



Republic of Mauritius



Ombudsperson for Children

Annual Report 2015-2016



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ACRONYMS

ANPO	Association of Night Clubs and Private Clubs Owners
AOMF	Association des Ombudsmans et Médiateurs de la Francophonie
BPM	Brigade pour la Protection des Mineurs
CAB	Citizen Advice Bureau
CDU	Child Development Unit
CP	Commissioner of Police
CPA	Child Protection Act
CPE	Certificate of Primary Education
CRPD	Convention on the Rights of People with Disabilities
CSA	Child Sexual Abuse
CSO	Central Statistical Office
CSR	Corporate Social Responsibility
CYC	Correctional Youth Centre
CYPFA	Children, Young Persons and their Families Act
DCC	Day Care Centre
DPP	Director of Public Prosecutor
ECCEA	Early Childhood Care Education Authority
ECD	Early Childhood Development
EEZ	Exclusive Economic Zone
FGC	Family Group Conference
FSL	Forensic Science Laboratory
ICCPR	International Covenant on Civil and Political Rights
IEC	Information, Education and Communication
IJJO	International Juvenile Justice Observatory
JDL	Juveniles Deprived of their Liberty
JOA	Juvenile Offenders Act
MAIFS	Ministry of Agro Industry and Food Security
MEDCO	Mauritius Educational Development Company Limited
MEHRTESR	Ministry of Education and Human Resources, Tertiary Education and Scientific Research

MES	Mauritius Examination Syndicate
MGECDFW	Ministry of Gender Equality, Child Development and Family Welfare
MGI	Mahatma Gandhi Institute
MITD	Mauritius Institute of Training and Development
MOHQL	Ministry of Health and Quality of Life
MoU	Memorandum of Understanding
MPF	Mauritius Police Force
MPILT	Ministry of Public Infrastructure and Land Transport
MSAW	Mauritius Society for Animal Welfare
MSIEE	Ministry of Social Integration and Economic Empowerment
MSSNSRI	Ministry of Social Security, National Solidarity and Reform Institutions
MTCI	Ministry of Technology, Communication and Innovation
MYS	Ministry of Youth and Sports
NCC	National Children's Council
NGO	Non-Governmental Organization
NHRC	National Human Rights Commission
OC	Ombudsperson for Children
OCA	Ombudsperson for Children Act
OCO	Ombudsperson for Children's Office
OIDC	Outer Islands Development Corporation
PFPU	Police Family Protection Unit
PMO	Prime Minister's Office
PTA	Parents Teachers Association
QEC	Queen Elizabeth College
RCI	Residential Care Institutions
RRA	Rodrigues Regional Assembly
RYC	Rehabilitation Youth Centre
SARD	Sustainable Agriculture and Rural Development
SEN	Special Education Needs
SLO	State Law Office
SMEDA	Small and Medium Enterprises Development Authority
SSS	State Secondary Schools

STU	Small Therapeutic Units
TA	Tourism Authority
UN	United Nations
UNCRC	Convention on the Rights of the Child
UNCRC	United Nations Committee on the Rights of the Child
UNEP	United Nations Environment Programme
UNICEF	United Nations Children's Emergency Fund
UNODC	United Nations on Drugs and Crime



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General Introduction

General Introduction

Upon taking oath as the new Ombudsperson for Children on 9 December 2015 in the presence of the Honourable President of the Republic of Mauritius, I solemnly affirmed 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.”

After the ceremony unfolded, I felt a strong sense of responsibility towards ALL children of my beloved country. The duty of protecting their rights was bestowed on me. I had special thoughts for the children detained at the Rehabilitation Youth Centres (RYCs) and the Correctional Youth Centres (CYCs) as their welfare had always been a matter of great concern for me. I promised myself that I would go out of my way in my newly appointed role to better protect and promote their rights in line with the Convention on the Rights of the child (UNCRC), the Beijing Rules and the Riyadh Guidelines.

My team of investigators and I spared no efforts to better understand the ongoing situation of those children and young people. We made recommendations to promote their rights. At times we even had to ‘burn the candles at both ends’! Much of the present report is devoted to the children living at RYCs and CYCs. Even if they are in conflict with the law, I believe they deserve to lead better lives and access appropriate quality services.

During the first year of my mandate, I also paid particular attention to the situation of children in Agalega and Rodrigues. The rights of the children of Agalega and Rodrigues should be promoted and protected according to the UNCRC and its optional protocols. Unfortunately, I have observed that when Mauritius submits its periodic reports to the UN Committee on the Rights of the Child, very little is mentioned about children of Agalega and Rodrigues.

In the course of my duties, I realised that, although the Ombudsperson for Children's Office (OCO) has been established since 2004, my role and the functions of my office are poorly understood by important stakeholders and the general public. I was compelled to elaborate on the daily investigation process carried out daily by my office and on my role as Ombudsperson for Children in the very first chapter of this report.

The final chapter of this document outlines some of the activities organised by the OCO from July 2015 to July 2016. The proof of the commitment from the OCO's team of investigators lies in the large number of activities promoting children's rights that were organised within such a short timeframe. I deeply thank Ismail Areff BAWAMIA, Yecha RHUNGAPEN-VEERAMOOTOO, Sharona Pillay MAUREE, Sandhya JOHAHEER and S. Yassir Yousouf JEWAN for their dedication and support.

I sincerely hope that the present report will be read by all Mauritian parliamentarians and members of the Rodrigues Regional Assembly. Ultimately, they have the political power to contribute to changes in the lives of vulnerable children and young people. Last but not least, I would emphasise that the rights of children concern ALL ministries and NOT ONLY the Ministry of Gender Equality, Child Development and Family Welfare.



PART I.

Investigation Procedures at the OCO

Introduction

Pursuant to the Ombudsperson for Children Act 2003 (OCA), the Ombudsperson for Children's Office (OCO) has been established as a National Human Rights Institution (NHRI) guided by the Paris Principles. The main purpose of the OCO is 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 overarching mandate of the OCO is to promote rights of the child in Mauritius which includes the following responsibilities, among others:

- investigating on its own or upon complaint by any party on all forms of violation of children's rights;
- monitoring the State's compliance with international treaty obligations; and
- requesting the assistance of any office, agency or bureau in the exercise of its functions.

In order to achieve its mandate, one of the core functions of the OCO is to carry out investigations, as set out in Sections 6 and 7 of the OCA. Since 2016, the OCO has reviewed its procedures in order to improve investigation.

Purpose of an Ombudsperson

The name “Ombudsperson” comes from the Swedish word which can be translated literally as “*an investigator of citizen's complaints*”¹.

In 1947, the International Bar Association, which is the world's leading organisation of international legal practitioners, bar associations and law societies, defined an Ombudsperson as:

“an office provided for by the constitution or by action of the legislature or parliament and headed by an independent high-level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government

¹ The Free Legal Dictionary by Farlex [<http://legal-dictionary.thefreedictionary.com/Ombudsperson>]

agencies, officials and employees or who acts on his own motion, and who has the power to investigate, recommend corrective action, and issue reports.”²

Therefore the Ombudsperson can be alternatively known as:

- an advocate;
- a citizen’s representative; and
- a mediator.

Why an Ombudsperson for Children?

As a National Human Rights Institution, the OCO plays an important role in promoting and protecting the rights of children. Paragraph 5 of the United Nations Convention on the Rights of the Child (UNCRC) Committee on the Rights of the Child General Comment No. 2 (2002) regarding *“The role of independent national human rights institutions in the promotion and protection of the rights of the child”* clearly states the rationale behind the creation of the OCO:

“While adults and children alike need independent NHRIs to protect their human rights, additional justifications exist for ensuring that children’s human rights are given special attention. These include the facts that children’s developmental state makes them particularly vulnerable to human rights violations; their opinions are still rarely taken into account; most children have no vote and cannot play a meaningful role in the political process that determines Governments’ response to human rights; children encounter significant problems in using the judicial system to protect their rights or to seek remedies for violations of their rights; and children’s access to organizations that may protect their rights is generally limited.”

Role and Functions of the Ombudsperson for Children

The OCO has been created by enactment of the Ombudsperson for Children Act (OCA). Accordingly, my role and functions as well as the investigation procedures have been established in the OCA. I therefore work within the parameters of the OCA.

² The website of the International Bar Association [<http://www.ibanet.org>]

I represent and defend the rights of the children:

- in Mauritius, Rodrigues and Agalega;
- of Mauritian origin who are abroad; and
- of any other nationalities who are in the Republic of Mauritius.

I may open an investigation on my own motion whenever I feel that there is a violation of the rights of the child, or that there exists the likelihood of one.

One of my main duties is to protect the rights of children by ensuring that public bodies, private authorities, individuals and association of individuals take into full consideration the rights, needs and interests of children. In line with this, I have the power to:

- make recommendations in order to remedy or to prevent any act of violation of the rights of the child;
- propose administrative or legislative reforms which can improve conditions of children;
- act as an impartial mediator between two parties, providing a less “threatening” type of dispute resolution. I help create solutions to problems that arise between the two parties; and
- investigate 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.

Chapter 1:

From Soft Power to Smart Power



Chapter 1: From Soft Power to Smart Power

As an Ombudsperson for Children, I act as a guardian of the rights of children and I have the duty to promote compliance with the principles of the UN Convention for the Rights of the Child (UNCRC). Upon receiving complaints or on my own motion, I investigate maladministration by public bodies wherever the rights of children may have been violated. However, my mandate is far reaching as I am independent and I am not bound by the complaints received. As per the OCA, I have the power to initiate an own motion investigation and refuse to pursue complaints made by the public when there is no violation of the rights of the child

1.1 Soft Power

One of the specific features of the Ombudsperson for Children's Office that serves as a distinction from the court and other control mechanisms is its non-coercive soft powers with no power of sanction. My recommendations are neither binding nor enforceable but the use of persuasion and moral authority encourages the public or private authorities or the parties concerned, to review their position or decision on issues relating to child rights. In certain cases, especially regarding individual complaints, the success of the case depends on the willingness of the party found at fault to comply with my suggestions or recommendations.

As pointed out by Professor Linda Reif, author of *The Ombudsman, Good Governance and the International Human Rights System*, "... ombudsman effectiveness does not always follow automatically from having stronger enforcement powers. [...] the non-coercive soft powers of an ombudsman can constitute strength and one source of its effectiveness, connected with other factors such as the character and authority of the ombudsman and the government's positive support."³

³ L.C.Reif, *The Ombudsman, Good Governance and the International Human Rights System*, Leiden: Martinus Nijhoff Publishers, 2004

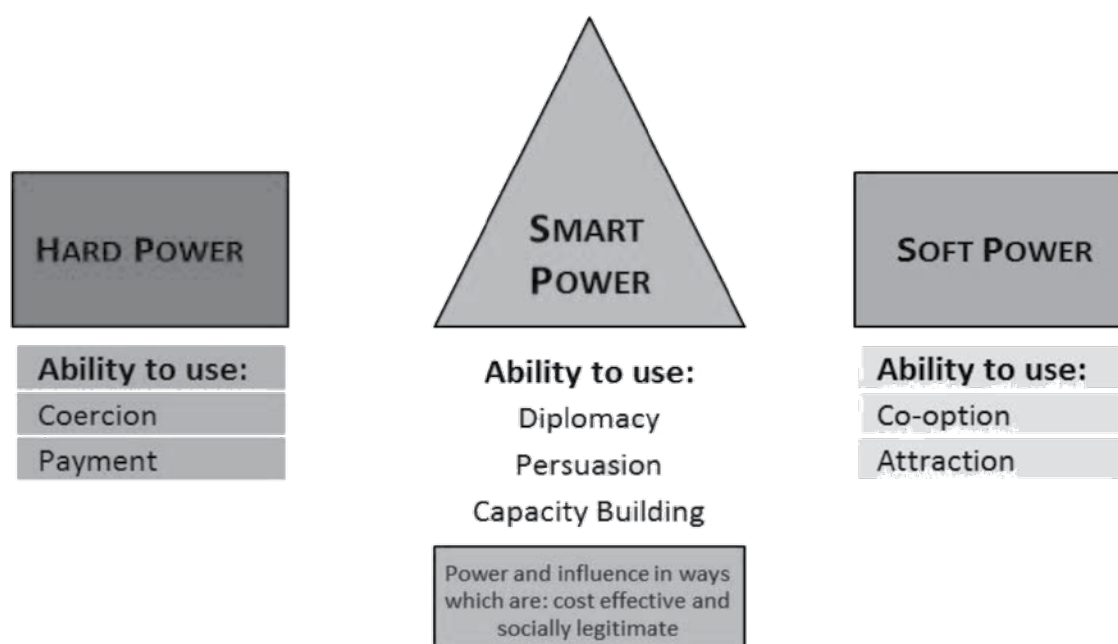
1.2 Smart Power

The effectiveness of my investigations lies in the fact that I seek to identify systemic issues and root causes of the cases involving child rights violations. The OCO thus acts as a catalyst for change to ascertain that the rights of the child are being respected by all, with the use of “smart power” and proactive engagement.

