflict with the law, especially those who are detained in correctional youth centres. I also stated that I share the concerns of other relevant stakeholders such as the National Human Rights Commission, with whom my office works closely.

I drew attention to the fact that, in the OCO's Annual Report 2015-2016, I presented a thorough assessment and discussion of our observations regarding children in conflict with the law based on national and international perspectives. I also made recommendations to the relevant ministries and stakeholders.

For the present case, I expressed my preoccupations on the fact that an officer took indecent photographs of two inmates and distributed it to another person. I highlighted that the Child Protection Act 1994 clearly stipulates in section 15(1) that:

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.

I considered that, even if the officer at the CYC might have taken this indecent photograph for whistleblowing about potential abuse against the children, the primary intention of the officer cannot be determined until a full investigation by the relevant authorities is carried out. However, the fact that the officer took the photographs and distributed them is already an offence according to sections 15(1)(a) and (b) of the aforementioned act.

I also informed the Honourable Prime Minister and the other persons concerned with this case about the outcome of my investigation. I wrote that, according to the information gathered

from other inmates, the two minors have often been observed to remove their clothes on their own volition. I explained that the need for nudity can sometimes be attributed to highly sexualised behaviours, which can themselves originate from difficult childhood experiences and deep-seated mental health issues. These psychological difficulties are rarely assessed and addressed among children in conflict with the law at the CYC.

Moreover, I stressed that children at the CYC must receive intensive therapy as part of a holistic and individualised rehabilitation plan. The archaic system of detention should be reviewed. I recommended that the State should work in collaboration with non-governmental organisations such as Open Mind, which are specialised in the domain of mental health and rehabilitation of children and young people.

4. Post-reporting follow-up

Several follow-up visits to the CYC were carried out after producing the report. I organised a one-day workshop with some representatives of Prison Officers working at the CYC to help them reflect on the way that our children who are in conflict with the law and deprived of their liberty are being rehabilitated. They were invited to ponder on the following:

- Their description of the CYC.
- Their dream for a better CYC.
- How can they contribute to make this dream a reality?
- How would they feel if their child was sent to the CYC?

I then organised a second workshop, but this time for both officers and children. The aim was to provide the opportunity to children to express themselves and for the officers to develop empathy towards the inmates. Illustrations of these workshops are provided in chapter 9 of the current Annual Report.

To conclude, I reiterate the recommendation made in my office's Annual Report 2015-2016 (OCO, 2016, pp.137-140), which regards moving from the present repressive approach to a more restorative solution for the rehabilitation of children and young people in conflict with the law. I suggest that this could be done through the establishment of small therapeutic units, which can narrow the current gap in providing individualised treatment and intensive therapy to these children.

Case 6: The impact of major infrastructural changes on children

1. Background

The ‘Metro Express’ is a major project being carried out, which aims at modernising and redefining the public transport system in Mauritius. It will bring infrastructural changes in the landscape of the country and, at the same time, it can improve the quality of life of all citizens, including children. However, the beginnings of the project gave rise to some street protests by inhabitants at Residence Barkly, Beau Bassin. The inhabitants were protesting against the partial demolition of their houses or walls to make way for the metro line. It should be noted that the demolition of the houses was made in the presence of armed Special Mobile Force (SMF) Officers and Police Officers.

2. The complaint

Three mothers accompanied by a social worker complained to me that they do not know where they will go to live with the construction of a rail track for the metro just in front of their houses. They stated that the authorities informed them that the street in front of their houses will be converted into a rail track. The mothers believed that these works will affect the health and everyday life of their children. They felt that their children’s security was at stake for reasons such as:

- The construction works were being carried out just a few metres from their houses and children could be exposed to potential hazards and get hurt.
- Their yards would be ending directly on the rail track, which can be dangerous for children playing in that area, or this can even give way to intruders entering their premises.

3. The investigation

3.1 Rationale of the investigation

I opened an investigation pursuant to section 5(a) of the Ombudsperson for Children Act 2003, which states that I shall *“ensure that the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and associations of individuals”*, and section 6(f) of the same Act, which reads that I *“shall investigate complaints made by a child, or any other person, in relation to the rights of any child”*.

3.2 Conducting the investigation

3.2.1) Field visit



Figure 4. Field visit at Residence Barkly

I carried out a field visit with two investigators at Residence Barkly to get a better understanding of the problem. We met the three complainants and gathered the following information:

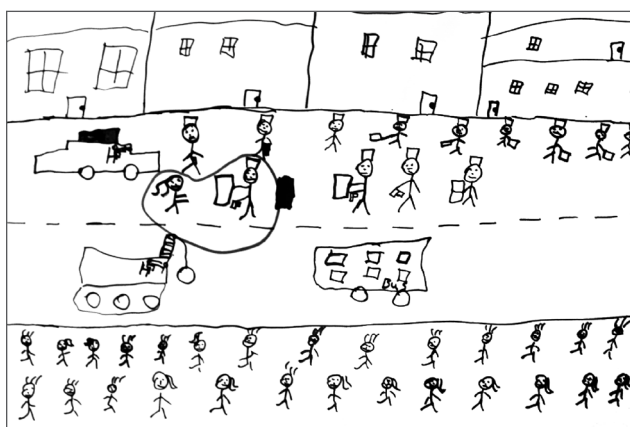
- Four families and 13 children were concerned with the complaint.
- With the 'Metro Express' Project, they reported that their front gate would be pulled down and that part of their front yard would be excavated to give way to the bus lane parallel to the metro line. In one house, seven stairs of their staircase would be pulled down. The problem with these families was that they did not build their front walls and gates as per building regulations. They were illegally occupying around four feet of State land in front of their houses. Therefore, the parts that would be pulled down are on State-owned land.
- The families added that the security of their children would be at stake because the bus lane would be located very close to their houses.
- The four families advanced that they were not invited to any consultation with authorities prior to the pulling down of part of their premises.
- All of them reported that no information was given to them on steps which will be taken by the authorities to compensate them for the disruptions in their daily life.
- Children reported being affected in their schooling. One child who will be taking part in the School Certificate Examination next October reported that the demolition work and the related incidents disturbed him in his studies.

3.2.2) Listening to children's voices

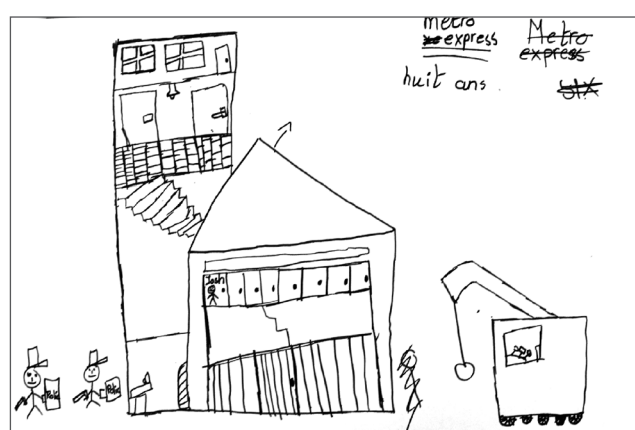
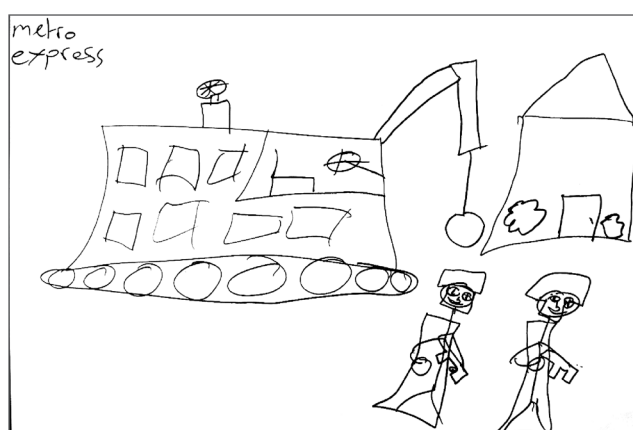
I invited the 13 children concerned to my office to listen to their grievances. Mr Bawamia, Investigator, and a Psychologist were also present. After a brief introduction, the OC invited the children to express themselves on the situation. Some of their main statements in Mauritian Creole were:

- “Leker ti pe fermal, li ti pe bat pli vit.”
- “Lapolis ti pe kraz nou lakaz.”
- “Nou pa pou kapav zwe.”

The children were given a sheet of paper and were requested to express themselves about what they saw or felt through a drawing. Some of the drawings are presented below along with the explanations given by the children.



“Ti ena bokou lapolis, lapolis ti met fizi lor mo mama.”



“Bulldozer ti vinn kraz nou lakaz.”

The children appeared to have suffered trauma from these incidents. Many of them saw the demolition works on their way back home from school. They were surprised to see so many policemen and armed SMF officers. They witnessed their parents being bullied by these officers. As a result, they seemed to have developed a negative perception of the police force – that of a repressive body which does a lot of harm to people like threatening and pulling

down their houses. They expressed being very angry towards the police. Mr Bawamia and the Psychologist had to explain to them in a child-friendly manner the importance of the police in ensuring people's security and maintaining law and order in the society. Many children also showed sympathy for their friends whose walls and houses have been demolished. They were also concerned about losing their playgrounds.

3.3 Analysis

It is suggested that some articles of the Convention on the Rights of the Child (United Nations, 1989), as described below, were potentially not considered while designing the 'Metro Express' Project and when deciding the actions taken to clear the way for the metro line.

- **Article 3(1):** *"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."*

I believe that the use of force by the authorities against parents in the presence of their children was not in the best interests of the children. The witnessing of these events can have lifelong negative consequences on their mental states and behaviours. Other non-violent methods such as dialogue and mediation could have been used instead.

- **Article 12:** *"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. 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."*

According to the information gathered by my office, at no time were these children given the opportunity to express themselves freely before the implementation of this major infrastructural project which would certainly impact on their future both in the short and long term.

- **Article 17:** *"States parties...shall ensure that the child has access to information..."*

However, in this case, the children were not informed and psychologically prepared beforehand about what will happen to their houses and playgrounds among others. Consequently, they experienced anxiety and fear, as expressed in their drawings.

- **Article 19(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..."*

The presence of armed police and SMF officers, army vehicles and bulldozers surely affected the children's mental well-being. The fact that they saw their parents being bullied by these officers also affected them psychologically. Their drawings clearly depicted their troubled state of mind.

I am in favour of **participatory democracy** when national projects of such a scale is concerned. I believe that, if there had been public consultations, including consultations with children, before the start of the project, these incidents could have been avoided. Spreading well-defined and adapted information on the advantages of this modern means of transport and the benefits of being future users of the metro to a maximum of inhabitants, especially those who live in the surrounding areas of the rail track, could have lessened their anxiety on the impact of this project on them. With regards to children, activities could have been organised at the school level to help them understand this new transport system in their country.

4. The outcome

I contacted the authorities concerned and was informed that an infrastructure for leisure and sports for children and young people of the locality will be considered in the implementation of the 'Metro Express' Project.

It is important to note that the families of Residence Barkly are not against the introduction of the metro as a means of transport. It seemed that there was a lack of communication between the authorities and the inhabitants in this case. They rather wanted to be heard by the authorities. They had to be reassured of the security of their children. It is important that all relevant stakeholders collaborate to listen to the concerns of the population, psychologically prepare them to major infrastructural changes and to ensure that the rights of children are respected.

CHAPTER 9:

REPORT ON ACTIVITIES

OMBUDSPERSON FOR CHILDREN'S OFFICE

Report on Activities (July 2017 - June 2018)

In figures

4

Investigators

12

Support Staff

Rs **13.2 M** Budget
(July 2017 - June 2018)

465

Cases Lodged

90 %

Cases Resolved

88

Cases School Problems

67

Anonymous Complaints

9 %

Awaiting Reports from
Stakeholders)

More than **60**

Persons Summoned
for Cases

More than

135

Field Visits

40

Sensitisation Sessions
& Talks

More than **6,000** Children
Attained in Sensitisation
Programmes

More than **7,500** Adults
Attained in Sensitisation
Programmes

More than **12,000**
phone calls

60
Visits to Residential Care
Institutions

28
Letters to OC
Written by Children

More than **125** Media
Interviews

15
Young Ambassadors
of OC

3
Visits to Rodrigues

85
meetings at OCO

20
workshops organised
by OCO

Visit of the “*Défenseure des Enfants*” of France and President of the “*Comité Enfants*” of the AOMF

25 - 29 September 2017

Mrs. Geneviève Avenard, the “*Défenseure des Enfants*” of France and President of the “*Comité Enfants*” of “*L'Association des Ombudsmans et Médiateurs de la Francophonie*” (AOMF) visited Mauritius from 28 to 31 August 2017, in the context of the “*Programme d'Echanges*” of the AOMF. The aim of the visit was to promote the role and importance of the Ombudsperson for Children's Office. Several activities were organised in this context.

Courtesy visit to the Acting President of the Republic of Mauritius on 25 September 2017



Meeting with Investigators at the Ombudsperson for Children's Office



Conference-debate on “*Les défenseurs des droits de l’enfant : Un mandat pour protéger les droits de l’enfant*”

30 August 2017 at Gold Crest Hotel,
Quatre Bornes



Thank you Mrs. Usha Dwarka-Canabady, Secretary
for Foreign Affairs, Regional Integration and
International Trade
for promoting children’s rights!



Address by Mrs. Rita Venkatasawmy
on her role as Ombudsperson for Children



Mrs. G. Avenard addressing the
audience on the mission of the AOMF and on
“*Le pouvoir d’influence du défenseur des droits de
l’enfant sur les politiques de l’état*”

Mrs. Avenard had a fruitful meeting with the young ambassadors of the Ombudsperson for Children. She explained that she has a similar group of young ambassadors at her office called the “*jeunes ambassadeurs du défenseur des enfants*” (JADES)



The young ambassadors listening intently and discussing with Mrs. Avenard



Our young ambassadors presented a Thank You gift to Mrs. Avenard



Young ambassadors and artists were impressed by Mrs. Avenard



Atelier Mozart in Roche Bois
“You have the right to artistic activities.”
– Mrs. Avenard

Submission of the Annual Report 2016-2017 to the President of the Republic of Mauritius

28 September 2017



The OC was accompanied by Mrs. S. Mauree, Investigator and the Secretary of the OCO

Launching of the Annual Report 2016-2017

16 October 2017

The launching of the Annual Report 2016-2017 was held at Palms Hotel in Quatre Bornes on 16 October 2017. More than 300 stakeholders attended this event. The Chief Guest was Mrs. Franchette Gaspard Pierre Louis, Commissioner for Child Development of Rodrigues.



"The CRC is a powerful tool to promote children's rights."
- Mrs. S. Johaheer, Investigator



"Long live children's rights!"
- Mrs R. Venkatasawmy, Ombudsperson for Children



Launching by the Chief Guest (second from left) in the presence of the Minister of Gender Equality, Child Development & Family Welfare (far right), the Ombudsperson for Children (third from left) and the Secretary of the Ombudsperson for Children's Office (far left)

Overview of the Annual Report 2016-2017

Overview of the Annual Report 2016-2017

"The present Annual Report covers a variety of areas that influence the promotion and protection of children's rights. It emphasises on children's right to voice their opinions in matters concerning them. It gives significant consideration to evaluating the rights of looked after children in RCIs of the Republic of Mauritius in comparison with international standards and frameworks. The report critically discusses the adverse impact of poverty on children's rights using a local example. It also explores the issue of bullying in secondary schools in Mauritius and Rodrigues. A whole chapter is dedicated as well to the institutional mechanism of children's rights in Rodrigues and the OCO's missions to the island during the past year. This document consists of a special section illustrating the main activities carried out by the OCO in 2016-2017. It finally provides summaries of a selected list of complaints received and handled by the OCO."

- Mrs Rita Venkatasawmy,
Ombudsperson for Children

World Day for the Prevention of Child Abuse

19 November 2017,
Gold Beach Hotel, Flic
en Flac

A workshop was conducted for 22 children of shelter L'Oasis, along with the manager and two carers. The main objective of the workshop was to sensitise children on their rights to be protected from abuse and neglect.



During the whole workshop, the Ombudsperson for Children put emphasis on the importance of education. She stated that *“education teaches a child how to write, think, speak and listen. Not to forget that the right to education is a fundamental and absolute human right that every child has”*.

Children's Voices

Children's dreams	Children's griefs in life	How children overcome griefs and anger
<i>Enn mond san abi.</i>	<i>Mo soufer aköz mo pa konn lir.</i>	<i>Bizin gard lafwa.</i>
<i>Enn fami!</i>	<i>Mo fami lwin avek mwa.</i>	<i>Pasians, pasians.</i>
<i>Mo ti pou kontan konn mo papa.</i>	<i>Pena personn pou swingn mwa ek mo anvi enn mama.</i>	<i>Bizin bliye lepase al delavan. Pa pans lepase ditou.</i>
<i>Al lamer ek mo papa mama.</i>	<i>Mo papa inn desede ek pena personn pou get mwa.</i>	<i>Mo koz avek mo mama shelter.</i>
<i>Monn anvi mo paran retourn ansam.</i>	<i>Mo pena paran me monnanvi enn fami adopte mwa.</i>	<i>Mo koz avek mo bann kamarad.</i>

Universal Children's Day

20 November 2017

The United Nations Universal Children's Day, which was established in 1954, is celebrated on November 20 each year to promote togetherness internationally and awareness amongst children worldwide. November 20 is also the date when the UN General Assembly adopted the Convention on the Rights of the Child in 1989.

The Ombudsperson for Children strongly believes that the Universal Children's Day is one that holds major significance – it should be actively celebrated, and children ought to be put to the forefront. For the year 2017, the OC marked the Universal Children's Day with three main activities, namely:

- i) a sensitisation poster in 5-Plus newspaper;
- ii) a sensitisation letter on the Rights of the Child addressed to the public and private bodies; and
- iii) a bus outing on the theme *"Mieux connaître ses droits en se promenant dans le Bus de l'Amitié"* with 15 young ambassadors of the OC and 14 children from Residence Barkly. The ambassadors of the OC were students from Belle Rose SSS, Ébène SSS and Gaëtan Raynal SSS.

Sensitisation poster and letter

The OCO conceptualised a sensitisation poster which illustrated the stakeholders that are involved in the protection of children's rights. The poster was published in 5-Plus Newspaper on 19 November 2017. It underscored the collective effort and collaboration that are required from both the public and private bodies as well as citizens in order to protect the rights of children.

The OC also prepared and designed a sensitisation letter with the aim of raising awareness of child rights within both the public and private sectors.

*"Individually, we are one drop.
Together, we are an ocean."*

- Ryunosuke Satoro

**Biro Ombudsperson pou Zanfan
20 NOVAM 2017**

ZOURNE INTERNATIONALE ZANFAN



**Ansam nou protez
drwa tou zanfan
Repiblik Moris**

Ombudsperson for Children's Office

1st Floor, NPF Building, Avenue des Artistes - Beau Bassin
Tel: 454 3010 • Fax: 454 3037 • E-mail: ombudschild@govmu.org

Sensitisation poster in 5-Plus Newspaper



Bureau de l'Ombudsperson pour les Enfants

Chaque 20 novembre, la journée internationale des droits de l'enfant met en lumière les injustices dont souffrent les enfants dans le monde, en s'appuyant sur la Convention internationale des droits de l'enfant, un texte de 54 articles adopté par les Nations Unies le 20 novembre 1989. La Convention affirme qu'un enfant est une personne vulnérable qu'il faut protéger et qui a un ensemble de droits.

La République de Maurice traite généralement bien ses enfants. Cependant la situation est préoccupante pour de nombreux enfants qui subissent des abus sexuels. À Maurice, un enfant par jour est victime d'abus sexuels.



En cette journée internationale des droits de l'enfant il est aussi de mon devoir d'attirer l'attention de toutes les citoyennes et de tous les citoyens sur le fait qu'un nombre grandissant de mineurs sont également auteurs d'abus sexuels au sein de notre République.

Ces jeunes délinquants sexuels constituent, toutefois, eux-mêmes une catégorie de victimes. Cela dit, la délinquance sexuelle des mineurs est souvent perçue comme un crime. Aujourd'hui, nous devons réfléchir à une question importante : notre réponse à ce comportement doit-elle être de nature pénale ou éducative ? Quoi qu'il en soit, nos attitudes doivent être professionnelles et fondées sur des données scientifiques.

Unissons-nous pour protéger les droits de l'enfant mauricien

Rita Venkatasawmy

L'Ombudsperson pour les enfants

Bureau de l'Ombudsperson pour les enfants
1^{er} Etage, Batiment NPF, Avenue des Artistes, Beau Bassin
Tel : 454 3010/ 464 4380
Fax : 454 3037 Postal Code : 71504
Email: ombudschild@govmu.org Website: <http://oco.govmu.org>

Sensitisation letter addressed to public and private bodies

“Bus de l’Amitié”



The “Bus de l’Amitié” crew

Objectives of the bus outing

The objectives of the program were to:

1. increase awareness of the children regarding their rights while travelling in the “*Bus de l’Amitié*”;
2. carry out activities based on the Convention on the Rights of the Child;
3. enable children to express themselves through music, dialogue and their talents;
4. develop social interaction, friendship, solidarity and sharing among children from different socio-economic and cultural backgrounds; and
5. learn the cultural differences of one another to help in understanding, appreciating and respecting diversity.

Several activities were organised during this outing. Preparatory meetings were also held at the OCO for children, parents, teachers and other stakeholders where they were informed of the objectives of the event and they shared their views. On-site visits were also carried out by investigators prior to the outing.

Preparatory meetings

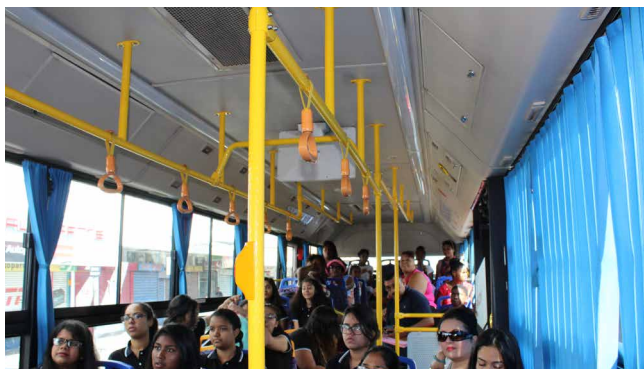
The OC chaired meetings with children, parents and teachers to prepare for the Universal Children's Day. Children's views were diligently taken into consideration while planning the programme.



The ice-breaking activity between the young ambassadors of the OC and children of Residence Barkly was a key element of the preparatory meeting.



Great ambience in the bus



Viewing of a clip "Découvre tes droits"
by AOMF in the bus



Children bonding through music

Activities at Pierrefonds River



*"History will judge us by the
difference we make in the
everyday lives of children."*

- Nelson Mandela



Show by children at Cheshire Home, Pierrefonds

The children presented a show to the residents and nursing officers of Cheshire Home. The performance included the recitation of a poem, singing of songs, playing the ravanne and the guitar, and dancing to a musical item.



Children showing their talents as "ségués"



Child playing the guitar to entertain the residents of Cheshire Home



Audience charmed by a girl playing the flute



Children dancing with the residents of Cheshire Home

"Every child is an artist."

- Picasso

Meeting with Mr. Francis Desalles, fisherman from Case Noyale

The children had the opportunity to learn about the adventures of Mr. Francis Desalles, a fisherman who has known the realm of the sea since his childhood. The children also asked several questions to the well-known fisherman of Case Noyale. Most of them were unaware that fishing entailed so much hard work and challenges.



Under the shade of trees, children listening with fascination to the adventures at sea of Mr. F. Desalles



Child of Barkly Residence presenting a gift to Mr. F. Desalles



The OC, along with Mr. F. Desalles and children of Barkly Residence

Children have the responsibility of respecting senior citizens.

“Chasse aux Droits” and “Hats Competition” at Le Morne Beach

The children, very enthusiastically, participated in a “Chasse aux Droits” and a Hats Competition and the winners were awarded with chocolates as prizes.



The “Chasse aux Droits” begins!



Congratulations to the winner of the “Chasse aux Droits”



‘Hooray’ to the winning team!



Congratulations to the winners of the “Hats Competition”

“J’ai beaucoup aimé voir la créativité des jeunes en découvrant leurs beaux chapeaux. C’était vraiment bien de récompenser les enfants en leur donnant des cadeaux car les enfants sont doublement motivés.”

- Prishika

Walk on the mountainside of Le Morne Brabant, the Cornerstone of our Mauritius Maroon Heritage

"Ah Le Morne Brabant ! En apprenant l'histoire des esclaves marrons, c'était comme si j'avais fait un saut dans le passé car je pouvais ressentir leur crainte, leur désespoir, et leur peur. C'était époustouflant."

- Gracy



« Apprendre l'histoire des esclaves m'a fait réfléchir. Ils ont beaucoup travaillé pour notre pays. »

- Jude



' Monn extra kontan mo lavantir. Nou'nn fer lakot, montagn, lamer... ti bien zoli. Monn fer bokou kamarad ki ti bien zanti.'

- Dorine

Visit to the Rasta Community at Tabernacle Nayabingui in Chamarel

The visit to the Rasta Community provided an opportunity for the children not only to learn about the Rasta culture and its mode of life but also to broaden their horizons and develop mutual understanding and appreciation of diversity.



'Nou ena nou kiltir me nou morisien. Nou zanfán ena mem drwa ki tou zanfán'

- Mr. José Rose, member of the Association Socio-Culturelle Rastafari



« La culture Rasta je ne connaissais pas avant et j'ai vraiment apprécié leur vie simple dans la nature, leurs chants et leur philosophie. »

- Tesha

50th Anniversary of the Independence of Mauritius



Flag raising ceremony at the Ombudsman for Children's Office



The Ombudsman for Children addressing staff members on this occasion



The Ombudsman for Children introducing the chief guest on that occasion, Ms. Preety Daby, a child with visual impairment



Activity with pupils of Quinze Cantons Government School on 7 March 2018 in the context of the Independence Day celebration

"To survive in peace and harmony, united and strong, we must have one people, one nation, one flag."

- Pauline Hanson

Workshop with officers of the Correctional Youth Centre

24 May 2018

The OCO organised a one-day meeting with 12 officers of the Correctional Youth Centre (CYC) on 24 May 2018 at Gold Crest Hotel. The aim of the meeting was to reflect on the role of the CYC in today's sociocultural context and to create awareness of tools available internationally when dealing with juveniles in conflict with the law.

"The CYC is an institution where juveniles are kept in custody, where juveniles are charged with offences that are punishable by imprisonment, where juveniles under the age of 18 years are incarcerated to follow training to reintegrate society. The institution is punitive rather than being rehabilitative. A detention centre with this type of security and infrastructure is meant for adult detainees."

- CYC Officer



The Ombudsperson for Children explaining the UNCRC General Comment no. 10 on Juvenile Justice

CYC officers express their dreams for a better CYC

- *'Bizin enn nouvo batiman avek bann meyer fasilite kouma sal-debin, twalet, plas pou dormi, plas pou manze'*
- *'Bizin ena bann zenn ofisie ki pou travay ek sa bann zivenil la. Bann ofisie motivant ek ki konn zot travay.'*
- *'Bizin ena bann dimounnkalfie ek forme pou travay ek bann zanfan.'*
- *'Bizin ena bokou dialog ek bann klas interaksion kot bann personn dan ONG, ofisie ek bann zanfan partisipe. Osi, bizin ena nouvo program reabilitasyon.'*

My contribution in making a better CYC a reality



The participants giving their views on the role of the CYC in the modern society

"Working with a uniform gives the impression of being in a prison. Too severe. Interactions are needed, group work with inmate on issues like drugs, sex-related activities, life outside prison, how to lead life as a good citizen."