The term “smart power” was coined by Joseph Nye, a political scientist from Harvard University (See Figure 1). The concept of “smart power” was originally applied to political contexts yet it can also be extended to the work of the OCO. Indeed smart power involves:

“the strategic use of diplomacy, persuasion, capacity building, and the projection of power and influence in ways that are cost-effective and have political and social legitimacy.”⁴

Figure 1: Joseph Nye’s three different types of power



Source: John S Barkat, “Blueprint for Success: Designing a Proactive Organizational Ombudsman Program”, *Journal of the International Ombudsman Association*, volume 8, number 1, 2015, p. 42.

⁴ Chester A. Crocker 2006, *Leashing the Dogs of War: Conflict Management in a Divided World*. US Institute of Peace Press, p. 13.

According to Joseph Nye, “hard power” is when force, coercion or violence is being used to achieve something. It is essentially the power to pressure, threaten or leverage. As defined above, “soft power” is neither about force nor coercion; it is about the power to change things by attraction, through persuasion, communication and non-coercion.

Nye refers to “smart power” as neither “hard power” nor “soft power” but as a “*skilful combination of both*”.⁵ In other words, “smart power” combines skills from “soft power”, that is, vision, emotional intelligence, and communication with “hard power” that is, the ability to use organisational capacity and political competence: “*Smart power uses elements of both hard and soft power as contextually and situationally appropriate.*”⁶

1.2.1 How does the Ombudsperson for Children use Smart Power?

One of my main roles is to ensure that the rights of children are respected and are given due consideration by all. In order to achieve this, I not only have to investigate into individual complaints but also to take stock of the situation of children in the Republic of Mauritius. Regarding individual complaints, I have to look into both sides of disputes and help to find solutions which are acceptable to all parties.

As for the situation of children, I have to take such steps as I may deem necessary to ensure that children are treated “*fairly, properly and adequately*”.⁷ It is also my duty to urge public bodies, private authorities, individuals and associations dealing with children to adopt fair and good practices.

When investigating into a case or into the situation of children in general, I identify systematic root factors. I am also in a privileged position to draw attention to these issues and to ensure that they are directed to the appropriate decision-making bodies for due consideration and action. The OC is in a unique position of power as she can gain access to any information concerning a child, enter any premises where a child is

⁵ [<http://etheses.lse.ac.uk/220/1>]

⁶ John S Barkat, “Blueprint for Success: Designing a Proactive Organizational Ombudsman Program”, *Journal of the International Ombudsman Association*, volume 8, number 1, 2015, p. 42.

⁷ Section 6(d) of the Ombudsperson for Children’s Act 2003.

present, either temporarily or permanently; a child may be in employment; there is reasonable ground to believe that the moral and physical safety of a child may be at stake, then the OC has the power to intervene and access the premises to see the child. The OC's access to information is unhindered, as set out in Section 7 (2) (a) of the OCA: the OC may *“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.”* Authorities have to comply with requests for information.

Even if the OCO has no power of sanction, the OCA clearly states that the OC has the power and one of the main function of the OC, is to advise and make proposals to the Minister of Gender Equality Child Development and Family Welfare on all matters concerning children. Section 6 (c) and (e) state that the OC has to “advise public bodies and other institutions responsible for providing care and other services to children on the protection of the rights of children” and “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”.

As set out in Section 11 of the OCA, the OC has to submit an annual report on its activities to the President of the Republic of Mauritius and “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.” The fact that the annual reports of the OCO and special reports are published and remitted to the Parliament, serve as an incentive for public bodies to take up recommendations.

In these processes mentioned above, I also provide functional and practical feedback either to Ministers or to public or private bodies so that possible remedies and reforms are considered and that issues regarding children are considered fairly using good practices.

The “smart power” of the OC is especially appropriate in the exploration of different avenues to ensure that the rights of children are being respected. It is also about how the OC's recommendations bring about systematic change.

The use of the media by the OC also acts as a pressure tool. The presentation I made to the press and relevant stakeholders on 21 April 2016 regarding certain practices which need to be improved or changed at the Rehabilitation Youth Centres (see Part II) is a perfect example. This shows the OC's challenging role as a catalyst for change using "smart power" and proactive engagement.

Chapter 2: *Guiding Principles*



Chapter 2: Guiding Principles

The OC receives complaints, summons witnesses, and has the duty to ensure that the rights and best interests of children are promoted and protected in compliance with international human rights conventions. In order to achieve this and with a view to improving investigation, the OCO has reviewed its guiding principles, which are listed hereunder.

2.1 Jurisdiction

The UNCRC Committee on the Rights of the Child General Comment No. 2 (2002) emphasizes “*the role of independent national human rights institutions in the promotion and protection of the rights of the child*” and provides that these independent national human rights institutions should “*be constitutionally entrenched and must at least be **legislatively mandated***”. Indeed the OC has a clear mandate and powers as depicted in the OCA. Her decisions and actions are within the parameters of the OCA.

2.2 Independence

The General Comment No. 2 (2002) of the Committee on the Rights of the Child highlights the fact that an Ombudsperson for Children’s Office should be able “*independently and effectively, to monitor, promote and protect children’s rights*”. The OC does not receive any directive from any public or private authority which would compromise the OCO’s independence. The OCO performs its functions independently from any public authority.

2.3 Best Interests of the Child

Article 3 of the UNCRC requires member states to observe the “*best interests of the child as a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies*”. Being the primary promoter of the principles and rights enshrined

in the UNCRC, my interventions are always motivated by the best interests of the child. Being an advocate for children's rights, I have a mandate to protect the best interests of children in all circumstances.

2.4 Impartiality and Fairness

The person designated as an OC has to be someone of a neutral personality and does not take the side of any party in a conflict. I receive and review each complaint in an objective and fair manner, free from bias, and treat all parties without favour or prejudice.

2.5 Confidentiality

The OC has the duty to keep confidential any information related to a complaint or investigation. The OC does not disclose information about individual cases or visits and cannot be compelled to testify about issues which have been brought to her attention. Confidentiality is very important to create trust in the OCO mainly because people or government officials who complain to the OC and who respond to the OC's investigations may fear reprisals. Therefore, protecting the identities and information which have been communicated to me enables me to effectively and efficiently advocate for the rights of children.

2.6 Credibility

Credibility is closely related to independence. The OCO gains credibility by following a credible review process. A credible review process depends on various factors, in particular the legal provisions in the OCA whereby the OC can investigate any type of complaint related to the violation of the rights of the child. The OC has the power to convene persons to the OCO during an investigation and to compel stakeholders to submit records. The credibility of the OCO also lies in the fact that complainants can envision the OCO as a real complaint resolution mechanism and not just as another department.

2.7 Transparency

The process of how complaints are to be made, received and acted upon is well defined in the OCA. Transparency is essential to accountability. As per the OCA, the OC has to submit a report every year on the OCO's activities to the President of the Republic of Mauritius.

2.8 Accessibility and Inclusion

The OCO provides a free and open complaint service which is available to all who need it. Complaints can be made by and on behalf of children. In order to make a complaint, any person can either:

- come to the office;
- call the office on 454 3010/20 and speak with an investigator or with the Ombudsperson for Children;
- download a complaint sheet from the OCO's website, fill it in and send it to the OCO;
- write a letter to the OCO about the complaint; or
- send an email to the OCO.

2.9 Awareness

One of the recommended activities of National Human Rights Institutions (NHRIs) as listed in the UNCRC Committee on the Rights of the Child General Comment No. 2 (2002) is to:

“promote public understanding and awareness of the importance of children's rights and, for this purpose, work closely with the media and undertake or sponsor research and educational activities in the field”.

The OC, in order to make the public aware of her role, works in close collaboration with the media. The OCO has carried out several awareness campaigns on the radio and television in the Republic of Mauritius, including Rodrigues and Agalega. These

campaigns highlight the role and functions of the OCO and inform the public about children's rights.



Chapter 3:

Investigation Step-by-step



Chapter 3: Investigation at the OCO

Paragraph 7 of UNCRC Committee on the Rights of the Child General Comment No. 2 (2002) states that a National Human Rights Institution (NHRI), whatever its form, should “*be able, independently and effectively, to monitor, promote and protect children’s rights*”. The power of the OC as a NHRI lies in her ability to investigate complaints of wrongdoing or about a matter relating to the rights of a child, and then notify the public or the relevant authorities of the findings.

The OC may initiate an investigation upon complaint made to her or on her own motion when the rights of children are not being respected. As set out in Section 6 and Section 7 of the OCA, the different instances where the OC may start an investigation, are:

- when she considers that there is, has been or is likely to be, a violation of the rights of a child;
- when there is any suspected or reported case of child labour; and
- when a complaint has been lodged by a child or any other person in relation to the rights of any child.

3.1 What is Investigation?

Investigation can be defined as the process of examining an issue to uncover facts, information or evidence, in order to discover the truth. It is a formal inquiry to try to find out all the possible details about an issue to be able to learn how it happened, who or what caused it and finally to come up with a conclusion.⁸

⁸ MacMillan Dictionary[<http://www.macmillandictionary.com/dictionary/british/investigation>]

3.2 The Work of the Investigators

There are four investigators who work at the OCO under the guidance of the OC. They assist me in the performance of the following duties:

1. Investigating:
 - i. into cases where there has been, or is likely to be a violation of the rights of a child;
 - ii. into cases related to the situation of children in family, in school and in any other institution, including private or public bodies, as well as the cases of abandoned children or street children;
 - iii. any suspected or reported case of child labour; and
 - iv. into complaints made by a child or any other person, in relation to the rights of any child.
2. Ensuring follow-up:
 - i. on all issues pertaining to child abuse;
 - ii. regarding children in shelters/places of safety and assist in the formulation of norms and standards for these institutions.
3. Preparing annual reports and any other reports on special issues.
4. Undertaking research in the field of child rights.
5. Establishing contacts and working in collaboration with government institutions and non-governmental organisations engaged in the promotion of children's rights.
6. Organising and carrying out :
 - i. sensitisation campaigns on the Convention on the Rights of the Child and related issues;
 - ii. workshops for children using child-friendly and participatory methodologies; and

- iii. workshops for teachers, headmasters and rectors, social workers and other professionals working with children.
- 7. Preparing IEC materials – booklets, leaflets, posters etcetera.
- 8. Monitoring and evaluating the implementation by the authorities of the Convention on the Rights of the Child and other international tools through visits and reports, amongst others.