- CYC Officer

"To introduce case management so that I can treat them individually and to take corrective measures where necessary. To know the family background of the inmate and to know the reason of that person behind living an indecent life. After-care service is a must and should be put in place."

- CYC Officer

Imagine your child was sent to the CYC. How would you feel?



The UNCRC General Comment No. 10 on Juvenile Justice stirred meaningful discussions

"As a parent, my life would have failed. I would feel very bad. The contact visit is very important. However, knowing that my children will be exposed to drugs, poor hygiene, physical aggression by other inmates, where I can't protect them and do nothing, and only count on officers, will be the worst thing of my life."

- CYC Officer

Workshop for officers and children from CYC

18 July 2018

On 18 July 2018, the Ombudsperson for Children's Office organised a workshop for both inmates and officers of the CYC. The objective was to listen to the voices of the inmates on their life experiences and on what led them to be sent to the CYC. The exercise helped the children to express themselves freely.



The Commissioner of Prisons listening to the statements of the inmates of the CYC on their life experiences



The Ombudsperson for Children animating a session with Mr. Hannelas, Officer in Charge of the CYC

Some CYC inmates tell us about their life experiences...

Ek lakoz mo koumans fer bann kitsoz ki pa bon ditou mo mama inn koz ar mwa boukou fwa me mo pann ekout li. Kan mo pa ti gagn sa ladrog la mo ti pe ankoler pou nanye ar mo mama ek enn kout mo ti pe zalou mo ti frer (...), zafer ki li ti pe gagne mo pa ti pe gagne. Me apre ler mo'nn konpran ladrog la ti pe detrir mo lavi san ki mo kone mo mem. Mo mama inn fatigue ar dir (mwa) aret ar simik, simik pou touy mwa. Mo ti pe fer par mo latet ziska ki'nn ariv zour ki mo al kokin kot enn madam. (17-year-old child)

Letan mo lexame ti fini ek kan mo mama ti al sers mo rezilta, li ti plore. Mo ti panse ki mo'nn fel me li ti pran mwa dan so lebra. Letan mo'nn demann li ki'nn arive, li dir mwa ki mo'nn pase ek mo ti gagn diznef inite, mo ti gagn kolez. Sa zour la inn res grave dan mo latet, pa pou kav bliye sa.

Apre trwa-an, avek bann frekantasion ki mo'nn gagne mo'nn koumans fim simik, mo'nn bizin aret lekòl. Si zordi mo anferme, se akòz mo'nn rode, mo dan rimann depi sa lane la. Meselma mo nisa kase kan mo mama ek mo granmer vinn get mwa lor vizit. Tou sa bann erer mo'nn fer la, zot inn pardonn mwa, zot la pou soutenir mwa pou donn mwa kouraz.

Fer mo leker fermal. Mo pa promet personn lesiel ek later me letan mo pou sorti dan CYC mo pou fer tou pou mo sanz lavi. Enn sel garson mo mama ena kouma mwa, mo'nn fatigue ar fer so leker fermal. (16-year-old child)

Mama papa gaspiyaz sa ! Mo ser ed mwa mo res kot limem. Mo pa ti kontan al lekòl. Kontan res lakaz get fim. Bezwin de larzan fer mwa kokin. Malgre mo gran dimounn dir mwa pa bon sa. Zis pou fim sigaret, mo kokin. Aster mo chagrin mo dan prizon. Lane prosenn mo gagn 18 an. Mo pa ti kontan al gran prizon. Mo pena okenn metie. Mo mama papa separe depi set-an. Mo ser tousel get mwa lor vizit. Si mo ti gide par mo papa mama, mo pa ti pou la dan prizon. (17-year old child)

Ladministrasion CYC finn get mwa bien, abe mo remersie zot pou sa. Mo pou pran enn nouvo depar e mo sir ki mo pou reisi dan mo lavi. E kan mo sorti mo anvi enn lavi serye pou dimounn kapav konpran mwa e pou mwa'si mo konpran dimounn. Saki mo ena pou dir, pran kont zenes lavi zoli. Bann frer dir non ladrog eksigaret, tou kitsoz mo kapav gagne dan lavi si mo ena enn bon travay. Lerla mo pou respekte dimounn e dimounn pou respekte mwa. (17-year-old child)



The participants played along and accepted to participate in demonstration exercises



Inmates were invited on stage to share their views on the workshop



The CYC officers helped in recording the children's life story. This exercise helps officers to develop empathy towards the inmates



The Ombudsperson for Children encouraging two inmates to write on their life experiences

CYC inmates tell us their views on the workshop

- *'Ti enn bon lexperians. Mo finn kapav koz lor tou mo bann problem. Mo finn santi mwa leze.'*
- *'Mo bien kontan bann ofisie finn ekout mwa. Mo santi mwa soulaze.'*

A CYC Officer said,

- *'Ti bien interesan. Mo finn apresie sa lexersis kot nou finn ekout zanfán. Sa finn permet mwa konpran plis zot sitiasion.'*

Workshop with Police Officers on Child Rights

06 June 2018

The OC was invited by the Commissioner of Police to sensitise in-service police officers from different divisions in the police force on the rights of the child. The workshop was very interactive.



The importance of the quality of police interaction with child victims cannot be overstated. Sensitive police work can by itself set children on the road to rehabilitation.



Visit at the OCO of the Director of Security from Hartsfield-Jackson Atlanta International Airport, USA

20 October 2017

Ms. Jan Lennon, Director of Security at the Hartsfield-Jackson Atlanta International Airport, USA, visited the Ombudsperson for Children's Office on 20 October 2017. She is in charge of a training programme on combatting trafficking in persons at the busiest airport in the world. The Ombudsperson for Children seized this opportunity to organise a meeting with stakeholders operating at Mauritius' airports and the ports.



Ms. Lennon and her delegation interacting with officers of the Ombudsperson for Children's Office



The Ombudsperson for Children welcoming the guests from USA and the local participants



Ms. Lennon presenting on the security programme designed to combat trafficking in persons at the Hartsfield Jackson Atlanta International Airport

Following this meeting, a working committee was set up with relevant authorities at the level of the Department of Civil Aviation of Mauritius to brainstorm on dealing with the issue of child trafficking.

Consultative meetings on Child Sexual Abuse

14, 21 & 28 February 2018

The Ombudsman for Children organised 3 consultative meetings on the theme “A Safer Childhood: A Milestone for Mauritian Independence” on 14, 21 and 28 February 2018. Representatives of national human rights institutions, governmental departments dealing with children, the judicial and legal sector and the civil society organisations active in the prevention and treatment of Child Sexual Abuse attended these meetings.



Networking is one of the most important strategies one can use to promote the rights and rehabilitation of victims of child sexual abuse and to prevent the abuse of potential victims.



The Right to Clean and Safe Environment

10 & 11 April 2018

The Ombudsperson for Children's Office organised several meetings and workshops to promote the right to a safe and clean environment with the Deputy Headmasters of the four educational zones. The aim was to encourage schools to educate pupils on the need for a clean environment.



Deputy Headmasters of all primary schools were convened to meetings on how to promote respect for the environment in a pedagogical manner



Mr Allan Wright, Environmental Activist, explained that the accumulation of waste caused the flash floods of 2013 in Port Louis. His intervention was highly appreciated



"Dear teacher, you must explain to your students that we won't have a society if we destroy the environment" – The OC



Storytelling is one of the most effective teaching strategies to sensitise children on why we should keep our environment clean

Team work is a MUST to protect and promote children's rights.



Meeting with managers of Residential Care Institutions in the context of the launching of the Annual Report 2016-2017 on 27 September 2017



Meeting with inhabitants of Residence Richelieu on the presence of asbestos in houses on 11 January 2018



Meeting with representatives of the Mauritius Research Council on the project "Children's Voices on Child Sexual Abuse" on 24 January 2018

“Coming together is a beginning. Keeping together is progress. Working together is success.”

- Henry Ford



The Ombudsperson for Children meeting Mrs. Surya Gayan, Director-General of the Mahatma Gandhi Institute



Preparatory meeting with representatives of primary schools on the project “Full Stop to Littering” to promote the Rights of the Child to a clean and safe environment



Courtesy visit of the Australian High Commissioner, Mrs Jenny Dee

***“Teamwork is the ability to work together toward a common vision.
The ability to direct individual accomplishments toward organizational
objectives. It is the fuel that allows common people
to attain uncommon results.”***

- Andrew Carnegie



Meeting with Senior Officers
of the Civil Status Office on teenage
pregnancy and child marriages



Meeting with members of the Council of
Religion in connection with teenage
pregnancy and child marriage



Courtesy visit of the President of SOS
Children's Village Mauritius and her
collaborators at the Ombudsperson for
Children's Office

The importance of child participation

Several talks targeting students were carried out in both primary and secondary schools at the request of the school management.



The Ombudsperson for Children addressing pupils of Belle Rose SSS on 6 March 2018



Investigator I. A. Bawamia animating a classroom activity at Britannia Government School



The OC interacting with pupils of R. Seeneevassen SSS

Activities related to the Children's Bill

Activities related to the Children's Bill

In the context of the forthcoming Children's Bill, the Ombudsperson for Children organised a series of consultations with different stakeholders, including children. The table below provides an overview of these activities.

SN	Date	Workshop & aim	Venue	Participants
1	24-25 March 2018	Residential workshop – To sensitise children on their rights and to understand the dynamics of the Children's Bill	Grand Bleu Hotel, Trou aux Biches	Children and carers of different residential care institutions
2	3-4 April 2018	Two-days workshop – To sensitise Rodriguan citizens on basic children's rights concepts	Antoinette Prudence Human Resource Development Centre, Malabar, Rodrigues	Representatives of civil society organisations
3	12 April 2018	One-day workshop – To sensitise Mauritian citizens on basic children's rights concept	MACOSS Headquarters, Réduit	Representatives of civil society organisations & Law students from the University of Mauritius
4	14 April 2018	One-day consultative workshop – To help children understand and discuss their rights and issues that matter to them	Baden Powell House, Trianon	Children and young people of Mauritius Scouts Association, SOS Children's Village, Mauritius Girl Guides Association, Chagos Refugees Group and Agalega Islands
5	5 May 2018	One-day consultative workshop – To help children understand and discuss their rights and issues that matter to them	Centre de Formation, Réduit	Children of non-governmental organisation, Safire

Residential workshop for children living in RCIs

24 & 25 March 2018 at Grand Bleu Hotel, Trou aux Biches

On 24 and 25 March 2018, the Ombudsman for Children's Office organised a residential workshop for fifteen children aged 12 to 15 years who are placed in Residential Care Institutions (RCIs). They were accompanied by 15 carers. The objectives of the workshop were to sensitise the children on their rights and responsibilities, and to identify strengths and areas for improvement from the children's perspective. A side event was organised for the carers.



The Ombudsman for Children explaining the aims and purpose of the residential workshop



Sensitisation on rights and responsibilities through demonstration



Carers and children discussing together



Bonding activities between children and carers



The Ombudsman for Children carried out an activity on the theme "Children's Participation in Peace-Building"

Sensitisation workshop for Civil Society Organisations

03 & 04 April 2018 at Antoinette Prudence Human Resource Centre, Malabar, Rodrigues

Consultative workshops with stakeholders regarding Child Sexual Abuse (CSA) and the Children's Bill were organised by the OCO in collaboration with the Office of the Director of Public Prosecutions.



The Constitution of Mauritius concerns children

“The Constitution of Mauritius enables the provision of fundamental constitutional rights in its sections 3-16 afforded to all Mauritian citizens, including children as full individuals with rights and responsibilities.”

– The OC

The participants were actively involved in the group discussions.



"The forthcoming Children's Bill is important for us in Rodrigues as well and we want our voices to be heard."

– Participants

Sensitisation workshop for Civil Society Organisations

12 April 2018 at MACOSS Training Centre, Moka

The Ombudsperson for Children's Office invited several stakeholders from civil society organisations and law students from the University of Mauritius to discuss about the forthcoming Children's Bill. The event was organised in collaboration with MACOSS and was held at the MACOSS Regional Leadership Centre for Civil Society Organisations in Moka on 12 April 2018.



The Ombudsperson for Children explaining the purpose of the workshop and introducing some key ideas in the context of the Children's Bill



Mrs Maya Hanoomanjee, Speaker of the National Assembly, explained the different steps involved for a Bill to become an Act in Parliament. Her intervention was highly appraised.



The representative of the CDU in Rodrigues elaborating on the issues and challenges affecting children on the island



The President of the Agalega Council explaining how the rights of children are not respected on the island of Agalega



The representative of the Office of the Director of Public Prosecutions intervening on the theme "Juvenile Justice and the minimal age of criminal responsibility"



Together we stand to promote children's rights

Listening to children's voices on the Children's Bill

14 April 2018 at Baden Powell House, Trianon

The Ombudsperson for Children's Office organised a consultative workshop with 125 children at the Baden Powell House, Trianon on 14 April 2018 to gather their proposals on what they would like to see in the forthcoming Children's Bill.



Active participation of the children



A group of children presenting a song on the rights of children



Drama, a powerful mode of communication



Time for a quiz with our participants



The children discussed in groups on themes such as the environment, poverty, education, participation, protection and children with disabilities among others in Mauritius, Rodrigues and Agalega.

***Children from the Chagossian Community
and from Agalega participated actively in the
consultative meeting.***

Consultation with children from the NGO "Safire"

05 May 2018 at Training Centre of the Ministry of Youth & Sports, Reduit

A consultation with 70 children from the NGO Safire was organised on Saturday 05 May 2018 at the Training Centre of the Ministry of Youth & Sports in Reduit. The aim was to give these children the opportunity to voice out their concerns and proposals in the context of the forthcoming Children's Bill.



Encouraging children to express themselves



We want a country fit for us



Children discussing in small groups on issues affecting them like drugs, the environment, violence and the importance of respecting laws

Children's views gathered during different consultations



Health

- Bann paran bizin pran zot responsabilite ek amenn zot zanfan fer vaksin.
- Met inpe plis dispenser partou afin ki zot benefisie bann swin medikal gratwit.
- Gouvernman bizin fer plis devlopman dan bann lopital parski nou mank bokou lekipman.
- Fer dimounn pran konsians lor bann maladi ki nou kapav gagne parski bokou dimounn pa okouran.

Environment

- Prix bas sur les matériaux de nettoyage.
- Evit deforestation – Met lalwa pou prezerv bann resours natirel.
- Fasilite tank pou konpost pou tou dimounn.
- Debousaz bann drin.
- Lamann sever pou bann polier.
- Evite les véhicules a court distance pour ne pas polluer l'air.

Education

- Bes pri bann materyel servi lekòl.
- Bizin amelior letablisman lekòl (onivo striktir)
- Bizin aboli '9-year schooling' ek profeser pa bien forme.
- Met bann lalwa kont 'bullying' dan lekòl.

Child abuse

- Bizin pini paran ki explwat zot zanfan pou zot prop lintere.
- Enn lalwa pou bann paran ki abiz zot zanfan.

Poverty

- Distribution de nourriture dans les ecoles secondaire.
- Sansibiliz bann pov pou zot kone kouma zer larzan dan zot fwaye.

Voices of children

The importance of child participation

- Fer li gagn konfians dan limem.
- Plis aktivite sosyal – sportif ek edikatif.
- Zanafan ena drwa partisip dan deba lor 'abi kont miner' (child abuse), arselman sexiel (sexual harassment).
- Ekout zanafan ek pran zot problem an konsiderasion.



Children with disabilities

- Get tou zanafan parey / pa viv kouma etranze.
- Met zanafan normal ek andikape ansam.
- Ogmant zot pansion.
- Ouver ankor lekol pou andikape.



Agalega

- Preserve et protégé la faune et la flore terrestre et marine.
- Construction de nouvelles institutions pour l'éducation.
- Plus d'importation de nourriture.
- Améliorer le system routier.



Adults' views gathered during different consultations

Sex Education

The Children's Bill should make it mandatory that sex education is included in the curriculum as from primary school and taught on a regular basis so that children understand the consequences of choosing to be sexually active at an early age.



Handling of sexual assault cases involving children by the media

The act of broadcasting personal information of a child victim should be criminalised with fines or even imprisonment. Strict limits should be drawn for the media.

Rehabilitation of children in conflict with the law

- Children should not be subject to any form of abusive punishment, corporal or otherwise only rehabilitation should be encouraged, especially by legislators. The latter should adopt a child-friendly approach, having the best interest of the child at heart when devising legislative measures.
- The only aim of the RYC or CYC must be to reintegrate the children in society as a relatively balanced individual.
- Being the future of the country, children should be provided with support and skills to make them responsible citizens.

Juvenile justice system

- Legislators must create a Juvenile Justice System in parallel to the existing Criminal Justice System but reserve it for cases involving children. The new system would be more adapted to children in the sense that it would not only involve the judiciary, but also psychologists, psychiatrists and any other stakeholders that would allow the judiciary to come to a decision in a fair manner.
- Video recordings of children's declarations/statements should be admissible in court.



Age of criminal responsibility

The age of criminal responsibility should not be set at an early age as children may not be mature enough to understand the consequences of their actions. It is proposed that the age of criminal responsibility should not be set below 14 years.

Children and adults' views on residential care institutions

Children	Adults
• Pa mo lakaz sa!	• Si bann gran fer kiksoz ki pa bon, bann pli tipti osi fer parey.
• Ombudsperson pou zanfan bizin fer bann vizit dan bann shelters pli frekan.	• Kan enn zanfan vinn inkontrolab, li inpe difisil pou intervenir akòz nou kav bles nou mem ou fer li ditor.
• Nou oblize al get nou paran.	• Tro boukou rezidan dan shelter ek carers an mwins.
• Nou'le linz pou nou.	• Li vinn difisil travay ar zanfan kan nou pena soutien ladministrasyon.
• Tro boukou zanfan dan shelter, nou pa gagn ase plas pou nou.	• Bizin ena formasyon avek zanfan ek bann 'child carers' ek plis swivi kote ledikasyon.
• Bann tipti agas nou, met zot enn lot plas.	• Bann carers bizin ena formasyon dan sikoloji.
• Carer pa ase pran nou kont parski ena tro boukou zanfan.	• Bizin reget lapey carers pou zot gagn motivasyon dan zot travay ek zanfan.
• Pena enn lalwa lor komie kas lekol enn zanfan bizin gagne.	• Bizin ena 'follow up' sikolojik pou paran ek carers.
• Bizin aret avoy zanfan BSH ou RYC kan fer move.	• Bizin kree enn park terapeetik ki pou enn 'stop shop' pou tretman zanfan.
• Met nou ennkout isi, enn kout laba, mo gagn ner.	• Lalwa bizin konsider seki zanfan la anvi parski kan separ enn zanfan avek bann dimounn ki li kontan ekar ki li ena latasman li bien inzis.

Children of Safire responding to OCO's Press Communiqué

Following a press communiqué from the OCO to invite people to provide their inputs on child marriage, teenage pregnancy, child sexual abuse, teen dating and co-habitation (concubinage), a delegation of children from the NGO Safire visited the Ombudsperson for Children's Office on 06 July 2018 to express their views.



The delegation from NGO Safire welcomed by the Ombudsperson for Children



The children met in the conference room. Two investigators facilitated the exercise. The educators of Safire were also involved

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.

(Convention on the Rights of the Child, article 12)



Investigator, Mrs S. Johaheer assisting the children by writing their statements verbatim



The educators of Safire also helped to collect the views of the children

Visits to Rodrigues



During this reporting year, the Ombudsperson for Children and her team carried out 3 visits to the Island of Rodrigues. The overarching objectives of these visits were to ensure that the rights, needs and interests of children are given due consideration on the island and to promote compliance with the CRC.

SN	Date	Objectives	Officers
1	2 – 6 April 2018	I. To improve partnership and networking among all relevant stakeholders in the area of child sexual abuse and the Ombudsperson for Children's Office. II. To devise strategies on how to better sensitise children on environmental issues. III. To create a platform for children to express themselves on the consequences of littering through their artistic talents.	Mrs. R. Venkatasawmy, Ombudsperson for Children & Mrs. S. Johaheer, Investigator
2	27 – 31 May 2018	I. To sensitise secondary school students on their rights and responsibilities at school. II. To sensitise children in conflict with law on their rights and responsibilities. III. To interact with Managers of nurseries and pre-primary schools.	Mrs. R. Venkatasawmy, Ombudsperson for Children, Mrs. L. Jhugroo, Secretary, Ms. P. Carmagnole, Intern/Investigator
3	19 – 23 June 2018	I. To carry out preliminary discussions with the Commission of Child Development and stakeholders in relation with the "Bullying Week". II. To follow up on Ombudsperson for Children's interventions with the Early Childhood Sector held in May 2018 by visiting selected schools and "crèches". III. To meet with parents of pre-primary schools to increase awareness on the UNCRC.	Mr. I. Bawamia, Investigator, Ms. P. Carmagnole, Intern/Investigator

Workshop on Child Sexual Abuse and Children's Bill

03 & 04 April 2018 at Malabar



The workshop was organised in collaboration with the Office of the DPP

Visit to the Rehabilitation Youth Centre (RYC)

03 April 2018 at Oyster Bay



The OC (from the far left), Deputy Chief Commissioner, Advisor of the Deputy Chief Commissioner and Officer-in-Charge of the RYC at the RYC of Rodrigues

Sensitisation program on the rights and responsibilities of children at school

28 May 2018 at Family Integrated Centre, Malabar



Students from La Ferme, le Choux, Grande Montagne and Mont Lubin colleges attended the program

The OC explained that all children have the right to education, health and a clean environment where they would grow healthily and reach their full potential. Children have the right to be respected and should be protected from all forms of violence including corporal punishment. However, the OC also stressed on the children's responsibility to behave properly and respect their parents and friends.

Interaction with managers of “crèches” and pre-primary schools

30 May 2018 at the Family Integrated Centre, Malabar

The main purpose of this meeting was to sensitise the managers on child rights and the importance of the role they have to play in the development of the child. The OC pointed out that children have the right to participate in a range of cultural, artistic and recreational activities as part of the pedagogical approach in early childhood care and education.





Using the power of imagination to write value-based children's stories



There is no age for enjoying a good story!

Talk at Rodrigues College

30 May 2018 at Port Mathurin



The OC explained about the rights and responsibilities of students at school. The students and the rector participated actively in the session.



Visit to Cheridou Nursery

20 June 2018 at Mont Lubin



The visit was carried out by Mr. I.A. Bawamia, Investigator & Ms. Carmagnole, Intern/Investigator

Sensitisation of parents in pre-primary schools of Rodrigues

20-22 June 2018

Around 200 parents of 5 pre-primary schools (PPS) were convened and sensitised on several aspects of the CRC. The points which were highlighted during these meetings were the right to be protected, the right to play, the right to be heard, the right to education and the responsibilities of parents. The use of storytelling and play as methods of educating children were also explained to the parents. There were enjoyable and constructive interactions between the parents and the investigator.



Children welcoming the delegation of the OCO at Les Hirondelles PPS, Latanier – 20 June 2018



Les Papillons PPS, Roche Bon Dieu – 20 June 2018



L'Aurore PPS, Quatre Vent – 21 June 2018



Le Goelang PPS, Baie du Nord – 21 June 2018



The parents of La Marguerite PPS located at Port Sud Est met at the nearby Youth Centre – 22 June 2018

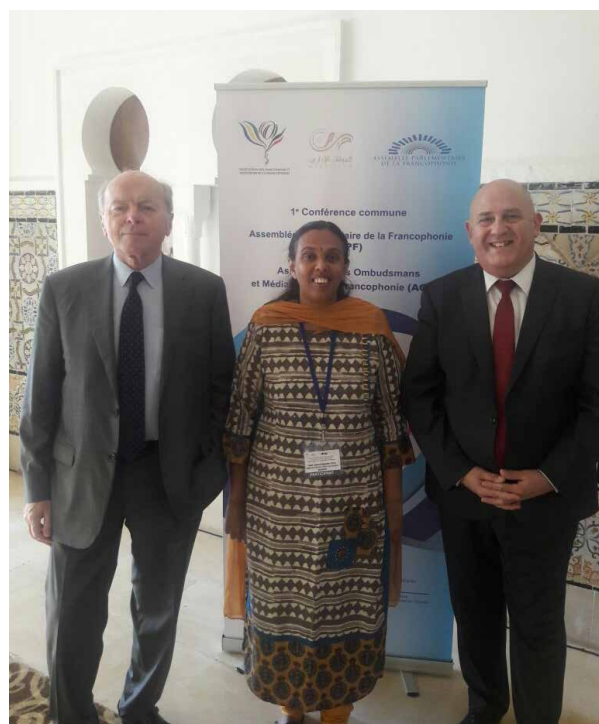
Overseas Missions & International Training

“1ere conférence commune de l’Assemblée des Parlementaires de la Francophonie (APF)” – Les parlementaires et les médiateurs, auteurs du renforcement de la bonne gouvernance”

23 & 24 November 2017, Tunisia

The important collaboration of parliamentarians and ombudsmen in the promotion of good governance was discussed during this conference. It highlighted the importance for parliamentarians to give due consideration to the reports, recommendations and proposals of ombudsmen to fight against maladministration and to reinforce good governance that respect the fundamental rights of citizens.

The Ombudsperson for Children (middle) with Mr. Marc Bertrand, “Médiateur de la Wallonie”, Belgium (far right) and Mr. Jacques Toubon, the “Défenseur des droits” of France (far left)



International exposure improves the quality of services provided by the OCO

20th Training Course for Collaborators of “Médiateurs membres de l’AOMF”

6 – 8 December 2017, Brussels, Belgium (attended by I. Bawamia, Investigator)

The theme of this training session was “*Les relations entre les citoyens/réclamants et l’institution de médiation tout au long du processus de médiation*”.



The Médiateur of Wallonie-Brussels and Chairman of the AOMF presiding the session



The participants discussing on challenging cases being dealt by their respective institutions



Fruitful exchanges on how investigators can more efficiently deal with complaints

Conference of the Association des Ombudsmans et Médiateurs Africains (AOMA)

5 – 9 February 2018, Lilongwe, Malawi

The Ombudsperson for Children attended a conference on “The role of the Ombudsman in promoting accountability, ethics and transparency in the public sector” from 5 to 9 February 2018 in Lilongwe, Malawi. This conference was organised by the African Ombudsman Research Centre in collaboration with the Office of the Ombudsman, Malawi.



The team of the Office of the Ombudsman of Malawi played a key role in making this conference a success



The African Research Centre interviewing the OC on the role and functions of her office in Mauritius

International Summer Course on the Rights of the Child

24 to 29 June 2018, University of Moncton, New Brunswick, Canada

(attended by S.P. Mauree, Investigator)

This edition of the International Summer Course on the Rights of the Child focused on various aspects of early childhood education. The course brought together professionals working in various field related to children's rights around the world. The main topics covered were:

- Universality and the realisation of children's rights in early childhood and educational services;
- Early childhood education policy in Morocco;
- The right to education and the right to play in early childhood;
- Social paediatrics and early childhood care and education; and
- Assisting patients/clients/persons at risk of poor health due to their poverty through an overview of the clinical poverty intervention tool in New Brunswick.