3.3 The Complaint Handling Process

The OCO has an independent and impartial complaint handling service. I seek to resolve disputes that two or more participating parties may have been previously unable to resolve. I also investigate whenever there is any suspicion that the rights of children may not have been respected. Findings and recommendations about individual complaints are issued to the party concerned while findings and recommendations about systemic issues, for example conditions of living in RYC, are made public.

3.3.1 How to Make a Complaint

Sections 6 and 7 of the OCA set out the functions and the investigation procedures to be followed by the OCO. Anyone, including children or any adult on their behalf, can submit a complaint to the OCO provided the complaint relates to a violation of the rights of the child. Sometimes people call the office or come to the office only to get an advice and information on how to proceed. There are different ways complaints are received at the OCO:

- anyone may come in person at the office;
- people may call the office on 4543010/20;
- a downloadable complaint sheet is available on the OCO's website where complainants can fill it in and send it to the OCO; and
- letters and emails are sent to the OCO.

3.3.2 Non Admissible Complaints

It shall be noted that I have a specific mandate and not all cases are investigated into by the OCO. The OCO investigates only into cases where there is, or is likely to be a violation of the rights of a child. As defined by the UNCRC, a child is a person below the age of 18. Therefore I do not investigate complaints relating to persons who are above the age of 18. It also has to be noted that, according to Section 7(4) of the OCA, the Ombudsperson for Children cannot 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”*.

3.3.3 Who Can Make a Complaint?

Anyone can make a complaint to the OCO. Any child can make a complaint directly to the OCO or any adult can submit a complaint on the behalf of a child to the Office. For example, I received letters from students complaining how they were being victims of harassment or corporal punishment. Some complaints are made by teachers against parents when they suspect that a child is at risk of being abused or being abused.

In all cases I work in close collaboration with all institutions, governmental departments and non-governmental organisations which work for the protection, welfare and development of children.

3.3.4 Handling a Complaint at the OCO

Three steps are followed to investigate into a complaint: the screening of the complaint, opening the case and the investigation.

Case screening (assessing admissibility)

When a complaint is made at the OCO, the investigators and I have to understand and analyse the information presented by the complainant in order to assess whether the complaint falls within the mandate of the OCO. The complaint may not be admissible if the complainant did not contact the relevant authorities first. For example if a child is being harassed by a teacher, the complainant has to make a complaint to the Ministry of

Education, Human Resources, Tertiary Education and Scientific Research first. The complainant is advised that if nothing has been done in 2 weeks, he/she has to make a complaint to the OCO.

In situations where a complaint is about a child who has been victim of sexual abuse or neglect, the investigator immediately contacts the CDU offices or the hotline 113 to refer the case, as the CDU is mandated to cater for these cases. At the level of the OCO, investigators carry out a follow-up to ensure that child rights have been respected.

There are also many situations when people come to the office or call the office and do not wish to make a complaint. However, they only seek advice on how to proceed when they are in particular situations, for example, who to contact if a child is neglected or what to do if a partner is not respecting a court order or where to go if child has suicidal tendencies, amongst others.

All letters are taken in consideration, whether they are anonymous or not. In the case of anonymous complaints received by post, such letters do not necessarily contain sufficient information to proceed with an investigation. If the sender is not anonymous, the investigator in charge of the case may convene him to the Office in order to get more in-depth information on the complaint.

Opening the Case

If the complaint is admissible, the investigator proceeds to open a case. If the complainant calls in person or talks to the investigator on the phone, the investigator fills out a complaint sheet with the relevant information.

Investigation

There are various ways to proceed with an investigation:

- Visits are effected so as to get a true picture of what is happening;
- Mediation is carried out, the main purpose of which being that the two parties achieve mutual understanding and reach an agreement to solve the issue informally;

- As per Section 7(2)(c) of the OCA, I may “*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*”;
- Case is referred to relevant public bodies and follow-up is ensured by the investigators.

In-depth Investigation on my own motion

One of the main functions of the OC is to advocate strongly for the rights of children. As per Section 6 of the OCA, I have to ensure that:

- all children “*under the care of, or supervision of*” a public body are treated fairly, properly and adequately;
- the legal rights of children in care are protected and the placement facilities promote the safety of children; and
- all institutions including private and public bodies, are complying with the UNCRC.

In order to achieve the above, I can initiate and conduct in-depth investigations on violation of children’s rights and can make recommendations to different authorities for the protection of children in general. Investigation on child rights violation is undertaken at the OCO with the aim of changing laws and practices to ensure that they are consistent with international laws and that they are complying with treaty obligations. An example of an in-depth investigation is the investigation on Rehabilitation Youth Centres and Correctional Youth Centres (see Part II).

3.4 Statistics of Cases

A monthly average of 30 letters and 50 calls are received regarding new complaints. Investigators and I attend to an average of 40 new complainants who call at the office on a monthly basis. For the period **from June 2015 to July 2016**, the OCO opened and dealt with 241 individual cases. Tables 1 and 2 below show the number of cases which have been investigated into and closed; the complainants and the types of complaints.

Table 1: Cases handled by OCO from June 2015 to July 2016

	Number	Percentage
Cases Closed	194	80.5
Cases in Progress	9	3.7
Cases Awaiting Report	38	15.8
Total	241	100

For this reporting year, the OCO investigated into 241 complaints out of which 194 cases were completed. This shows that 80.5 % of the cases have been disposed of. The OCO is awaiting report mainly from the Child Development Unit for 15.8 % of its cases.

As shown in Table 2 below, the majority of complainants (80 out of a total of 241 cases) were mothers and fathers (40). Complaints from grandparents (18) were mostly about parents abandoning or neglecting their child. The category “Education professionals” refers to school rectors, teachers or educational psychologists. The category “Ministries/Departments” refers to officers working at the Child Development Unit, the Ministry of Social Security, among others. The OCO also investigated into 28 anonymous complaints.

Table 2: Status of complainants

Complainant	Number
Mother	80
Father	40
Anonymous	28
Grandparents	18
Education professionals	13
Ministries/departments	12
Media	12
Relatives/friends	10
Child	9
Medical social workers	7
NGO	6
Neighbours	4
Parent Teachers Association	2
Total	241

The main types of complaints investigated into during this reporting year were about school problems regarding admission of children, transfer of children because parents are separated, parents wanting to transfer their child because of the lack of transport facilities or the deplorable infrastructure of schools. Twenty-nine complaints were about corporal punishment or humiliating punishment perpetrated by either a teacher or the rector/head teacher.

Table 3: Types of complaints

Types of complaints	Number of cases
School Problems/Transfer/Admission/Transport/Infrastructure	32
Corporal Punishment/Harassment/Verbal Abuse by Personnel at School	29
Child Neglect/Abandonment/Ill treatment	30
Family Conflict/Custody/Right of Access	23
Violence/ Bullying/ Assault at School	23
Institutional Abuse and Neglect/Police brutality	18
Sexual Abuse and Harassment	14
Behavioural Problems	14
Poverty- lack of means/Social Aid/Lack of school materials	12
Physical Violence in family/Domestic Violence	9
Children with Disabilities/Social Aid	7
School Absenteeism/Drop out	6
Suicidal Tendencies	5
Prostitution/Child Trafficking	4
Child Abduction	4
Drug Abuse	4
Sale of cigarettes and alcoholic drinks to minors	3
Adoption	2
Tardy Declaration	2
TOTAL	241

Chapter 4:
Sample of Cases
Investigated into by the OCO

Chapter 4: Sample of Cases Investigated into by the OCO

4.1 Case of Access of Minors to Night Clubs

A fatal car accident involving minors returning from a night club triggered an investigation regarding violations of children rights. My investigation led to the preparation of new regulations and the enforcement of new measures.

4.1.1 Description of Event that Triggered the Investigation

On 21 December 2015, six young adults died in a serious car accident. Among the badly injured, there were two minors aged 16 and 17 respectively. They were all returning from a White Afternoon Party which had taken place in a nightclub in Flic-en-Flac.

This tragedy put into light the serious issue of minors getting access to nightclubs or private clubs where they can buy alcoholic drinks. In the aftermath of the accident, I received several complaints regarding access of minors to night clubs.

4.1.2 Identification of the Violations of Rights

Following this incident, several press articles were released on White Afternoon, Black Afternoon and Foam Parties where minors as young as 14 years old are able to attend. These parties start around 1 o'clock in the afternoon and end after midnight. The OCO has identified two major issues:

- Access of minors to nightclubs, private club and pubs
- Alcoholic drinks sold to the minors on the premises

Both are considered offences according to the Child Protection Act 1994 and the Guidelines for Night Clubs. When minors attend parties in nightclubs where they can easily get alcoholic drinks, their right to a safe environment is not being respected.

4.1.3 Justification of the Investigation

I decided to open an investigation on the access of minors to nightclubs, based on the powers conferred to me by law. According to Section 5(a) of the Ombudsperson for Children Act (OCA) 2003, the OC *“shall ensure that the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and associations of individuals”*.

Under section 5(c) of the OCA, the Ombudsperson for Children has the duty to promote compliance with the United Nations Convention on the Rights of the Child. Section 6(f) of the OCA gives me the prerogative to initiate an investigation whenever I *“consider that there is, has been or is likely to be, a violation of the rights of a child”*.

4.1.4 Legal Framework

In Mauritius the main laws that govern the administration of nightclubs are the Places of Public Entertainment Act 1941, the Tourism Authority Act 2006 and the Guidelines for Nightclubs. The Guidelines for Nightclubs established by the Tourism Authority (TA) explicitly mention in paragraph 3.15 (ii) that *“no minor shall be authorised access to the nightclubs at all times”*. A “nightclub” means *“a place of entertainment providing music and space for dancing on its premises which is open to the public and serves refreshments including alcoholic drinks and optionally caters for food”*.

Under the Child Protection Act 1994, section 16.1(b), any person, including parents, commits an offence when he/she *“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”*.

It should be highlighted that in this situation, children are at risk and no less than 8 articles of the UN Convention on the Rights of the Child, ratified by Mauritius in 1990, are likely to be violated, namely:

- ❖ Article 3 – Best interests of the child
- ❖ Article 4 – Protection of rights
- ❖ Article 6 – Survival and development

- ❖ Article 24 – Health and health services
- ❖ Article 33 – Drug abuse
- ❖ Article 34 – Sexual exploitation
- ❖ Article 35 – Abduction, sale and trafficking
- ❖ Article 36 – Other forms of exploitation

4.1.5 Actions Taken

In the course of the investigation, I sent official correspondence to relevant authorities, met several stakeholders and advocated in the media for regularisation of the situation.

- In the immediate aftermath of the accident, I contacted the Chairperson of the Tourism Authority by phone to discuss the urgency of the situation.
- Thereafter I sent a letter to the Chairperson of the Tourism Authority recommending that it should be made compulsory for all clients to present their National Identity Cards before allowing them access to the premises. It should be clearly indicated at the entrance that minors are not allowed.
- I convened the President and several members of the Association of Night Clubs and Private Clubs Owners (ANPO) to my office.
- I had a meeting with members of ANPO at Paradox club, which is the official seat of the association.
- I had a meeting with the then Director of the Tourism Authority.
- I made a number of declarations to the Press and media advocating amendments in the law.

4.1.6 Outcome

The actions taken had very positive outcomes. During the meeting I had with ANPO, the members highlighted the fact that the guidelines for nightclubs prohibit access of nightclubs to minors but do not specify how minors are to be distinguished from adults and what measures they should take to prevent minors from accessing nightclubs.

The president of ANPO declared that he is favour of the verification of the ID cards at the entrance of night clubs. He also expressed the wish that legislations be reviewed.