7th Edition – Early Childhood and the Right to Education: Toddlers and their rights in relation to Articles 28 and 29 of the UN Convention on the Rights of the Child



The course also included a visit to Tír na nÓg Forest School which provides children with an outdoors educational experience by following their individual interests at their pace through a hands-on, experiential approach.



We come from different parts of the globe, but we all unequivocally believe that children should have a good start in life

Annual Training on the Rights of the Child – AOMF

14 – 17 May 2018, Gold Crest Hotel, Mauritius

The Ombudsperson for Children's Office hosted the Annual Training on the Rights of the Child of the AOMF on the theme "Article 12: Le droit d'exprimer librement son opinion" at the Gold Crest Hotel, Quatre Bornes. Delegates from Belgium, Benin, Canada, Côte d'Ivoire, Djibouti, France, Madagascar, Mauritius, Monaco, Senegal, Seychelles and Tunisia attended the workshop.



Children of the Mahatma Gandhi Institute and the Correctional Youth Centre performed during the Opening Ceremony



Mrs Sarah Dennene of New Brunswick, Canada, speaking on *"Les droits à la participation dans les textes internationaux"*



Mr Pierre Yves Rosset of Belgium carrying out a session on *"La mise en œuvre du droit à la participation"*

Annual Training on the Rights of the Child – AOMF (Continued)



There was active participation during the workshop



Children from SOS Children's Village animating an ice-breaking activity with the participants during the session on the project "*Parlons jeunes*"



Children acting as experts in discussion groups on the project "*Parlons jeunes*". Their contribution to the deliberations were of high quality



The "*Parlons jeunes*" session participants
(faces of children of SOS Children's Village have been blurred for anonymity)

Annual Training on the Rights of the Child – AOMF (Continued)

The ‘Association des Ombudsmans et Médiateurs de la Francophonie’ is a non-profit international association which pursues essentially professional objectives through cooperation among its members. One of its main objectives is to promote knowledge of the role of ombudsmen and mediators and to develop the concept of the institution in the Francophonie in order to promote democratic practices, social peace and the protection and advancement of human rights.



Meeting of the “comité des droits de l’enfant” of the AOMF by video conference – the Chairperson Mrs Geneviève Avenard addressing the members via Skype



Visit to the shelter “Women and Children in Distress” at Forest Side



Visit at SOS Children’s Village of Bambous

Participants discovered that the Ombudsperson for Children’s Office Mauritius is the first of its kind in Africa. It was inspired by the Norwegian Model. The Ombudsperson for Children Act 2003 was voted on 21 October 2003 and came into force on 20 November 2003 on the occasion of the Universal Children’s Day. The first Ombudsperson for Children was nominated on 10 December 2003 on the occasion of the Human Rights Day.

Annual Training on the Rights of the Child – AOMF (Continued)



Closing dinner at Grand Ocean Restaurant, Caudan, Port Louis



Collaboration at the international level is important to promote children's rights efficiently

Networking in Action: Meeting of Mrs R. Venkatasawmy, Ombudsperson for Children with Mrs. Stuti Kacker, Chairperson of the National Commission for the Protection of Child Rights (NCPCR)

19 April 2018, India



NCPCR – The Mandate

The mandate of the NCPCR constituted under the CPCRA Act 2005 is

- to monitor all laws, policies, programmes and administrative mechanisms in the country in consonance with child rights perspective; and
- to ensure children's rights as enshrined in the Constitution of India; and as enshrined in the UN Convention on the Rights of the Child (UNCRC) are protected.

CONFERENCE AND MEETINGS AT OCO

SN	DATE	THEME
1.	08.08.17	Meeting with representatives of the Government Teachers' Union
2.	09.08.17	Interview of the Ombudsperson for Children by a representative of the Human Rights Organisation, Droits humains Océan Indien (DIS-MOI)
3.	10.08.17	Meeting with the Head of Child Development Unit
4.	15.08.17	Pre-conference meeting with non-governmental organisations in connection with the visit of Mrs. Geneviève Avenard
5.	16.08.17	Pre-conference meeting with government stakeholders in connection with the visit Mrs. Geneviève Avenard
6.	18.08.17	Meeting with officers of the National Children's Council
7.	23.08.17	Meeting with representatives of the Human Rights Organisation, Droits humains Océan Indien (DIS-MOI)
8.	28.08.17	Courtesy call of Mrs. Avenard at the Ombudsperson for Children's Office
9.	31.08.17	Meeting of the Young Ambassadors of the Ombudsperson for Children with Mrs Avenard
10.	01.09.17	Debriefing of the visit of Mrs Avenard with the staff of the OCO
11.	07.09.17	Meeting with the acting Vice Chancellor of the University of Mauritius
12.	11.09.17	Meeting with representatives of the Association of Disability Service Providers (Long Mountain)
13.	11.09.17	Meeting with the students of Gaetan Raynal State College
14.	13.09.17	Discussion on Metro Express with inhabitants of Residence Barkly
15.	13.09.17	Meeting with members of the National Human Rights Commission
16.	20.09.17	Meeting with Dr. P. Bissessur, former Director of the NGO Pedostop
17.	21.09.17	Meeting with Mr Anil Nokadee, President of the NGO Child Hope
18.	27.09.17	Preparatory meeting with managers of Residential Care Institutions in connection with the launching of the Annual Report
19.	29.09.17	Preparatory meeting with educators of Belle Rose and Ebène SSS in connection with the Universal Children's Day
20.	02.10.17	Preparatory meeting with young Ambassadors of the Ombudsperson for Children in connection with the Universal Children's Day
21.	02.10.17	Meeting with Police Inspector, Mr. Codabaccus regarding the sensitisation of police officers on child rights
22.	10.10.17	Meeting with Mr. Paul Stempel, Economics Officer of the US Embassy
23.	20.10.17	Visit of Mrs Jan Lennon, Director of Security at Hartfield Jackson Airport, Atlanta, to the OCO
24.	20.10.17	Meeting of Mrs Lennon with different stakeholders regarding Prevention of Child Trafficking in airport settings
25.	27.10.17	Pre-meeting with children of Residence Barkly in connection with the Universal Children's Day

CONFERENCE AND MEETINGS AT OCO

SN	DATE	THEME
26.	30.10.17	Meeting with the representatives of Ledikasyon pu Travayer on Children's Bill
27.	03.11.17	Meeting with the President and members of the Rasta community in connection with the Universal Children's Day
28.	06.11.17	Meeting with a representative of the Mauritius Research Council in connection with the project "Children's Voices on CSA"
29.	14.11.17	Training of OCO's investigators by the Mauritius Research Council
30.	15.11.17	Meeting with the Young Ambassadors of the Ombudsperson for Children in connection with the Universal Children's Day
31.	05.12.17	Courtesy visit of Mr Jean Tsack, United Nations Human Rights Officer to the OCO
32.	05.12.17	Meeting with Mrs Deslie Billich, Australian Consultant
33.	11.01.18	Meeting with Joint Committees and inhabitants in connection to a case on poor housing conditions
34.	12.01.18	Meeting with Mrs Joelle Hannelas, President of Pedostop
35.	24.01.18	Meeting with representatives of the Mauritius Research Council
36.	24.01.18	Meeting with Mrs. Surya Gayan, Director-General of Mahatma Gandhi Institute
37.	26.01.18	Meeting with the officers of the CSR Foundation
38.	15.02.18	Meeting with Mr. Munien, President of the CSR Foundation
39.	21.02.18	Meeting with the European Union Consultant, Mrs Irina Urumova in connection with the forthcoming Children's Bill
40.	22.02.18	Meeting on child rights with Zone Directors of the MEHRTESR
41.	23.02.18	Meeting with a journalist of Globe Magazine
42.	06.03.18	Meeting with the representatives of the SOS Children's Village
43.	09.03.18	Flag Raising Ceremony at the OCO - Chief Guest Ms Preety Daby
44.	15.03.18	Meeting with the President of the National Children's Council
45.	22.03.18	Meeting with the members of the NGO Open Mind
46.	04.04.18	Courtesy visit of the Regional Pedagogical Director of SOS Children's Village to the OCO
47.	09.04.18	Pre-meeting with a representative of the European Union in connection with Children's Bill
48.	13.04.18	Meeting with stakeholders on poor housing conditions in different areas
49.	13.04.18	Meeting with the European Union Consultant, Mrs Irina Urumova on the Children's Bill
50.	16.04.18	Meeting with governmental & non-governmental stakeholders on child sexual abuse
51.	18.05.18	Meeting with a Solicitor from Mardemootoo Solicitors
52.	21.05.18	Meeting with members of Ledikasyon pu Travayer

CONFERENCE AND MEETINGS AT OCO

SN	DATE	THEME
53.	22.05.18	Meeting with the Art teacher of Belle Rose SSS
54.	06.06.18	Meeting with the Solicitor from Mardemootoo Solicitors regarding the Children's Bill
55.	11.06.18	Meeting with the Registrar of the Civil Status Division on the theme of teenage pregnancy
56.	11.06.18	Meeting with the officers of APRIM
57.	12.06.18	Meeting with the officers of the National Transport Authority on school bus problems
58.	20.06.18	Courtesy visit of the Australian High Commissioner, Ms Jenny Dee to the OCO
59.	27.06.18	Meeting with the President of the Jummah Mosque in connection with child marriage
60.	28.06.18	Meeting with the members of the Conseil des Religions in connection with teenage pregnancy and child marriage
61.	29.06.18	Case conference with CDU, Brigade pour la Protection des Mineurs, and Police officers
62.	04.07.18	Meeting with representatives from SOS Children's Village, Mauritius
63.	06.07.18	Meeting with the children of the NGO Safire
64.	09.07.18	Meeting with officers of the National Children's Council
65.	10.07.18	Meeting with the representative of the NGO Planet Zenfans
66.	11.07.18	Meeting with the members of the Mauritius Family Planning and Welfare Association and Mouvement D'Aide à la maternité regarding teenage pregnancy
67.	26.07.18	Training for investigators on child rights legislations by Me Pooja Bissoonauthsing of Mardemootoo Solicitors

CONFERENCE AND MEETINGS OUTSIDE OCO

SN	DATE	THEME	VENUE
1.	02.08.17	Meeting with Martine Luchoomun (Essentielle) & Lizié dan la main	Lizié dan lamain, Curepipe
2.	17.08.17	Training session by Angelique de la Hogue for stakeholders	TIPA
3.	28.08.17	Programme d'échange – AOMF Visit of Mrs Avenard to Ag. President, Hon. Mr. Vyapoory	State House, Reduit
4.	28.08.17	Programme d'échange – AOMF Visit of Mrs Avenard to Ag Minister Gender Equality, CD & FW & Minister of Arts and Culture	Ministry of Arts and Culture, Port Louis
5.	29.08.17	Programme d'échange – AOMF Visit of Mrs Avenard to RYC and CYC	RYC & CYC Beau Bassin
6.	29.08.17	Programme d'échange – AOMF Visit of Mrs Avenard to a shelter	Etoile du Berger, Albion
7.	31.08.17	Programme d'échange – AOMF Visit of Mrs Avenard to Atelier Mo'zar (<i>Soirée culturelle</i>)	Atelier Mo'zar, Roche Bois
8.	12.09.17	Welcoming reception for British High Commissioner, Mr. Keith Allan	Westminster House, Floreal
9.	12.09.17	Capacity Building Workshop on Autism	Renganaden Seeneevassen Building, Port Louis
10.	18.09.17	Meeting with the Director Public Prosecution	Office of the DPP. Port Louis
11.	27.09.17	Conference on Juvenile Justice by the Association Kinouété	Municipal Council Room, Port Louis
12.	28.09.17	Submission of the Annual Report to the President of the Republic of Mauritius	State House, Reduit
13.	03.10.17	Reception to welcome Mr E Daizovi (Political Officer) & Mr P Stampel (Economics Officer)	US Embassy, Port Louis
14.	12-13 Oct 2017	Capacity Building Workshop -SADC	Le Meridien Hotel, Pte aux Piments
15.	25.10.17	Meeting with the Minister of Local Government	Ministry of Local Government, Port Louis
16.	07.11.17	Launching of the exhibition in the context of the Universal Children's Day (organised by ECCEA)	Town Hall, Municipality of Vacoas/Phoenix
17.	09.11.17	Induction session for newly recruited Educators	Mahatma Gandhi Institute, Moka

CONFERENCE AND MEETINGS OUTSIDE OCO

SN	DATE	Capacity Building Workshop -SADC	VENUE
18.	10.11.17	30 th Anniversary of the NGO Joie de Vivre and Launching of website	Centre Joie de Vivre, Poste de Flacq
19.	16.11.17	Enhancing Digital trust to encompass online child safety organised by Halley Movement	Hennessy Park Hotel, Ebène
20.	16.11.17	Donation Ceremony to organisations promoting the rights of children with disabilities	State House, Réduit
21.	16.11.17	American Thanksgiving	US Embassy, Floréal
22.	17.11.17	'Watch' training programme in connection with Universal Children's Day	So Sofitel Hotel, Bel Ombre
23.	18.11.17	End of Year programme for children - "The Rocking Stars"	Mahatma Gandhi Institute, Moka
24.	25.11.17	Launching of media campaign on domestic violence	Mahatma Gandhi Institute, Moka
25.	27-28 Nov 2017	<i>'Formation pour une meilleure prise en charge des mineurs auteurs d'abus sexuels'</i>	Veranda Hotel, Grand Bay
26.	28.11.17	Seminar on Child Sexual Abuse	Institution of Judicial & Legal Studies, Port Louis
27.	28-29 Nov 2017	2-days training on combatting trafficking in persons	National Women Development Centre, Phoenix
28.	29.11.17	<i>'Forum débat sur la violence contre les femmes et les enfants'</i> organised by European Union	Gold Crest Hotel, Quatre Bornes
29.	30.11.17	Workshop on Social innovation organised by the Mauritius Research Council in collaboration with Ministry of Technology, Communication and Innovation	Hennessy Park Hotel, Ebène
30.	30.11.17	Workshop on 'Observatoire de la Parentalité'	Hennessy Park Hotel, Ebène
31.	01.12.17	Activities with children at Le Morne organised by Child Hope	Social Welfare Centre, Le Morne
32.	01.12.17	Launching of the Magazine 'Le Defi Kids' by Defi Media Group	Coco Town Trianon
33.	06.12.17	Human Rights Monitoring Committee	Government House, Port Louis
34.	06.12.17	End of year party with children	Open Mind, Verdun
35.	06.12.17	Award Ceremony organised by CMO Asia "Africa's women leadership excellence citation"	Le Meridien Hotel, Pte aux Piments
36.	07.12.17	Workshop on Implementation of Concluding Observation	Gold Crest Hotel, Quatre Bornes

CONFERENCE AND MEETINGS OUTSIDE OCO

SN	DATE	THEME	VENUE
37.	08.12.17	84th Anniversary of His Imperial Majesty of Japan	Westin Turtle Bay Resort, Balaclava
38.	11.12.17	Celebration of Human Rights Day in collaboration with European Union & Human Rights Commission	Hotel Voila, Bagatelle
39.	13.12.17	Workshop for Rectors and Deputy Rectors of Zone 4	Gold Crest Hotel Quatre Bornes
40.	13.12.17	Reception at the European Union	European Union Residence, Upper Vale
41.	14.12.17	Animation Culturelle	CELPAC Ministry of Arts and Culture, Port Louis
42.	15.12.17	Meeting with Mrs Sall Marjaana/Representative EU Ambassador	EU Office, St James Court, Port Louis
43.	16.12.17	Meeting at APRIM	Paul Harris House, Beau Bassin
44.	18.12.17	Meeting with Japan Ambassador	Japan Embassy, Port Louis
45.	20.12.17	Meeting with Hon Minister of Gender Equality, Child Development and FW	Ministry of Gender Equality, CD & FW Port Louis
46.	24.12.17	Christmas Event	Light of Hope Ebène Gymnasium
47.	11.01.18	Meeting with Hon Minister of Gender Equality, Child Development and FW	Ministry of Gender Equality Port Louis
48.	02.02.18	Meeting with Director of Mahatma Gandhi Institute	Mahatma Gandhi Institute
49.	02.02.18	Welcoming reception by US Ambassador	US Embassy, Port Louis
50.	26.02.18	Meeting on Children's Bill	Intercontinental Hotel, Balaclava
51.	06.03.18	Morning Assembly talk on the right of children to education	Belle Rose SSS
52.	07.03.18	Independence Day Celebration	Quinze Cantons Government School
53.	09.03.18	Independence Day Celebration	Sir Abdool Razack Mohamed College, Port Louis
54.	13.03.18	Soroptimist (IT after School Centre for Children) Independence Day Celebration	Camp Levieux Rose Hill

CONFERENCE AND MEETINGS OUTSIDE OCO

SN	DATE	THEME	VENUE
55.	13.03.18	Garden Party on the occasion of the 50th anniversary of the independence of Mauritius	State House, Réduit
56.	15.03.18	Consultative Meeting on Children Bill	Gold Crest Quatre Bornes
57.	15.03.18	Visit to Coast Guard of Port Louis	Le Port Port Louis
58.	19.03.18	Talk on 50 th Independence Day Celebration	MACOSS Moka
59.	21.03.18	Talk on the role of the Ombudsperson for Children	Rabindranath Tagore Institute Ilot
60.	21.03.18	Meeting on Community School	Xavier Barbe Government School, Pailles
61.	22.03.18	Workshop on bullying in secondary school	Rabindranath Tagore Institute Ilot
62.	02.04.18	Meeting with the Indian High Commissioner	Indian High Commission, Port Louis
63.	04.04.18	Consultative workshop on statistics in Mauritius (A gender approach)	Palms Hotel, Quatre Bornes
64.	05.04.18	Workshop by CSR Foundation	Hotel Voila, Bagatelle
65.	18.04.18	Workshop on Child Sexual Abuse- Watch Program	So-Sofitel Bel Ombre
66.	19.04.18	Workshop Consultation method with children	TIPA, Curepipe
67.	20.04.18	Workshop on Child Sexual Abuse- Watch Program	So-Sofitel Bel Ombre
68.	24.04.18	Child Sexual Abuse- Watch Program	Sofitel Imperial Flic en Flacq
69.	26.04.18	Conference on Child Labour	Gold Crest Hotel Quatre Bornes
70.	03.05.18	Workshop on the Promotion of Human Rights in Mauritius and Rodrigues organised by European Union Foundation	Training Unit Ministry of Social Security, National Solidarity and Reform Institutions Port Louis

CONFERENCE AND MEETINGS OUTSIDE OCO

SN	DATE	THEME	VENUE
71.	05.05.18	Thématique de l'inclusion social auprès des formateurs et animateurs de jeunesse de l'Europe et de l'océan indien organised by CEDEM	Sikanifer Hotel Quatre Bornes
72.	09.05.18	Meeting with Minister of Gender Equality, CD & FW	Ministry of Gender Equality, CD & FW
73.	10-11 May 2018	Training program for Integrity Officers	ICAC Moka
74.	11.05.18	Meeting on Child Trafficking	Department of Civil Aviation Plaine Magnien
75.	17.05.18	Meeting with Equal Opportunity Commission	Belmont House Port Louis
76.	28.05.18	Validation workshop on the draft Children's Bill organized by Min Gender Equality, CD & FW	Hennessy park Hotel Ebène
77.	06.06.18	Talk on the Rights of children	Octave Wiehe Auditorium Vacoas
78.	07.06.18	Talk on drugs and substance abuse	University of Mauritius Réduit
79.	11.06.18	Mothers' Day celebration	CEDEM
80.	21.06.18	Workshop on Human Rights and Children's Rights organised by National Human Rights Commission	Renganaden Seeneevassen SSS Girls Port Louis
81.	23.06.18	Launching of South West Indian Ocean on-line training in Human Rights Education organised by DIS-MOI	St Georges Hotel Port Louis
82.	12.07.18	Talk on the importance of education and teenage pregnancy	BPS College, Beau Bassin
83.	13.07.18	Meeting with the Minister of Gender Equality, Child Development and Family Welfare	Ministry of Gender Equality, CD & FW, Port Louis

Talks at Citizen Advice Bureaus (CAB)

SN	DATE	VENUE
1.	08.02.18	Saint Pierre
2.	15.02.18	Montagne Blanche
3.	22.02.18	Vacoas
4.	01.03.18	Grand Bay
5.	08.03.18	Pointe Aux Sables
6.	22.03.18	Grand Bois
7.	29.03.18	Cite Vallijee
8.	05.04.18	Quatre Bornes
9.	17.04.18	Midlands
10.	26.04.18	Mahebourg
11.	10.05.18	Sainte Croix
12.	17.05.18	Beau Bassin
13.	31.05.18	Central Flacq
14.	21.06.18	Chemin Grenier
15.	26.06.18	Route Nicolay
16.	28.06.18	Bambous
17.	05.07.18	Plaine Magnien
18.	12.07.18	Rose Hill
19.	19.07.18	Pamplemousses

Field Visits

SN	DATE	VENUE
1.	18.08.17	Rehabilitation Youth Centre, Beau Bassin
2.	21.08.17	Association des Parents d'Enfants aux Besoins Spéciaux (APEBS), Curepipe
3.	21.08.17	Lizie dan Iamain, Curepipe
4.	21.08.17	CEDEM, Floréal
5.	21.08.17	Children Foundation, Vacoas
6.	22.08.17	Amour sans Frontière, Goodlands
7.	22.08.17	Amour sans Frontière, Piton
8.	23.08.17	APRIM, Mont Roches
9.	24.08.17	Notre Dame de Bon Secours RCA, Port Louis
10.	25.08.17	Rajcoomar Gujadhur SSS, Flacq
11.	12.09.17	Association Anou Grandi, Rivière du Rempart
12.	12.09.17	Notre Dame du Bon Secours RCA, Port Louis
13.	12.09.17	Century Welfare Association, Port Louis
14.	26.09.17	Shelter L'Oasis, Grand River North West
15.	26.09.17	Le Nid School, Triolet
16.	26.09.17	Centre St Luc, Quatre Bornes
17.	10.10.17	Open Mind, Verdun
18.	24.10.17	Women's Prison, Beau Bassin
19.	25.10.17	Perle d'Avenir, Flacq
20.	25.10.17	Shri Rajiv Gandhi Govt School, Flacq
21.	26.10.17	National Transport Corporation, Vacoas & Cheshchire Home, Pierrefonds
22.	24.11.17	Children's Garden, Plaine Magnien
23.	13.12.17	Correctional Youth Centre, Beau Bassin
24.	14.12.17	Rehabilitation Youth Centre (Girls), Beau Bassin
25.	15.12.17	Rehabilitation Youth Centre (Boys), Beau Bassin
26.	11.01.18	Housing Community SOS Village, Beau Bassin
27.	11.01.18	Signal Mountain RCA, Bell Village
28.	11.01.18	I CAN, Beau Bassin
29.	15.01.18	Rehabilitation Youth Centre (Boys and Girls), Beau Bassin
30.	29.01.18	Patten College (Girls), Rose Hill
31.	29.01.18	Shelter L'Oasis, Grand River North West
32.	30.01.18	Patten College (Girls), Rose Hill
33.	30.01.18	Vacoas SSS, Vacoas
34.	02.02.18	MP Sharma Jagdambi SSS, Goodlands
35.	02.02.18	Friendship College, Goodlands
36.	07.02.18	Mount Ory Government School, Moka

Field Visits

SN	DATE	VENUE
37.	07.02.18	Lycée des Mascareignes, St Pierre
38.	07.02.18	Loreto College of St Pierre, St Pierre
39.	08.02.18	BPS Fatima College, Goodlands
40.	09.02.18	Rajiv Gandhi Government School, Flacq
41.	09.02.18	New Devton College, Beau Bassin
42.	12.02.18	Shelter La Colombe, Pte aux Sables
43.	12.02.18	New Devton College, Beau Bassin
44.	20.02.18	DAV College, Morc St Andre
45.	02.03.18	Eastern Welfare Association for Disabled, Beau Champs
46.	06.03.18	Villiers Rene Government School, Port Louis
47.	06.03.18	Madad-UI-Islam College, Port Louis
48.	13.03.18	Ebène SSS Boys, Ebène
49.	13.03.18	Floreal SSS
50.	14.03.18	Gopeenath Cheetanum Government School, Surinam
51.	19.03.18	Notre Dame de Lorette, Curepipe
52.	22.03.18	James Toolsee Government School, Curepipe
53.	03.04.18	Shelter Vedic Social Organisation, Paillotte
54.	03.04.18	Foyer Père Laval, Port Louis
55.	04.04.18	Shelter Oasis, Grand River North West
56.	05.04.18	CEDEM, Floréal
57.	19.04.18	Nursery, Surinam
58.	23.04.18	NHDC No.12 Geoffroy Bambous
59.	24.04.18	Foyer Père Laval, Port Louis
60.	24.04.18	Aime Cesaire Government School, Rose-Hill
61.	25.04.18	Rajkoomar Gujadhur SENRDC, Flacq
62.	25.04.18	Notre Dame de la Visitation RCA, Vacoas
63.	26.04.18	Beau Vallon Government School, Beau Vallon
64.	26.04.18	Duperre Government School, Mahebourg
65.	26.04.18	Correctional Youth Centre (Boys), Beau Bassin
66.	02.05.18	Correctional Youth Centre (Boys), Beau Bassin
67.	09.05.18	Amaury Government School, Amaury
68.	21.05.18	Curepipe College, Curepipe
69.	31.05.18	Saddul College, Vacoas
70.	04.06.18	Caroline Government School, Bel Air Rivière Sèche
71.	13.06.18	Cavendish Private School, Vacoas
72.	13.06.18	Sir Veerasamy Ringadoo Government School, Quatre Bornes
73.	13.06.18	Floréal SSS, Floréal
74.	14.06.18	Sir Aneerood Jugnauth Government School, Rivière du Rempart

Field Visits

SN	DATE	VENUE
75.	14.06.18	Amaury Government school, Amaury
76.	27.06.18	St Jean Bosco RCA, Curepipe
77.	28.06.18	St Jean Bosco RCA, Curepipe
78.	04.07.18	Belle Mare Government School, Belle Mare
79.	04.07.18	Crèche Kid zone, Curepipe
80.	04.07.18	Rosunee Government School, Flacq
81.	08.07.18	Philippe Rivaland Government School, Beau Bassin
82.	08.07.18	Amaury Government School, Amaury
83.	09.07.18	Philippe Rivaland RCA, Beau Bassin

In addition to the above-listed visits, more than 60 visits were carried out to residential care institutions (RCIs).