I have also been informed by the then Director of the Tourism Authority in a letter that the appropriate regulations prohibiting access of minors to nightclubs have been prepared by the authority and is being examined by the State Law Office. In the meantime, the Tourism Authority has imposed the following conditions to the licence on nightclubs:

1. A Licensee shall request every person to present his/her National Identity Card to be allowed access to the nightclub.
2. A Licensee shall affix a notice at the entrance of his/her premises indicating that *“no minor are allowed in the nightclub, even if accompanied by their parents or legal guardians.”*

4.2 Case of Mediation Services Provided to Solve a Family Dispute

Mr X alleged that his ex-wife Mrs Y refused him access to his son despite being ordained a “*droit de visite*” by the Magistrate of the Supreme Court. An enquiry was opened with respect to the child’s right to visit his father.

4.2.1 Description of Event that Triggered the Investigation

On 3 May 2016, Mr X phoned at the office to complain that his ex-wife, Mrs Y, who has custody of minor (9 years), did not allow him to meet his son despite the fact that the Magistrate of the Supreme Court granted him a “*droit de visite*” by. In doing so, she has violated not only the court order but also the child’s right to see his father.

4.2.2 Identification of the Violation of Rights

According to Article 9 of the UNCRC, children whose parents do not live together, have the right to stay in contact with both parents, unless this might harm the child. Parental separation often leaves children struggling emotionally. Because of the stress caused to them by the situation, children may eventually become anxious or distressed before and after staying with the other parent.⁹

Section 6(f) of the OCA grants me the prerogative to initiate an investigation whenever I “*consider that there is, has been or is likely to be, a violation of the rights of a child*”. In this case, the child’s right to visit his father had been denied by his mother. In view of the 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(3a) of the OCA. Mediation is the attempt to help parties in a disagreement to hear one another, to minimise the harm that can result from disagreement (e.g. hostility or “demonising” the other party) in order to maximize

⁹ Brochure “Children and Separation” published by An Australian Government Initiative [<http://www.familyrelationships.gov.au/BrochuresandPublications/Pages/ChildrenAndSeparationBooklet.aspx>]

the area of agreement and to find a way of preventing the areas of disagreement from interfering with the process of seeking a compromise or mutually agreed outcome.¹⁰

4.2.3 UNCRC Framework

In such situation, if issues are not tackled diligently, 4 articles of the UNCRC are likely to be violated, namely:

- **Article 3: Best interests of the child.** All actions concerning the child shall take full account of his or her best interests. The States shall provide the child with adequate care when parents or other person charged with this responsibility, fail to do so.
- **Article 9: Separation from parents.** The child has a right to live with his or her parents unless this is not in the child's best interest. The child has the right to maintain contact with both parents if separated from one or both
- **Article 12: The child's opinion.** Children have the right to express their opinions freely, and have their opinions taken into account in matters that affect them.
- **Article 18: Parental responsibilities.** Parents have joint responsibility for raising the child, and the State shall support them in this.

4.2.4 Actions Taken

- I convened Mrs Y to my office to obtain her version on the matter. The latter stated that Mr X himself did not come to fetch his son during his visiting time, failed to provide full alimony to his son and created a ruckus simply to provoke her.
- I carried out mediation between both parties, i.e. Mr X and Mrs Y and also listened to the statement of the child. The latter stated that he did not want to

¹⁰ Source: Wikipedia [<https://en.wikipedia.org/wiki/Mediation>]

visit his father as the latter was irresponsible and never shared quality time with him. Seeing Mr X being quite aggressive in his stance, I as the mediator worked on the parties separately, helping them to focus on the best interest of their son.

- I requested:
 - i. Mrs Y to abide by the court order and in case the matter is not settled, to apply for a variation order at the Supreme Court.
 - ii. Mr X to spend quality time with his son and to provide to the OCO the receipt of alimony paid for his son for the last 6 months.

4.2.5 Outcome

The investigator in charge of the case called Mrs Y for a follow up. She stated that the father had not come to meet his son. As for the child, he is faring well and doing fine at school and according to our information the child has still not expressed any desire to meet his father.

4.3 Case of Two Pupils Causing Disturbance at a Primary School

I received a complaint regarding two pupils with special needs who were allegedly causing disturbance in a primary school. Despite the intervention of various institutions, the situation had not improved.

4.3.1 Description of Event that Triggered the Investigation

I received a correspondence from the president of the PTA of a school informing that two students, namely X (psychiatric patient) and Y (epileptic patient) were creating pandemonium in school: they often misbehaved; hit and threatened pupils and teachers; walked in and out of the classrooms; disrupted the harmony of the school; and even putting the security of pupils at stake. Despite the intervention of the Ministry of Education and Human Resources, Tertiary Education and Scientific Research (MEHRTESR), the Child Development Unit (CDU) and Brigade pour la Protection des Mineurs (BPM), the situation had not improved. He suggested that the two children be placed in a specialised institution adapted to their needs.

4.3.2 Identification of the Violation of Rights

There are several ways in analysing this situation which show that the rights of the children may be undermined:

1. When minors X and Y were aggressive towards other students in schools, the security and well-being of the two children and all the other students were at stake. The school management agreed that it is their responsibility to ensure full security of the students. In this case, the management stated that the situation had gone beyond control.
2. Minors X and Y come from very poor families and are undergoing treatment at the hospital. The teachers stated that they could not managed the two children's behaviour and they felt that the children's right to education was being jeopardised.

3. Despite the intervention of the Ministry of Education and Human Resources, Tertiary Education and Scientific Research (MEHRTER) and Ministry of Gender Equality, Child Development and Family Welfare (MGECDFW) in this matter, no concrete actions had been taken; the welfare of minors X and Y, as well as of the rest of the children was still at stake.

4.3.3 Justification of the Investigation

I initiated an investigation in relation to the administrative actions, or inactions, of the MEHRTER that may have had an adverse effect on the children concerned and all the other students. The case was known to the MEHRTER since 2014, yet no concrete action had been taken and in 2016, the situation is still prevailing.

4.3.4 UNCRC Framework

In this case, no less than 7 articles of the UNCRC are likely to be violated, namely:

- **Article 2: Non-discrimination:** *“States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.”*
- **Article 3: Best interests of the child:** *“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...”*
- **Article 6: Optimal development:** *“States Parties shall ensure to the maximum extent possible the survival and development of the child.”*
- **Article 12: The child’s opinion:** *“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...”*

- **Article 23** is specifically concerned with disabled children, in recognition of their vulnerability to segregation and discrimination: *“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...”*
- **Article 28: The child’s right to education:** *“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.”*
- **Article 29: Education should develop each child’s personality and talents to the full.** *“States Parties agree that the education of the child shall be directed to the development of the child’s personality, talents and mental and physical abilities to their fullest potential.”*

4.3.5 Actions Taken

- An investigator and I carried out a field visit at school and met with the headmistress, president of the PTA, the educational staff and a few parents and noted down their complaints. I also met with child Y and his teacher in his classroom. Y was seen going in and out of the classroom. The teacher described him as being impulsive and hyperactive. Unfortunately, child X was absent at the time of visit.
- The investigator sent a letter to the MEHRTESR requesting a report on actions taken regarding this case.
- The investigator met Y’s mother at her place and learnt the following: Y’s mother has six children and the family lived in very poor condition; the eldest son had a physical handicap; Y was epileptic, was difficult to manage even at home and his medical certificate had been submitted to the MSSNSRI. Y’s mother requested that his son be admitted to a special school that would better

cater for his needs. Unfortunately, despite several attempts the investigator could not meet the other child X's mother as she was in hospital.

- I raised the issue with the Minister of MEHRTESR who took immediate action and a case conference was called.
- A case conference was organised at the seat of the school so that the best course of action may be taken for the two minors. An investigator and I attended the case conference. Several representatives from the MEHRTESR attended the meeting: the inspector, the head of National Education Counselling Services, a Senior Educational Psychologist, an Educational Social Worker, a Parent-Mediator of the SEN unit, a representative of CDU, the headmistress and the president of the PTA.

4.3.6 Outcome

From the case conference, it was decided that an integrated unit with specialised educational program for the two children will be created. To set up the integrated unit, the MEHRTESR will liaise with a NGO and will provide 2 SEN teachers to attend to the children. The CDU will take over the child mentoring program and the Parent-Mediator shall work in close collaboration with parents and school teachers. Follow-up is being ensured.

4.4 Case of Bullying in a Private Secondary School

A child refused to attend school as she was bullied by two classmates. The mother alleged that she reported the case to the Rector but no action has been taken. The Ombudsperson for Children opened an investigation.

4.4.1 Nature of the Complaint

A lady and her 15-year old daughter, a Form III pupil in a private secondary school, complained that the child was being bullied by two classmates. This has been going on since the child was in Form I. The mother declared that she had reported the problem to the Rector but no action had been taken at school level. The child told the investigator “*sak fois banne la gagne ner, zotte tappe moi*”.

The mother informed me that the child was traumatised and refused to attend school as she was afraid to be bullied again.

4.4.2 Identification of the Violation of Rights

I identified three major issues in the case whereby the rights of the child were being violated:

- the child was not protected against violent acts at school;
- the child was regularly absent from school; and
- the child was undergoing psychological trauma.

All three identified issues had a negative impact on the child’s rights to education.

4.4.3 UNCRC Framework

Article 19 of the UNCRC stipulates that children must be protected from all forms of violence, abuse, neglect, maltreatment or exploitation. In its General Comments No.13 (2011), the UNCRC Committee on the Rights of the Child, included physical bully and hazing by other children in its definition of physical violence.

In our legislation, bullying would fall under “harm” which is defined as *“physical, sexual, psychological, emotional or moral injury, neglect, ill-treatment, improvement of health or development”* in the Child Protection Act.

In the Student Behaviour Policy of the MEHRTESR published in January 2016, it is stipulated that *“bullying should not be tolerated in any of its forms and should be considered as being a very serious offence to be dealt with accordingly and with all required severity”*. The Student Behaviour Policy also mentions that support should be provided to the victims in priority. The school should also consider productive ways of working with bullies in order to make them change their aggressive behaviours.

The investigator responsible for the case contacted the rector of the school to get his views on the incidents and to request him to provide support to the child. A letter was sent to the PSSA to apprise them of the problem and to request them to take the appropriate action.

4.4.4 Outcome

The actions taken led positive results. The mother and the child were called at school. The deputy rector and the discipline master gave a verbal report to the mother reassuring her on the child’s safety on the school premises. The parents of the two bullies were called at school and in their presence a written warning was issued to their two children. The parents were also informed that the school would not tolerate such acts in the future. The child resumed school.

4.5 Case of RYC Inmate Resuming School

An Upper Six pupil had to stop her schooling as she was declared “beyond control” by the court and was consequently committed to the RYC for two months. From there she could not pursue her studies. The child was supposed to sit for the HSC examinations in November 2016. I intervened and the girl was eventually released from RYC and able to resume school.

4.5.1 Nature of the Case

In the course of my investigation on RYCs, I learnt that a 17-year old child, who was also an Upper Six student, had been committed for two months to the RYC.

Her parents had gone before the court and declared that they were not able to control the child. I understood that, the child had left her parents’ house on several occasions to stay at her boyfriend’s place. However she was regular at school. The magistrate had declared the child “beyond control” and committed her for two months at the RYC.

The child was expected to sit for the HSC examinations in November 2016. However when a child is committed to the RYC, he/she is not allowed to attend school outside the RYC compound. Moreover there is no qualified teacher at the RYC to coach the child to prepare for her examinations. The RYC context is not conducive for studies. I was very concerned about this child’s rights to education. The child’s future was at stake.

4.5.2 UNCRC Framework

The right to education is enunciated in Article 28 of the UNCRC; Article 28(e) specifically stipulates that the State shall take measures to encourage regular attendance at schools and the reduction of drop-out rates.

Our national legislation and regulation framework also makes provision for the situation. The Student Attendance Policy of the MEHRTESS mentions that “*absences for personal reasons shall be authorised up to a maximum of 5 days in any academic year*”. Furthermore, in the Circular Note No 12 of the MEHRTESS, dated 5 May 2016, it is mentioned that “*in order to benefit from the full payment of examinations fees, Form V and Form VI candidates would need to reckon attendance levels of at least 90% in the year of examinations and in the preceding year*”.

Additionally, Section 3 of the Reform Institutions Act provides that 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.*”

4.5.4 Actions Taken

- I interviewed the child at the RYC. The latter told me that she wanted to resume school.
- I advocated for the release of the child with the Commissioner of Prisons and the Acting Superintendent of the RYC under the powers conferred to them by Section 3 of the Reform Institutions Act.
- I discussed the matter with high officials of the Ministry of Social Security, National Solidarity and Reform Institutions.

- I carried out mediation, in the presence of the Acting Superintendent of the RYC, with the child's mother and the child herself because the mother was reluctant to take her child back.
- I also contacted the rector of the child's school.
- A request was sent to the National Empowerment Foundation to provide assistance to the child regarding school materials and uniform.
- A letter was also sent to the Ministry of Gender Equality, Child Development and Family Welfare requesting the appointment of a Child Mentor to support the child.

4.5.5 Outcome

The mediation was successful. The Acting Superintendent of the RYC agreed to grant the child leave of absence upon the condition that she attends school regularly and behaves properly with her parents. The Rector informed me that the child is a good pupil at school and that she performs well in her studies. She had no objection to take back the child. The child was made aware that this leave of absence may be revoked at any time if the conditions were not respected. The child was able to resume school.



Chapter 5:

Submissions

Chapter 5: Submissions

I have the duty, as per Section 6 of the OCA, to make proposals to the Ministers regarding “*legislation, policies and practices*” and also to advise them. During this reporting year I investigated two particular cases where rights of children have not been respected. Compliant with my duty, I submitted a report on each case to the Ministers concerned, namely the Minister of Gender Equality, Child Development and Family Welfare (MGECDFW) and to the Minister of Youth and Sports (MYS).

5.1 Case of Alleged Malpractice at a Trust Fund

Two complaints were lodged at the Ombudsperson for Children’s Office (OCO) respectively by the President of a Regional Athletics Committee and by four parents. They raised the issue of an alleged mismanagement of funds within a Trust Fund in the implementation of a sports project for children, sponsored by a foundation. This case raised the following questions:

- Why did that Trust Fund stop its sport activities for a group of 32 children in that region?
- Did the Trust Fund take into consideration that this vulnerable group of children could be affected by such a decision?
- Was this a management decision taken following a formal committee meeting?
- What were the scope and purpose of the project?
- Where is the written copy of the project?
- Where is the budget proposal for the allocation of the MUR XXX, 000 granted by the sponsoring foundation to the said Trust Fund for the implementation of the project?



5.1.1 The Case

A Trust Fund and an Athletics Association signed a protocol with a sponsoring foundation to support 32 athletes out of 280 children from a particular region. The athletes were aged between 11 and 20. The project's main objective was to promote the children's academic and sports performance.

The children were entitled to benefit from:

- sport equipment;
- transport facilities ;
- food;
- medical and dental check-up; and
- educational support.

This project was sponsored by the foundation with a financial commitment of MUR XXX, 000

5.1.2 Rationale of the Investigation

The former Ombudsperson for Children (OC), conducted an investigation following the complaints received. The complainants alleged that there has been malpractice within the Trust Fund. As per the Ombudsperson for Children's Act 2003 the Ombudsperson *"shall ensure that the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and association of individuals"*.

I opened an investigation because I asserted that:

- a. the children's rights to leisure play and culture may have been violated.
- b. the best interests of children might not have been of primary concern when the Trust Fund took the decision to stop the project in that region. Article 3 of the Convention on the Rights of the Child states 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"*.

5.1.3 The Complaint

The President of the Regional Athletics Committee lodged his complaint. He alleged that there have been:

- a. malpractice within the Athletics Association;
- b. mismanagement of funds by the Trust Fund.

Some months later, four parents of athletes selected for the project accompanied by the President of the Regional Athletics Committee called at the Ombudsperson for Children Office (OCO) and made the following complaints:

- the terms and conditions of the project have not been respected;
- the agreed timeframe was for a period of two years but the Trust Fund and the Athletic Association stopped the project after one year;
- children received poor quality shoes. The correct sizes of shoes were unavailable for some children;
- the meals were not of good nutritional quality;
- the children could not afford the transport costs to the shops to exchange the shoes of unsuitable size and the transport arrangement was erratic. For these reasons, many were not able to attend training;
- the amount of funds provided for books and tuition have been reduced considerably;
- the children were victims of discrimination. They resented the charity-like approach of the project. They were not asking for charity but for support, partnership and collaboration;
- the athletes of the region had potential but they were not given the opportunity to move forward.

5.1.4 Actions Taken

- The former OC requested a report on the project from the parent Ministry. The concerned officers were not aware that an investigation had been opened in this respect. The Ministry submitted to the former OC a brief on the Trust Fund and a letter from the Trust Fund regarding the project.
- I requested the Trust Fund to submit the following documents for the purpose of my investigation:
 - written project stating the duration of the sponsorship;
 - receipts regarding the delivery of shoes by two suppliers;
 - correspondence from rectors regarding the education expenses;
 - agreement signed by parents; and
 - minutes of proceedings of the meeting whereby it has been decided that the project would be stopped.

Summons

Officers from the Trust Fund who had been directly involved in the project were summoned to my office.

I gathered the following information:

- Neither parents nor children signed any document upon receipt of equipments.
- When asked whether the Trust Fund is accountable to the sponsoring foundation, an officer replied *“On ne dit pas à la firme comment on a dépensé. Ils nous font confiance”*.
- It is to be noted that the Trust Fund has managed a large sum of money, MUR XXX, 000, without of any transparency.
- Having signed a MoU an officer is accountable for the implementation of a project.

- Although officers stated that the shoes were appropriate and of good quality; that the dental and medical check-ups were done and that transport facilities were available, the parents stated otherwise.
- The parents were not present and the athletes were not requested to sign anything upon receipt. Each athlete received two pairs of shoes (training shoes and spikes). In case the size of the shoes was not appropriate, the athletes were requested to exchange them at the supplier's shop. Transport facilities were provided ONLY after the training sessions.
- Neither the parents nor the children signed a document upon receipt of shoes. No specifications were provided for the shoes to be bought for the athletes. How could the supplier provide shoes to the Trust Fund without being informed of specifications? How and why were the two suppliers selected? There was no tender procedure when buying shoes and equipment for the athletes.

5.1.5 Re-statement of complaint

Three parents accompanied by the President of the Regional Athletics Committee called at the office and re-affirmed their complaint.

- *‘Les promesses faites n’ont pas été respectées.’*
- *‘Mo zanfane degoute. Linn prefere kit athleticism.’*
- *‘Se Trust Fund kinn apros mo zanfane.’*
- *‘Zot ti dir li pou rambours liv et leson. Mem ziska liniversite, linn dir nou pena pou gagn traka.’*
- *‘Zot denigre zanfane.’*



5.1.6 Meeting with Ombudsman for Sports

I apprised the Ombudsman for Sports of my investigation. He showed much concern. He declared that he can initiate an investigation regarding the Athletic Association. This case may even be referred to the *Tribunal Arbitral du Sport*.

5.1.7 Areas of Concern

The investigation has allowed identifying the following concerns:

- Lack of transparency and ethics issues;
- Non-compliance to the MoU;
- Absence of monitoring.

Lack of transparency and ethical concerns

There is an obvious lack of transparency and several ethical concerns in the overall management of the project.

1. A drafted written project is not available. There is no signed contract/agreement between parents and the Trust Fund. According to officers, the Trust Fund is not accountable to the company who is funding the project. Yet, the MoU stipulates that the Trust Fund and the Athletic Association should submit a detailed report every three months on the use of the funds received: *“Ils s’engagent à fournir à la foundation chaque trois mois un rapport détaillé sur l’utilisation des fonds avancés par la foundation dans le cadre du projet”*. No such reports have been submitted to my office.
2. There are no minutes of proceedings regarding the decision to stop the project. As per the MoU, the duration of the project was one academic year.
3. The absence of tender procedures when buying equipment or selecting food providers is unethical.

Non-compliance to the MoU

1. As per section 2.3 of the MoU, '*Mise à disposition de tuteurs à l'école (de la form 1 à la HSC) par le Trust Fund afin d'assurer le suivi pédagogique des jeunes athlètes*', all athletes should benefit from academic support. As per the officers of the Trust Fund, only athletes who were in form IV were supported academically and again, only on the recommendation of the tutors or the rectors of the schools attended by the athletes.

2. As per section 2.4 of the MoU, transport facilities should be given to the athletes: '*Le transport des athlètes sera prise en charge dans le projet, soit par le remboursement des tickets de bus ou par un véhicule spécial dédié au transport des athlètes*'. Many athletes were not able to attend training because they could not afford the transport cost.

3. As per section 2.3 of the MoU, '*Les athlètes bénéficieront d'un repas équilibré lors des journées d'entraînement*'. Is '*pain saucisse mayonnaise*' a balanced diet for athletes? Did the Management make sure that the food served to the children meets the requirements of a balanced diet for athletes? However, rectors as well as one physical education teacher certified that they had no complaints regarding the meals served by the school canteen.

5.1.8 Recommendations

- The budget of the Trust Fund should be managed by a board which approves all the expenses.
- Equipment suppliers and food providers should be selected through calls for tender even though priority may be given to providers of the region targeted for the project.
- The decision to stop a project concerning children should not be done without taking into consideration the best interests of the child.
- The company funding a project should abide by CSR ethics. The whole concept of CSR is in itself the continuing commitment of organizations to act ethically and to contribute to social wellbeing. The Ministry of Finances and Economic Development should ensure that the CSR money meets the scope and purpose of the project for which it has been voted for.

5.1.9 Conclusions

Have child's rights and interests been respected and protected in this case? The decisions taken and the lack of proper procedures have been detrimental to the children. Some of the children quit athletics. Others are not even willing to practice any sport. Children have been disillusioned by the project.

5.2 Violent Incidents in a Shelter

My core statutory functions are set out in the Ombudsperson for Children Act 2003.

They include amongst others:

- *“Advising the Minister on public and private residential placement facilities and shelters established for the benefit of children”;*
- *“Proposing measures to ensure that the legal rights of children 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”.*

I can investigate complaints made by or on behalf of children and, Section 7 of the Ombudsperson for Children Act which states that I can also initiate investigations on my own motion.

In addition to its role to investigate complaints, the Ombudsperson for Children Office has the duty to *“ensure that the rights, needs and interest of children are given full consideration by public bodies, private authorities, individuals and association of individuals and promote compliance with the convention.”*

As the Ombudsperson for Children, I welcomed the opportunity to provide a submission to the Minister of Gender Equality, Child Development and Family Welfare on a shelter.

5.2.1 Investigation at a Shelter

I decided to conduct an investigation into matters that have been publicly raised relating to violent incidents which occurred in a shelter. The main purposes of the investigation were:

1. to establish the circumstances and events surrounding the violent incidents at the shelter;

2. to consider and report on any systemic failings or concerns that are identified; and
3. to propose recommendations as regards to my findings.