Workshops organised by the OCO

SN	DATE	THEME	VENUE
1.	30.08.17	Conference-debate on 'Les défenseurs des droits de l'enfant : Un mandat pour protéger les droits de l'enfant' - in connection with the visit of Mrs Avenard, 'Défenseure des Enfants' of France and President of AOMF	Gold Crest Hotel Quatre Bornes
2.	16.10.17	Launching of the Ombudsperson for Children's Annual Report 2016-2017	Palms Hotel Quatre Bornes
3.	19.11.17	World Day for the Prevention of Child Abuse	Gold Beach Hotel Flic en Flac
4.	20.11.17	Celebrating the Universal Children's Day through a bus outing on the theme 'Mieux connaître ses droits en se promenant dans le Bus de l'Amitié'	Pierrefonds River Cheshire Home (Pierrefonds), Case Noyale, Le Morne Beach&Brabant, Chamarel
5.	14.02.18	Child Sexual Abuse	Ombudsperson for Children's Office
6.	20.02.18	Full Stop to littering- The rights of a child to a clean and safe environment	Ombudsperson for Children's Office
7.	21.02.18	Child Sexual Abuse with stakeholders	Ombudsperson for Children's Office
8.	28.02.18	Child Sexual Abuse with stakeholders	Ombudsperson for Children's Office
9.	24-25 Mar 2018	Residential workshop for children living in Residential Care Institutions	Grand Bleu Hotel Trou aux Biches
10.	10-11 Apr 2018	Full stop to littering with Deputy Headmasters of Zone 1-4	Belle Rose SSS Belle Rose

Workshops organised by the OCO

SN	DATE	THEME	VENUE
11.	12.04.18	Sensitisation workshop on Children's Bill with stakeholders from the Civil Society Organisations and Law students from the University of Mauritius	MACOSS Training Centre Moka
12.	14.04.18	Consultative workshop with children (Scouts) on Children's Bill	Baden Powell House Trianon
13.	05.05.18	Consultative workshop with children (Safire) on Children's Bill	Training Centre of the Ministry of Youth & Sports Reduit
14.	14-17 May 18	Annual Training on the Rights of the Child of the AOMF on the theme 'Article 12 : <i>Le droit d'exprimer librement son opinion</i> '	Gold Crest Hotel Quatre Bornes
15.	24.05.18	Workshop with officers of the CYC Boys – To reflect on the role of the CYC in today's sociocultural context and to create awareness of tools available internationally when dealing with juveniles in conflict with the law	Gold Crest Hotel Quatre Bornes
16.	18.06.18	Workshop for officers and children from CYC Boys – To listen to the voices of the inmates on their life experiences and on what led them to be sent to the CYC.	Gold Crest Hotel Quatre Bornes

Rodrigues

SN	DATE	THEME	VENUE
1.	2-6 Apr 2018	Consultative and sensitisation workshops with civil society organisations regarding Child Sexual Abuse and the Children's Bill	Antoinette Prudence Human Resource Development Centre, Malabar
		Visit to the Rehabilitation Youth Centre	Oyster Bay
		Visit to Foyer Marie Madeleine de la Croix	Baladirou
2.	27-31 May 2018	Sensitisation Program on the rights and responsibility of children at school	Family Integrated Centre, Malabar
		Interaction with Managers of 'Crèches' and Pre-primary schools	Family Integrated Centre, Malabar
		Talk on the rights and responsibilities of students at school	Rodrigues College, Port Mathurin
3.	19-23 June 2018	Visit	Cheri Dou Nursery, Mont Lubin
		Sensitisation of parents in 5 pre-primary schools of Rodrigues on the UNCRC	Les Hirondelles PPS, Latanier Les Papillons PPS, Roche Bon Dieu L'Aurore PPS, Quatre Vent Le Goelang PPS, Baie du Nord La Marguerite PPS, Port Sud Est

Overseas Mission & Training

SN	DATE	THEME	VENUE
1.	23-24 Nov 2017	Les parlementaires et les médiateurs, auteurs du renforcement de la bonne gouvernance (AOMF)	Tunis Tunisia
2.	6-8 Dec 2017	Training course for collaborators of 'Médiateurs membres de L'AOMF' on 'Les relations entre les citoyens/ réclamants et l'institution de médiation tout au long du processus de médiation'	Brussels Belgium
3.	5-9 Feb 2018	Conference of the Association des Ombudsmans et Médiateurs Africain (AOMA) on 'The role of Ombudsman in promoting accountability, ethics and transparency in the public sector'	Malawi Africa
4.	19 Apr 2018	Meeting with Mrs Stuti Kacker, Chairperson of the National Commission for the Protection of Child Rights (NCPCR)	Delhi India
5.	24-29 Jun 2018	International Summer Course on the Rights of the Child with regard to Article 28 and 29 of the UNCRC	Moncton, Canada

APPENDICES

Appendix A: Ombudsperson for Children Act 2003

OMBUDSPERSON FOR CHILDREN ACT

Act 41 of 2003 – 20 November 2003

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Establishment of office of Ombudsperson for Children
4. Appointment of Ombudsperson for Children
5. Objects of office of Ombudsperson for Children
6. Functions of Ombudsperson for Children
7. Investigation
8. Protection of witnesses
9. Protection from liability
10. Staff of Ombudsperson for Children
11. Report of Ombudsperson for Children
11. Offences
12. Regulations
13. —

SCHEDULE

OMBUDSPERSON FOR CHILDREN ACT

1. *Short title*

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

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 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 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 office of 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. Functions of 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 any case 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, nongovernmental 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.
- (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. [S. 7 amended by s. 3 of Act 8 of 2005.]

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. Protection from liability

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 Ombudsperson for Children

The Secretary to Cabinet and Head of the Civil Service shall make available to the Ombudsperson for Children such administrative and other staff as the Ombudsperson for Children may require.

11. Report of Ombudsperson for Children

- (1) 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.
- (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 for Children;
 - (ii) refuses to take the oath before the Ombudsperson for Children; 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 for Children; or
 - (ii) knowingly gives to the Ombudsperson for Children 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 for Children; 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.

[S. 11A inserted by s. 4 of Act 8 of 2005.]

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.

SCHEDULE

[Section 3]

I having been appointed to be the Ombudsperson for Children under the Ombudsperson for Children Act 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

Appendix B: Extract from the Law Reform Commission's recommendations (including those relevant to sexual offences) on the Criminal Protection of Children Rights (May 2016)

[Note: Recommendations denoted by an asterisk () in the following list are relevant to sexual offences.]*

(III) PROSPECTS FOR REFORM

158. The Law Reform Commission has also proposed in the Interim Report on Reform of Criminal Code (May 2016) changes aimed at better protecting the rights of the child.

They are, inter alia, as follows:

- Deprivation of food or care to the point of endangering the health of a minor under sixteen years of age, inflicted by an ascendant or by any other person exercising parental authority or having authority over the minor, shall be punished by imprisonment for a term not exceeding seven years and a fine not exceeding 200,000 Rupees (new section 260 (1));
- It is an offence to keep a child under six years of age on a public road or in a place used for the purposes of public transport with the aim of soliciting the generosity of passers-by (new section 260 (1));
- Failure by the father or mother, without a legitimate reason, to comply with their legal obligations to the point of endangering the health, safety, morals or education of their minor child shall be punished by imprisonment for a term not exceeding two years and a fine not exceeding 150,000 Rupees (new section 260 (3));
- It would also be an offence to fraudulently abusing the ignorance or situation of weakness of a minor in order to induce the minor to act or abstain from acting in any way seriously harmful to him (new section 331(1));
- The sale of fireworks shall be prohibited to minors and those found guilty of such offence shall be liable to a fine not exceeding 3,000 Rupees and imprisonment for a term not exceeding 10 days (new section 385);
- *Any person who, having knowledge of maltreatment, deprivations, or sexual assaults inflicted upon a minor under sixteen years of age omits to report this to the administrative or judicial authorities shall be punished imprisonment for a term not exceeding three years and a fine not exceeding 50,000 Rupees (new section 161 (2));
- *The manufacture, transport, distribution by whatever means and however supported, of a message bearing a pornographic or violent character or a character

seriously violating human dignity, or the trafficking in such a message, shall be punished by imprisonment for a term not exceeding three years and a fine not exceeding 100,000 Rupees, where the message may be seen or perceived by a minor (new section 260B);

- *Where a sexual aggression would be committed abroad against a minor by a Mauritian national or a person habitually resident in Mauritius, Mauritian law would apply (new section 249 (1));
- *The commission without violence, constraint, threat or surprise of a sexual offence by an adult on the person of a minor under sixteen years of age shall be punished by penal servitude for a term not exceeding twenty years. It shall be punished by penal servitude for a term not exceeding thirty years when it was committed by a legitimate, natural or adoptive ascendant or by any other person having authority from law or of fact over the victim or when it was committed by a person abusing the authority conferred by his position (new section 250 B (1) and (2));
- *Sexual acts committed without violence, constraint, threat or surprise on a minor aged over sixteen and not emancipated by marriage shall be punished by penal servitude for a term not exceeding twenty years where they are committed by a legitimate, natural or adoptive ascendant or by any other person having authority from law or of fact over the victim or where they are committed by a person abusing the authority conferred by his functions (new section 250 B (3));
- *Taking, recording or transmitting a picture or representation of a minor with a view to circulating it, where that image or representation has a pornographic character, shall be punished by imprisonment for a term not exceeding five years and a fine not exceeding 75,000 Rupees. When the image or representation involves a minor under sixteen, acts would be punishable even if they were not committed in view of the dissemination of this image or representation (new section 250 C)); and
- *When the minor is a victim, it constitutes, in respect of certain offences, an aggravating circumstance: procuring prostitutes (new S. 253), sexual harassment (new S. 254), moral harassment (new section 255), exploitation of begging (new S. 196), manslaughter (new S.223(1)), torture and acts of barbarity (new section 223 A), acts of violence (new S. 228), rape (new section 250 (2)).

159. Some further changes can be envisaged, and the comparative analysis which has been made can be of some inspiration, such as:

- Making bullying at school an offence, as is provided by section 89 of the UK Education and Inspections Act 2006;
- Making “hazing” (“bizutage”) a crime, as it is in France (article 225-16-2 of the French Penal Code);

- Creating a new offence of causing or allowing the death of a child, as is the case under the UK Domestic Violence, Crime and Victims Act 2004;
- *Making provision so that persons who commit sex offences against children abroad can face prosecution in Mauritius, even if that offence is not illegal in the foreign country in which it was committed, as it is the case with the UK Criminal Justice and Immigration Act 2008 and section 144A of the New Zealand Crimes Act 1961;
- Making it a crime, as is provided by section 219 of the Canadian Criminal Code, to fail to seek medical assistance for a child;
- Making it a crime for someone to cause the death of any child that has not become a human being in such a manner that he would have been guilty of murder if the child had become a human being [Presently, according to French doctrine and jurisprudence (Crim. 25 juin 2002112), there cannot be voluntary or involuntary homicide on a child not yet born. This is not the case in New Zealand (section 182 (1) of the Crimes Act, regarding the “Killing unborn child”)];
- *Making sexual grooming an offence, as is the case in South Africa (S. 18 (1) Criminal Law (sexual offences and related matters) amendment Act);
- *Making it an offence to compel or cause a child to witness a sexual offence (S. 21 (1) Criminal Law (sexual offences and related matters) amendment Act - South Africa);
- Affording greater protection to children with disabilities, as is required by article 23 of the UN Convention on the Rights of the Child; and
- Making it an offence for a person who has care and control of a child to leave a child unattended and unsupervised either in a motor vehicle, as is the case in New South Wales (S231 Children and Young Persons (Care and Protection) Act 1998).

Appendix C: List of attendees at the OCO's consultative meetings

- In Mauritius:***

S/N	Name	Designation	Organisation
1.	Ms A Paraouty	Legal Researcher	Institute for Judicial and Legal Studies
2.	Ms Deepnarain Caleechurn	Inspector of Police	Mauritius Police Force, Brigade de Mineurs
3.	S Ranee Nundah	Coordinator	Ministry of Gender Equality, Child Development and Family Welfare
4.	Ms Marlène Ladine	Director-Board Member	MACOSS & Chrysalide
5.	Hanaa Keenoo	Research Assistant	Mauritius Research Council
6.	Ms ChitraRuhee	Research Assistant	Mauritius Research Council
7.	Ms Joelle Hannelas	President	Pedostop
8.	Joanne Moutou-Leckning	Senior Assistant DPP	Office of Director of Public Prosecutions
9.	Mr Sabir Kadel	Senior Law Reform Officer	Law Reforms Commission
10.	V Gokool	Principal Officer	RYC Girls
11.	Ms Diksha Beeharry	Legal Adviser	National Human Rights Commission
12.	Mr Hervé Lassemillante	Deputy Chairperson	National Human Rights Commission
13.	Mr Vijay Ramanjooloo	Member	National Human Rights Commission
14.	Mrs Chitra Bhandu	Welfare Officer	Prisons Department
15.	Dr Trisha Boodhoo	Clinical Psychologist	CEDEM
16.	Ms Jacqueline Madelon	Vice President	Mouvement d'Aide à la Maternité
17.	J K Sobhee	CAB Coordinator	PMO (National Development Unit) Citizen's Advice Bureau
18.	C Appaddoo/M F Bolte Noyan	Head Children's Village Bambous	SOS Children's Village
19.	Dr Vineta Poorun	Consultant in Charge Pediatrics	Ministry of Health and Quality of Life
20.	Ms Sandrine Sew	Training and Quality Officer	Lovebridge
21.	Sooraye Gareeboo	Ag. APC	Attorney General's Office
22.	K Davay	State Counsel	Attorney General's Office
23.	Ms Anushka Virahsawmy	Director	Gender Links
24.	Mr K Bhagan	Psychologist	Drop- In Centre; Mauritius Family Planning Welfare Association
25.	Edley Maurer	Manager	Safire

Appendix C: List of attendees at the OCO's consultative meetings

S/N	Name	Designation	Organisation
26.	Mr G. Bucktowansingh	Vice President	Economic Development Board Mauritius
27.	Ms Jackie Forget	President	SENS
28.	Mrs E Pillay	Assistant Director	Min of Education and Human Resource
29.	D Seenauth	SFWPO	Child Development Unit
30.	Parsuramen Armoogum	President	Global Rainbow Foundation
31.	Priya Luckoo	Journalist	La Sentinelle Ltd
32.	Alisonne Sinnapen	Journalist	Top FM
33.	Audrey Harel	Chef d'Édition	L'Express
34.	Mélanie Valère-Cicéron	Journalist	Defimedia
35.	G S Naiko	Journalist	Top FM
36.	Mrs Rita Venkatasawmy	Ombudsperson for Children	Ombudsperson for Children's Office
37.	Mr I A Bawamia	Investigator	Ombudsperson for Children's Office
38.	Mrs Yecha Rhungapen- Veeramootoo	Investigator	Ombudsperson for Children's Office
39.	Mrs Sandhya Johaheer	Investigator	Ombudsperson for Children's Office
40.	Mrs Sharona P Mauree	Investigator	Ombudsperson for Children's Office
41.	Miss Pauline Carmagnole	STM	Ombudsperson for Children's Office
42.	Miss Trisha D Luchoomun	STM	Ombudsperson for Children's Office
43.	Mr Chetan Boodhoo	Intern	Ombudsperson for Children's Office