5.2.2 Meeting with Children and Staff

Accompanied by an investigator, I called at the shelter after receiving the information that a group of adolescent girls was allegedly victim of police brutalities. We discussed with the girls, other inmates of the shelter and staff members. We met with:

- i. A (17 years)
- ii. B (12 years)
- iii. C (14 years)
- iv. D (16 years)
- v. E (16 years)
- vi. F (17 years)
- vii. Mrs G (staff) and Mrs H (staff)

The adolescents stated that on a Sunday morning, they went on the roof of the building to play. They mentioned that they know how to accede the roof top even when the accessing gate is locked.

The girls explained that the two carers who were on duty on that day thought that they had run away and called the police. The girls alleged that when the latter came upstairs, they tried to compel them by using force to come downstairs.

The girls accused the police of having been very aggressive towards them and they even affirmed that they had been beaten by the police. Mrs G and Mrs H with whom we talked on that day totally supported the views of the girls.

I phoned the responsible officer of the shelter and asked her to make sure that the six girls lodge a complaint against the police officers at the National Human Rights Commission.

5.2.3 Summons

I summoned Mrs I and Mrs J, carers of the shelter. On the same day I also summoned two officers from the police station of the locality, Inspector K and Police Constable L. All of them were invited to give their version of the violent incidents which occurred at the shelter. Both carers stated that the police officers never physically abused the girls. On the contrary:

“Se zanfán ki finn bat lapolis. Kan la polis fine met lesel pou monte la haut, zanfán fine zet lesel ek lapolis la finn tombe. Apre kan zot finn desann dan Hall zot finn kraz tou sa mem zot finn blesse.”

Mrs J stated that she had to phone the police on that day because when she asked the girls to come down from the roof top they threatened to commit suicide. Mrs I mentioned that the girls were very aggressive and *“dan salon zot finn avoy stoul lor lapolis. Ekstra violans zot finn fer.”*

Interviewing the group of girls

I convened the six girls involved in the violent incidents to my office. I wanted to give them the opportunity to freely express themselves again and thus to obtain more clarifications from them.

They asserted they were playing hide and seek and had gone upstairs to hide behind the water storage tank. The carers thought they had the intention to run away and called the police. They reported that the police came upstairs to arrest them. *“Bann lapolis la vilger zot zour nou, fer brit are nou, bat nou avek matrak.”*

Carer's view

On the same day, I talked with another carer, Mrs M, who confirmed that minor N had been beaten by the police. She stated that the police were about to handcuff the children had she not intervened. She also mentioned that she was shocked to witness the girls being ill-treated by the police.

The Watchman

The watchman Mr R. seemed to be quite frightened to answer our queries. But he testified that the girls were very aggressive on that day and:

“zot ti pe rod bat mwa. Kan lot shift pe rantré bann tifi la koumans krié ploré pou narien. Zot zet lekòr anba ek dir ki lapolis pé rod bat zot. Ni zanfan in bat gard, ni gard inn bat zanfan.”

The Police

I talked with police officers working at the police station of the locality and interviewed Inspector K and Police Constable L. They all stated that police officers never physically nor verbally abused inmates of the shelter. They believe that the group of adolescent girls were very aggressive and that they were injured while damaging property in the hall.

Inspector K believed that there were many security issues at the shelter and that immediate action should be taken. Police Constable L stated that the six girls were trying to flee and the police officers had prevented them from doing so. He believed that according to law he could have arrested them for damaging property even if they were minors.

5.2.4 Systemic Review of the Situation

A systemic review is about systems, the system of laws, rules and regulations that govern an institution. I had collected two conflicting versions concerning the violent incidents at the shelter. From these two conflicting versions of one same incident, what could be done to improve the situation at the shelter?

I considered the way the shelter was functioning and tried to identify what could have contributed to the violent incidents which occurred there. My conclusions were that:

- there is a lack of qualified care and management staff and this adversely affects the quality of services provided at the shelter;

- it is a matter of concern that Mauritian laws do not provide that staff (carers, managers, supervisors) dealing with children in RCIs, should be suitably qualified;
- the monitoring and inspection staff of the CDU does not have any specialised training in monitoring and inspection;
- some officers seem to take advantage of the absence of quality monitoring and evaluation. For example, they eat the food prepared for children; they fail to take good care of children and cannot protect them from various forms of abuse;
- in such circumstances it is difficult to promote values and maintain discipline in the shelter when adults do not behave as role models;
- there are serious security issues in this shelter. How can two or three carers manage and take care of 60 to 80 children? ;
- minors abuse minors in the same shelter and the cohabitation of boys and girls puts inmates at high risk; and
- it is a matter of concern that children can freely access the roof top.

5.2.5 Shared Responsibilities

Several stakeholders share responsibility in this issue:

- **The Shelter:** The managers of the shelter who failed to provide children victims of abuse with the opportunity to grow up in a therapeutic environment.
- **The CDU officers** for poor monitoring and evaluation.
- **The staff of the shelter** for their wrong attitudes and for not protecting children.

- **The Police** for have not being able to devise appropriate strategies when dealing with a group of aggressive girls at the shelter.
- **The Children** for not respecting values and discipline.

5.2.6 Recommendations

- I recommend that the shelter should set up small residential care units to rehabilitate victims of abuse. The needs of vulnerable and abused children cannot be fulfilled in such a large residential care setting. Boys and girls should be kept separated.
- The shelter should be under continuous review until provisions are made to set up small units.
- Monitoring and inspection should be ensured.
- The six girls involved in violent incidents should benefit from intensive therapy and psychological support. They are quite aggressive and they need urgent and regular support to deal with their childhood emotional trauma.
- Taking into consideration that the children who are victims of abuse can become very manipulative, all staff members of the shelter should be provided training on how to deal with such children. Manipulative children are not “bad” children. They are children who have learned inappropriate behaviour to fulfil their desires.
- Adults who have not resolved their childhood issues can also be very manipulative. Any residential care institution should make sure that it recruits stable and resilient adults.
- All staff members of the shelter should benefit from initial and continuous specialised training in the field of child welfare.

- It is in the interest of the management of the shelter to nurture good working relationship with the neighbouring police station because it can need the support of police officers any time. Moreover the police represent authority and the children badly need to learn to respect authority.

5.2.7 Conclusion

My investigation revealed that violent incidents occurred at this shelter because of a number of systemic failures. The risk that such incidents recur is high because the population of children at this shelter is too high and the staff members do not have the adequate skills to deal with this large group of children with special needs.

I cannot confirm that children were victims of police brutalities. What I can affirm is that the interactions between children, staff members and the police were violent in nature. I can also affirm that the six girls are very aggressive and need intensive therapy. I insist on the fact that they are not “bad” but can be very manipulative and they may manipulate adults to achieve their objectives. This is not only dangerous for the staff but also for the emotional stability of the girls and their future integration into society.



PART II.

Children in Conflict with the law



Introduction

Deeply concerned by the situation of children living in detention in the Republic of Mauritius, I initiated an investigation into this issue on my own motion on 13 January 2016. The investigation had the following objectives:

- (a) assess the living conditions of children in detention;
- (b) assess to what extent Mauritius has been acting upon the recommendations of the UNCRC Committee of Experts; and
- (c) make recommendations to policy decision-makers and other relevant authorities on how to deal with children in conflict with the law in a more efficient way.

Empowered by the Ombudsperson for Children Act to access places where children are detained as a result of being in conflict with the law¹¹, I have made it a point to visit the various detention centres namely:

- the Correctional Youth Centres (CYCs) Boys and Girls;
- the Rehabilitation Youth Centres (RYCs) Boys and Girls;
- the Petite-Rivière Detention Centre (Boys only); and
- the Probation Homes (Boys and Girls).

Save for living conditions in probation homes, I was shocked to discover how distressing living conditions were in the aforementioned detention centres. How can rehabilitation be possible in such deplorable conditions was the question that struck me!

With a view to better understand this situation, I decided first and foremost to carefully and respectfully listen to the concerns and views of the children in question. This is my duty, according to Article 12 of the UNCRC which stipulates that:

“State 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

¹¹ Children in conflict with the law can be defined as children who are alleged as, accused of or recognised as having infringed penal law.

affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

Most of the children I met during my investigation appreciated and were often surprised to be spoken and listened to. However the children were not the only ones who wanted to be listened to. Many staff members of the RYC girls resented this process and felt left out by it and openly expressed their anger: *“The Ombudsperson for Children does not take into account our views. What about our rights?”*

I realised that actually they did not quite understand my roles and functions. Some irrational comments were even made: *“Children misbehave because they are being empowered to exert their rights”*. I sometimes felt that some of the staff members of the detention centres needed to be sensitised on the nature of human rights which are universal, inalienable, indivisible and interdependent, irrespective of age.

It is also important that officers working in detention centres for children learn to objectively analyse and understand the root causes of violent and aggressive behaviours of these children. Having said this, I do admit that the work of RYC and CYC officers is undeniably of a complex and challenging nature. While they are expected to manage violent behaviour of inmates, they are themselves often victims of verbal and physical abuse. Officers of RYC Girls rightly pointed out that they cannot carry out their duties properly in unsafe violent environments. Significant change is therefore needed.

As I progressed in my investigation, I also became aware that our Republic is not empowered with the appropriate legal framework to protect the rights of children in conflict with the law. Today many of our children are losing the most important years of their life behind bars despite the fact that it has been 20 years since the Committee of Experts of the UNCRC¹² recommended that the Republic of Mauritius:

“Envisage undertaking a comprehensive reform of the Juvenile Offenders Act in the spirit of the Convention, in particular articles 37, 39 and 40, and of other United Nations standards in this field, such

¹² The Committee on the Rights of the Child is the body of 18 Independent experts that monitors the implementation of the Convention on the Rights of the Child by State Parties. All State parties have to submit regular reports to the Committee on how the rights are being implemented. The Committee examines the reports and addresses its concerns and recommendations to the State party.

as the ‘Beijing Rules’, ‘Riyadh Guidelines’ and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.”

The Committee of Experts of the UNCRC also recommended that:

“Particular attention should be paid to the consideration of deprivation of liberty only as a measure of last resort and for the shortest period of time, to the protection on the rights of children deprived of liberty, to due process of law and the full independence and impartiality of the judiciary.”

In the light of the above, it is urgent for the Government of Mauritius to take action to improve the treatment of children in conflict with the law, while in detention, to increase the chances of their rehabilitation and re-integration into society as productive adults. I hope that this report and the following recommendations will provide the necessary guidance in this respect.

Chapter 1:

A Brief History of Juvenile Justice Administration in Mauritius

Chapter 1: A Brief History of Juvenile Justice Administration in Mauritius

To better understand the current legal framework, let us look at how things progressed.. A brief chronology of juvenile justice administration shows how legislation has progressively evolved since the 18th century, namely from a time when there was no distinction between adult and juvenile detainees to the present time when legislation has been drafted to deal with children in conflict with the law and correctional and rehabilitation centres for juveniles have been set up.

1.1 Chronology of Juvenile Justice Administration in Mauritius

In Mauritius, legislation making specific provision for juvenile offenders dates back to 1935. Mauritius was then under the British rule. Most correctional and rehabilitation institutions for juveniles were created in 1988 under the Reform Institutions Act, 20 years after independence.

1887 Prisons Ordinance

Under the Prisons Ordinance of 1887, there was no distinction of treatment between adult and juvenile detainees. The Ordinance provided that prisoners, both adults and juveniles, could be sentenced to hard labour and outdoor labour. Many provisions of this old Prisons Ordinance were incompatible with the treatment of detainees that we nowadays consider acceptable, in line with basic human rights.

1935 The Industrial Schools Ordinance (Repealed by GN No 4/82 of 1951)

The Industrial Schools Ordinance 1935 established schools for the detention and reformation of children or young persons of both sexes. The Governor General could declare any prison or part of a prison to be an ‘industrial’ school.

1935 The Juvenile Offenders Act

The Juvenile Offenders Act is a specific legislation for the treatment of young offenders within the penal system, which is in force. It makes provision for the

setting up of a separate ‘Juvenile Court’ for juvenile offenders under 18 years. It also provides restrictions on punishment of juveniles as well as alternatives to detention in places such as industrial schools.

1936 The Rehabilitation Youth Centre (RYC) Regulations

The Rehabilitation Youth Centre (RYC) Regulations are in force. They provide that detainees must attend school. They also provide in detail which corporal punishments to be inflicted.

1946 The Probation of Offenders Act

The Probation of Offenders Act is in force and applies to any person in conflict with the law and *a fortiori* to children.

1947 The Borstal Institution Ordinance 1947 (Repealed by the Reform Institutions Act of 1988)

The Borstal Institution Ordinance was passed to establish and regulate “Borstal institutions” in the Colony. According to the Ordinance, a Borstal Institution is defined as a place in which offenders who are “*no less than sixteen nor more than twenty year of age*” are detained and “*given such industrial training and other instruction, and be subjected to such disciplinary and moral influences as will conduce to their reformation and prevention of crime*”.

1947 The Correctional Youth Centre (CYC) Regulations 1947

The Correctional Youth Centre (CYC) Regulations are in force. They provide for the education of detainees at CYC. They also provide for various kinds of sanctions in case of “gross misconduct” or “idleness” of the detainees.

1951 Accommodation of girl juvenile detainees

A new building was constructed at the west side of the Beau-Bassin Central Prison to accommodate women detainees and a separate wing is currently being used for the setting up of an “industrial school” for girl juvenile detainees. Prior to 1951, girl juvenile offenders were detained in a convent under the supervision of the Sisters of Mary.

1954 Probation Hostel for Boys

A Probation Hostel for Boys was established under the Borstal Act 1954.

1988 The Reform Institutions Act

The Reform Institutions Act 1988 makes provisions for the running of RYC's and CYC (boys). Under the Reform Institutions Act 1988, the industrial schools are replaced by the RYC's and the Borstal Institution is replaced by the CYC (Boys). A Probation Home for Girls was also established on 8 August 1988. The Reform Institutions Act 1988 repeals the 1947 Borstal Institution Ordinance but still maintains the practice that prisoners (both adults and children) have to carry out certain duties during their detention period¹³.

1989 The Probation Hostel and Home Regulations

The Probation Hostel and Home Regulations was made by the Ministry of Social Security, National Solidarity and Reform Institutions under Section 7 of the Probation of Offenders Act 1946. These regulations came into operation on 1 January 1990. They establish a Managing Committee appointed by the Minister to run the Probation Hostel for boys and the Probation Home for girls.

2003 The Ombudsperson for Children Act

The Ombudsperson for Children Act 2003 provides for the establishment of the Ombudsperson for Children's Office. The objects of the Ombudsperson for Children are to promote the rights and best interests of children and to ensure that their rights, needs and interests are given full consideration in the country. According to the Ombudsperson for Children Act 2003, the Ombudsperson for Children shall also promote compliance to the UNCRC. In carrying out the duties of his office, the Ombudsperson for Children has the right and duty to visit premises where a child is present, including places of detention, and educational or health institutions (Section 7 of The Ombudsperson for Children Act 2003).

2007 Establishment of the Petite-Rivière Juvenile Detention Centre

A detention centre for juvenile detainees was set up at the Petite-Rivière Police Station (for boys only).

2016 Inauguration of the Correctional Youth Centre (CYC) for girls

¹³ Section 35(1)(a) of the Reform Institutions Act 1988 "Employment of detainees".

Following several upheavals at the RYC (girls), a “temporary” CYC for girls was established on the third and fourth floor of the RYC (girls) building in 2015. The CYC for girls was officially inaugurated in April 2016.

1.2 Rehabilitation Youth Centres (Boys and Girls)

Rehabilitation Youth Centres (RYCs) were established under the Reform Institutions Act of 1988 and have as main objective the rehabilitation of juvenile offenders¹⁴.

The RYCs cater separately for male and female offenders in two different buildings located at Sir Francis Herchenroder Street, Beau-Bassin. Each building can accommodate a maximum of 44 inmates.

The rehabilitation programmes at RYCs consist of academic, vocational, sports and artistic activities.

1.3 Correctional Youth Centres (Boys and Girls)

The Correctional Youth Centre (Boys) in its present form was established under the Reform Institutions Act of 1988 for male offenders up to 18 years of age. It falls under the authority of the Commissioner of Prisons. Prior to 1988, the centre was known as a “Borstal Institution”¹⁵.

The CYC (Boys) is housed in an old style building situated at Barkly, Beau-Bassin which is in fact a prison with cells and security doors outside and within the building. The CYC provides opportunities for juveniles to follow educational and vocational courses. Indeed, Section 9 “Education of detainees” of the Correctional Youth Centre (CYC) Regulations 1947 makes provision for the education of detainees, which is under the responsibility of the Commissioner of Prisons.

¹⁴ The Reform Institutions Act 1988 Section 2(b) defines the Rehabilitation Youth Centre as “an institution for the detention and training of minor who have been convicted offences punishable by imprisonment in regulations made by the Minister”.

¹⁵ This institution owed its name to a village called Borstal in the United Kingdom, which had been reputed for its high rate of criminality and juvenile delinquency during World War II.



The CYC (Girls) is much more recent. It was proposed to establish a correctional youth centre for girls in the wake of the 2015 upheavals at the RYC (girls). Children showing acute behavioural disturbances were then separated from the other inmates and kept in the custody of prison officers in the same conditions as the inmates of CYC (Boys). This ‘temporary’ CYC for girls was situated on the third and fourth floor of the present RYC (Girls) building. In April 2016, the CYC (Girls) was officially inaugurated. This correctional facility for girls provides care, supervision and treatment for 16 youths in conflict with the law up to the age of 18 years.

It provides facilities and aims to help them through appropriate programs and services. The therapeutic environment in this brand new CYC is so beautiful that some girls detained at RYC have even declared that “*mo pu fer move pou al CYC*”.

1.4 Petite-Rivière Juvenile Detention Centre

The Petite-Rivière Juvenile Detention Centre was established in 2007. It is a detention centre for boys only. There is no detention centre for girls in Mauritius.

Prior to 2007, children and young persons involved in an offence used to be kept in a shelter at Albion managed by the Ministry of Women’s Rights, Child Development, Family Welfare and Consumer Protection. Following a policy decision in 2007, the shelter was reserved exclusively for children who are victims of abuse. A dedicated centre for young male offenders was then set up at the Petite-Rivière Police Station and is referred to as “Petite-Rivière Juvenile Detention Centre”.

1.5 The Probation Hostel for Boys and the Probation Home for Girls

In December 1989, the Minister of Social Security, National Solidarity and Reform Institutions introduced the Probation Hostel and Home Regulations under Section 17 of the Probation of Offenders Act of 1946.

In contrast to the RYCs and CYCs, the Probation Home for girls and the Probation Hostel for boys are semi-open reform institutions providing residential rehabilitation

treatment for young offenders under 17 years.¹⁶ The number of residents in a hostel or home at any time shall not exceed 20. The period of residence in these probation institutions shall not exceed three years.¹⁷ The Probation Hostel and Home Regulations 1989 also specify that the period of residence of a child in conflict with the law must be of “*sufficient duration to enable him to complete the scheme of training provided in the hostel or home*”(Article 8). No child shall be received in a hostel or home if he/she is on remand or if he/ she appears to be suffering from any illness requiring medical treatment in an appropriate institution.

The Probation Hostel and Home Regulations 1989 further address the issues of the management of institutions, the admission and discharge procedures, the role of the staff and the conditions in which the residents should be kept. These Regulations established a Managing Committee appointed by the Minister to run each institution.¹⁸

I. The Probation Hostel for Boys

The Probation Hostel for Boys is a semi-open institution providing residential treatment for male minor offenders aged up to 18 years for a period not exceeding three years. It was established in 1954 under the Borstal Ordinance 1947 (repealed in 1988). In 1961, the Probation Hostel moved to its present location at Les Casernes, Curepipe in a one-storey building. The one-storey building provides accommodation facilities for 20 boys¹⁹. The inmates are allocated single accommodation cubicles on the first floor while the houseparents’ quarters, the hall and the kitchen are located on the ground floor. In 1995, a new block was added at the rear of the existing building. It made provision for

¹⁶ According to the Probation Hostel and Home Regulations 1989, Article 7(2) and 7(3), the age limit of the residents on admission shall be under 17 years. Except for special reasons, the Committee shall not admit to the hostel or home any person who is not less than 17 years.

¹⁷ Annual Report of the Probation and Aftercare Service 2006.

¹⁸ The Probation Hostel and the Probation Home managing committees are composed of representatives of the Ministry of Social Security, National Solidarity and Reform Institutions, of the Ministry of Youth and Sports and the Ministry of Gender Equality, Child Development and Family Welfare are appointed as members on the committee. The Managing Committee also exercises control over all expenses. It shall meet at least once a month. Each institution receives a grant of 1,200,000 to 1,300,000 MUR to cover the recurrent expenses. At the end of each financial year the audited accounts are submitted to the Commissioner for Probation and Aftercare.

¹⁹ According to the Probation Hostel and Home Regulations 1989, the number of residents at the Hostel shall not exceed 20 at any time.

an additional accommodation space of 20 cubicles, a mess room, an office, a workshop and a committee room.

II. The Probation Home for Girls

The Probation Home for Girls is a semi-open residential institution catering for girls below the age of 18 years whose home surroundings are detrimental to their proper development and social functioning, hence necessitating their removal from their home and placement in a more favourable milieu.

The Probation Home for Girls was established in August 1988. It was then located at La Croix Street in Forest Side in a rented building. The building could accommodate a maximum of 15 girls. In 2014 the Home moved to a rented spacious five bedroom house in Phoenix.

Chapter 2:

International Framework for the Protection of the Rights of Children in Conflict with the Law

Chapter 2: International Framework for the Protection of the Rights of Children in Conflict with the Law

It cannot be ignored that the problem of children in conflict with the law has become a social phenomenon faced by societies around the world. Since the Universal Declaration of Human Rights, many international instruments have been drafted, where some have the status of international laws and others are guiding principles. The influence of these international instruments is such that they have inspired many constitutions, including that of the Republic of Mauritius (hereafter ‘Mauritius’).

Mauritius as a democratic state has ratified a number of international conventions which are core international instruments in the promotion and protection of the rights of children in conflict with the law, in particular the UNCRC. Our Mauritius thus has the duty to adhere to these imperative instruments. As per Article 4 of the UNCRC, States Parties are required to undertake all appropriate legislative, administrative and other measures to implement the Convention.

The most important international instruments for the administration of juvenile justice are the UNCRC and the International Covenant on Civil and Political Rights (ICCPR). They are complemented by a number of guidelines, notably:

- (a) the Beijing rules for the protection of juveniles deprived of their liberty;
- (b) the Riyadh Guidelines for the prevention of juvenile delinquency; and
- (c) UN Rules for the protection of Juveniles Deprived of their Liberty (JDLs).

The Expert Committee of the UNCRC has indicated that these guidelines relating to juvenile justice provide relevant detained standards for the implementation of the UN Convention on the Rights of the Child. These United Nations guidelines provide practical guidance to the State Parties. The Expert Committee of the UNCRC has clearly stated that the Convention on the Rights of the Child and these guidelines should be taken together.