- ***In Rodrigues:***

S/N	Name	Designation	Organisation
1.	Gaspard Anne Sophie	STM	Commission for Child Development and Ors
2.	Allas Aline	STM	Commission for Child Development and Ors
3.	Casimir M.Prissile	Family Welfare and Protection Officer	Commission for Child Development and Ors
4.	Saalehol M. Antony	CDU	Commission for Child Development and Ors
5.	M.M Carl	FWPO	Commission for Child Development and Ors
6.	Anick Tolbize	Manager and Training Coordinator	RCEA Rodrigues
7.	Labour Virgine	Educational S Worker	RCEA Rodrigues
8.	Colet M. Joseline	Senior Youth officer	Commission for Youth and Sports
9.	JMR Perrine	Principal Prison Officer	Rodrigues Prison
10.	STE Marie Naikene	President	Rodrigues Student Needs Association
11.	Agathe Danielle	Woman Police Constable	Mauritius Police Force
12.	Tolbize Alina	Woman Police Sergeant	Mauritius Police Force
13.	Bernard Marie Kyntia	Woman Police Constable	Mauritius Police Force
14.	Parmasse Marie Antoinette	Woman Police Constable	Mauritius Police Force
15.	Auguste Orlando	Senior School Inspector	Commission for Education
16.	Perrine Marie Fevinette	Educational Psychologist	Commission for Education
17.	Potage Larose Pascaline	Psychologist	REDCO
18.	Sister Benile	Responsible Officer	Foyer M M de la Croix
19.	J Paul C Felicité	Police Constable	Brigade pour la Protection des Mineurs
20.	Gurbah Pratab	Police Constable	Mauritius Police Force
21.	Clair M. Sibiana	Police Constable	Police Family Protection Unit
22.	Etienne M Louisemay	Woman Police	Family Protection Unit (Police)
23.	J Moutou-Leckning	Senior Ass. DPP	Office of the DPP
24.	Fong Him	FWPO	Child Development Unit
25.	Rita Venkatasawmy	Ombudsperson for Children	Ombudsperson for Children's Office
26.	S Johaheer	Investigator	Ombudsperson for Children's Office

Appendix D: List of attendees at the OCO's Sub-committee meetings

Name	Designation	Organisation
Ms A Paraouty	Legal Researcher	Institute for Judicial and Legal Studies
Ms Joelle Hannelas	President	Pedostop
Ms Joanne Moutou-Leckning	Senior Assistant DPP	Office of Director of Public Prosecutions
Mr Sabir Kadel	Senior Law Reform Officer	Law Reforms Commission
Dr Trisha Boodhoo	Clinical Psychologist	CEDEM
Ms Jackie Forget	President	SENS
Mrs Rita Venkatasawmy	Ombudsperson for Children	Ombudsperson for Children's Office
Mr I A Bawamia	Investigator	Ombudsperson for Children's Office
Mrs Yecha Rhungapen-Veeramootoo	Investigator	Ombudsperson for Children's Office
Mrs Sandhya Johaheer	Investigator	Ombudsperson for Children's Office
Mrs Sharona P Mauree	Investigator	Ombudsperson for Children's Office

Appendix E: Brief descriptions of some individual therapies that could be practised at the therapeutic residential mental healthcare facility

All these therapies described below (this list is not exhaustive) can be adapted in child-friendly and creative ways to be used with children and young people of the therapeutic residential mental healthcare facility:

1. **Cognitive Behavioural Therapy (CBT):** CBT works with our thoughts, feelings and behaviours. CBT therapists understand that by changing the way we think and act in the here-and-now, we can affect the way we feel. CBT can also be applied longitudinally to explore the origin of beliefs, rules and assumptions which shape an individual's world-view: this knowledge can then be used to drive change in the present.
2. **Compassion Focused Therapy (CFT):** CFT involves the use of approaches intended to bolster self-compassion. It is an effective treatment for shame and self-criticism.
3. **Eye Movement Desensitization and Reprocessing (EMDR):** EMDR is a therapeutic approach developed by Francine Shapiro. Originally EMDR was used for processing traumatic memories in PTSD, and this is the application for which is supported by most evidence. There is increasing evidence that it can also be applied helpfully in other conditions where intrusive memories are problematic.
4. **Behavioural activation:** It is an effective treatment for overcoming depression by increasing one's level of activity. There is evidence to suggest that the more people do, and the more pleasant activities they get involved in, the better they feel. This treatment will consist of helping patients schedule and undertake activities, work through challenging activities and build their motivation and a sense of mastery in their lives.
5. **Narrative therapy:** This form of therapy places people as experts in their own lives and views problems as separate from individuals. It is a way of helping patients reconstruct the stories of their lives in a respectful and non-blaming manner by acknowledging their difficulties along with emphasising their skills, abilities, beliefs and values. This can support patients to minimise the influence of problems in their lives.

Sources: Psychology Tools (2018). Retrieved 20 February 2018 from www.psychologytools.com/

Appendix F: Overview of different potential negative outcomes of bad housing on children's physical health, mental health, education and opportunities in adulthood (Shelter, 2006)

- **On physical health**

Experience of multiple housing problem increases children's risk of ill-health and disability by up to 25 per cent during childhood and early adulthood. Bad housing is linked to debilitating and even fatal, illnesses and accidents.

1. Children in overcrowded housing are up to 10 times more likely to contract meningitis than children in general. Meningitis can be life threatening. Long-term effects of the disease include deafness, blindness and behavioural problems.
2. There is a direct link between childhood tuberculosis (TB) and overcrowding. TB can lead to serious medical problems and is sometimes fatal.
3. Children living in overcrowded and unfit conditions are more likely to experience respiratory problems such as coughing and asthmatic wheezing. For many children this means losing sleep, restricted physical activity, and missing school.
4. Overcrowded conditions have been linked to slow growth in childhood, which is associated with an increased risk of coronary heart disease in later life.
5. Almost half of all childhood accidents are associated with physical conditions in the home. Families living in properties that are in poor physical condition are more likely to experience a domestic fire.

- **On mental health**

Homeless children are three to four times more likely to have mental health problems than other children. Mental health issues such as anxiety and depression have also been linked to overcrowded and unfit housing.

- **On education**

Bad housing affects children's ability to learn at school and study at home.

1. Homeless children are two to three times more likely to be absent from school than other children due to the disruption caused by moving into and between temporary accommodation.
2. Children in unfit and overcrowded homes miss school more frequently due to illnesses and infections.

3. Overcrowding is linked to delayed cognitive development, and homelessness to delayed development in communication skills.
4. Homeless children are more likely to have behavioural problems such as aggression, hyperactivity and impulsivity, factors that compromise academic achievement and relationships with peers and teachers.

It is unsurprising that homeless children have lower levels of academic achievement that cannot be explained by differences in their levels of ability.

- **On opportunities in adulthood**

The lower educational attainment and health problems associated with bad housing in childhood impact on opportunities in adulthood.

1. Long-term health problems and low educational attainment increase the likelihood of unemployment or working in low-paid jobs.
2. Opportunities for leisure and recreation are undermined by low income and health problems.
3. The behavioural problems associated with bad housing in childhood can manifest themselves in later offending behaviour. In one study, nearly half of young people who had offended had experienced homelessness.

Appendix G: Recommendations made by the Global Breastfeeding Collective (2017)

Led by UNICEF and WHO, the Global Breastfeeding Collective calls for the immediate scaling up of financing and implementation of policies, programs, and interventions to better enable mothers to give their children the strongest start to life. Specifically, the Global Breastfeeding Collective calls on country governments, donors, and development partners to:

1. **Increase funding** to raise breastfeeding rates from birth through two years. At least \$5.7 billion in additional funding is required by 2025 to ensure that 50 percent of the world's children are exclusively breastfed.
2. Fully implement the International Code of Marketing of Breastmilk Substitutes and relevant World Health Assembly resolutions through **strong legal measures that are enforced and independently monitored** by organizations free from conflicts of interest.
3. **Enact paid family leave and workplace breastfeeding policies**, building on the International Labour Organization's maternity protection guidelines as a minimum requirement, including provisions for the informal sector.
4. **Implement the Ten Steps to Successful Breastfeeding¹⁴⁷ in maternity facilities**, including providing breastmilk for sick and vulnerable new-borns.
5. **Improve access to skilled breastfeeding counselling** as part of comprehensive breastfeeding policies and programs in health facilities.
6. **Strengthen links between health facilities and communities**, and encourage community networks that protect, promote, and support breastfeeding.
7. **Strengthen monitoring systems that track the progress** of policies, programs, and funding towards achieving both national and global breastfeeding targets.

¹⁴⁷ **Ten Steps to Successful Breastfeeding:** Every facility providing maternity services and care for new-born infants should:

1. Have a written breastfeeding policy that is routinely communicated to all health care staff.
2. Train all health care staff in skills necessary to implement this policy.
3. Inform all pregnant women about the benefits and management of breastfeeding.
4. Help mothers initiate breastfeeding within half an hour of birth.
5. Show mothers how to breastfeed, and how to maintain lactation even if they should be separated from their infants.
6. Give new-born infants no food or drink other than breast milk, unless medically indicated.
7. Practise rooming-in - that is, allow mothers and infants to remain together - 24 hours a day.
8. Encourage breastfeeding on demand.
9. Give no artificial teats or pacifiers (also called dummies or soothers) to breastfeeding infants.
10. Foster the establishment of breastfeeding support groups and refer mothers to them on discharge from the hospital or clinic.

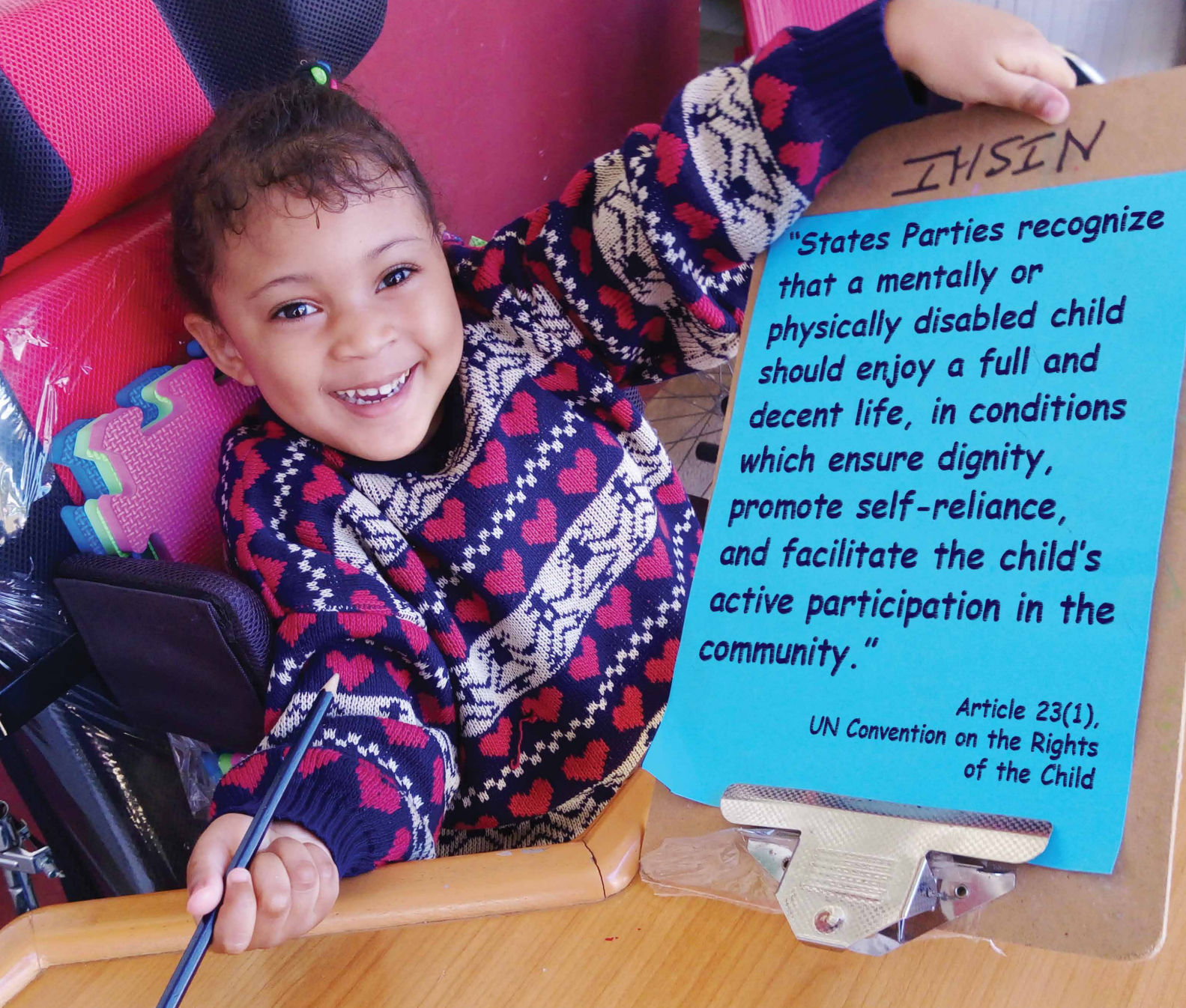
Source: *Protecting, Promoting and Supporting Breastfeeding: The Special Role of Maternity Services*, a joint WHO/UNICEF statement published by the World Health Organization.



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