2.1. The United Nations Convention on the Rights of the Child

In 1990, Mauritius ratified the UN Convention on the Rights of the Child (UNCRC) adopted by the General Assembly of the United Nations in 1989. The UNCRC sets out the basic principles that should be included in a juvenile justice system. Since then, we are guided by Articles 37 and 40 of the UNCRC to protect the rights of children in conflict with the law.

2.1.1. UNCRC General Articles regarding Children's Rights

The UNCRC provides a wide-ranging framework for the protection of children's rights and, more importantly, constitutes a comprehensive listing of the obligations towards children that countries are required to implement. In Mauritius, a Children's Bill is still to be enacted so that these provisions may be embodied in the legislation. The Committee of the UNCRC insists that in the administration of juvenile justice, States Parties have to apply systematically the general principles contained in:

- ❖ Article 2 – Non discrimination
- ❖ Article 3 – Best interests of the child
- ❖ Article 6 – The right to life, survival and development
- ❖ Article 12 – The right to be heard

Article 2 of the UNCRC establishes that “*States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment (...)*”. The UNCRC also stipulates in Article 3 that the best interests of the child shall be a primary consideration in all actions concerning the child undertaken by public social welfare institutions, courts of law, administrative authorities or legislative bodies. Furthermore it corroborates with Article 12 of the UNCRC that the child shall be provided the opportunity to be heard in any judicial and administrative proceedings.

2.1.2 Specific Provisions regarding Juvenile Detention

Several articles of the UNCRC provide guidelines on the treatment of detained children.

Reasonable detention (Article 37)

Article 37 of the UNCRC provides that no child shall be subjected to torture, cruel or inhuman punishment. If a child is to be detained, the article provides that he/she must be treated with humanity and his/her dignity must be respected. The Convention also prohibits sentences of life imprisonment for offences committed by persons under the age of 18 years.

Also, placing children in conflict with the law in a closed facility should be a measure of last resort, to be avoided whenever possible. This means that States Parties should have in place a well-trained probation service to allow for the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day-report centres, and the possibility of early release from detention.

Preserve the rights of the detained child (Articles 37 and 40)

Article 37 of the UNCRC also provides that the child must be separated from adults. He/she must also have contact with his/her family, save in exceptional circumstances where that would not be in his/her best interest. The minor has to have access to legal representation and his/her right to challenge his /her arrest must be safeguarded.

Article 40 of the UNCRC shall seek to promote measures for dealing with children “*alleged as, accused of, or recognized as having infringed the penal law*” without resorting to judicial proceedings as far as possible. Article 40(4) of the UNCRC gives details about possible alternatives:

“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.”

Preserve the dignity of the detained child (Article 40)

Moreover, Article 40 of the UNCRC provides a set of fundamental principles for the treatment to be accorded to children in conflict with the law. These include:

- *Treatment that is consistent with the child's sense of dignity and worth.* This inherent right to dignity and worth, to which the preamble of UNCRC makes explicit reference, has to be respected and protected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies and all the way to the implementation of all measures for dealing with the child.
- *Treatment that takes into account the child's age and promotes the child's reintegration and the child's assumption of a constructive role in society.* Again this must be taken throughout the whole process in dealing with the child. It requires that all professionals involved in the administration of juvenile justice be knowledgeable about child development, the dynamics and growth of children, what is appropriate for their well-being, and the pervasive forms of violence against children.
- *Respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented.* Violence that occurs in all phases of the juvenile justice process, from the first contact with the police, during pre-trial detention and during the stay in treatment unit and other facilities for children sentenced to deprivation of liberty, should at all cost be prevented. States Parties should ensure so.

Freedom of conscience and expression (Articles 13 and 14)

In addition to the above, the UNCRC does provide for the child's right to freedom of expression to be respected (Article 13), as well as the child's right to freedom of conscience and religion (Article 14).

Protection from violence (Article 19)

In line with our concern about the situation in RYCs and CYCs, Article 19 of the UNCRC establishes that the State 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*”. If the children detained in premises such as detention or rehabilitation centres are subjected to any sort of violence, it is the duty of Mauritius to take appropriate and prompt actions to address this issue.

Adequate standard of living (Articles 27)

Article 27 of the UNCRC guarantees the child the right to appropriate standard of living for his/her physical, mental, spiritual, moral and social development. This legal provision must also apply to our RYCs and CYCs as it is understood (in the light of this article) that the conditions of living in these premises must make provision for the development of minors residing there.

Right to education (Articles 28 and 31)

According to the UNCRC, a minor has the right to education (Article 28) and the right to rest and leisure (Article 31). Every child of compulsory school age has the right to education suited to his/her needs and abilities, and designed to prepare his/her return to society. Every child should receive appropriate vocational training in occupations likely to prepare him/her for future employment.

2.2 The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the United Nations General Assembly in 1966. It commits its States Parties to respect the civil and political rights of individuals, including children. Mauritius ratified the ICCPR in 1973. The ICCPR contains a number of important articles that provide special protection to children. Article 14 in particular makes provisions for the protection of the rights of children in conflict with the law.

Right to privacy (Article 14)

Article 14 of the ICCPR recognises the need to respect juvenile's privacy and regulates that a judgement rendered in the case of juvenile persons shall not be made public when his interest so demands. This is an exception to the general rule provided by the article stating that judgments should be given in open court. The article shows that cases involving minors are sensitive. Court proceedings are therefore encouraged to be private so as to protect minors by not subjecting them to public scrutiny and criticism.

Right to fair trial and rehabilitation (Article 14)

Subsection 4 of Article 14 of the ICCPR provides that the Court procedure must consider the age of the child and take into account "*the desirability of promoting their rehabilitation*". The article makes further provision for the recognition of the rights of the child to fair trial, presumption of innocence, double jeopardy²⁰, trial within reasonable delay, right to appeal, rights to assistance of an interpreter, right to examine and cross examine witnesses, right to adequate preparation of defence and to legal representation. These rights are similar to the rights listed in the UNCRC which specifically target children.

2.3 The Beijing Rules

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, often known as the Beijing Rules, is a resolution of the United Nations General Assembly regarding the treatment of juvenile prisoners and offenders. They were adopted by the General Assembly in 1985.

The Beijing Rules provide guidance to member states on protecting children's rights and respecting their needs when developing separate and specialised systems of juvenile justice. The Beijing Rules recognize that "*the young, owing to their early stage of human development, require particular care and assistance with regard to physical,*

²⁰ Double jeopardy is a procedural defence that forbids a defendant from being tried again on the same or similar charges in the same case following an acquittal or conviction.

mental and social development, and require legal protection in conditions of peace, freedom, dignity and security”.

The Beijing Rules were the first international legal instrument to comprehensively detail norms and principles for the administration of juvenile justice with a child-right and a child-development approach²¹.

These principles aim at *“promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention”.*

Table 4: A summary of the Beijing Rules

THE BEIJING RULES
▪ The fair and humane treatment of children who come into conflict with the law
▪ Conducting proceedings in the best interests of the children and ensuring their full participation in the proceedings
▪ The application of the principle of proportionality to the offender and the offence
▪ The application of community programs for diversion from court procedures
▪ Detention as a measure of last resort and for the shortest possible time
▪ Deprivation of liberty only for serious offences
▪ The abolition of corporal and capital punishment
▪ Continuous and specialized training for law enforcement officers working with children
▪ The application of alternatives where possible
▪ The provision of educational and other social re-integrative services for those children who are institutionalized

²¹ The Beijing Rules are divided into six parts: fundamental principles; investigation and prosecution; adjudication and disposition; non-institutional treatment; institutional treatment; and research, planning, policy formulation and evaluation.

The Beijing Rules are formulated so as to be applicable to different legal systems while setting 11 minimum standards for responding to juvenile offenders. Rule 2 defines a juvenile as “*a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult*”. Rule 4 urges States Parties to fix the age of criminal responsibility at a reasonable level, stating that “*the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity*”.

One major principle of juvenile justice as advocated by the Beijing Rules is the “proportionality principle”. According to Rule 5 “Aims of juvenile justice”, the juvenile justice system shall emphasize the well-being of the juvenile²² and shall ensure that any reaction to juvenile offenders “*shall always be in proportion to the circumstances of both the offenders and the offence*”. Therefore, this proportionality principle is an instrument for curbing punitive sanctions in relation to the gravity of the offence:

“The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reaction (for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to a wholesome and useful life.”

²² Rule 5 of the Beijing Rules: “The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions.”

2.4 The Riyadh Guidelines

The UN Guidelines for the Prevention of Juvenile Delinquency also known as the Riyadh Guidelines, were adopted by the United Nations General Assembly in 1990. The Riyadh guidelines complement the Beijing Rules for the administration of juvenile justice.

The Riyadh Guidelines require that emphasis be placed on prevention policies that facilitate the socialisation and integration of children, in particular through community, peer groups, schools and vocational training. They focus on measures to prevent juvenile delinquency and the need for “*progressive delinquency prevention policies*” in this regard (Article 5, Riyadh Guidelines). The consideration underlying this philosophy is that:

“[A] large number of young persons who may or may not be in conflict with the law but who are abandoned, neglected, abused, exposed to drug abuse, and are in marginal circumstances and in general at social risk.”

States Parties are therefore advised to develop community-based interventions and programmes to assist in the prevention of children coming into conflict with the law²³. Depriving these children of their liberty should be utilised only as a means of last resort. Also, education must be accessible to all; children must be given academic and vocational training and should feel integrated through activities and peer groupings. As a fundamental measure, the guidelines provide that the whole society must be engaged in preventing juvenile delinquency.

The Riyadh Guidelines recommend that prevention programmes should give priority to children who are at risk of being abandoned, neglected, exploited and abused. They advocate a multidisciplinary and inter-sectorial approach to the prevention of juvenile delinquency that recognises children to be full participants in society. Minors must be made an integral part of society by involving them with the family, peers, community and schools. For this to happen, the State should develop policies accordingly.

²³This is very much in line with the African (Nigeria) proverb that says “*It takes a whole village to raise a child*”.

2.5 The UN Rules for the Protection of Juvenile Deprived of their Liberty

The UN Rules for the Protection of Juveniles Deprived of their Liberty (JDLs) are standard minimum rules for the administration of juvenile justice. They were adopted as a resolution by the UN General Assembly in 1990.

The fundamental perspective of the JDLs is that *“the juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles”*²⁴. With this in view, the JDLs are designed to establish minimum standard rules for the protection of the juveniles deprived of their liberty:

“The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.” (Section I.3 of the JDLs)

Specific sections of the JDLs are dedicated to the accommodation and education of juveniles deprived of their liberty.

According to Section D(13) of the JDLs, *“juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity”*. In line with this principle, it is recommended by the JDLs that the design of detention facilities for juveniles and the physical environment should keep in mind *“the rehabilitative aim of residential treatment”* (Section D.32 of the JDLs). According to Section E.42 of the JDLs, every juvenile including detained juvenile should have the right to receive vocational training in occupations likely to prepare him/her for future employment.

The JDLs rules are designed to serve as standards of reference and to provide guidance to professionals involved in the management of the juvenile justice system. It also

²⁴ In line with this cornerstone principle, the JDLs also emphasise that *“deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases”* (Section I.1 of the JDLs).

emphasises that States Parties should incorporate those rules into their legislation and monitor the application of the Rules:

“Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.”
(Section I.7 of the JDLs)

In conclusion, the Beijing Rules, the Riyadh Guidelines and the JDLs are internationally accepted minimum standards to which States should take into consideration when setting up or amending their existing juvenile justice laws.

Chapter 3:

Framework regarding the Protection of the Rights of the Children in Conflict with the law

Chapter 3: The National Legal Framework regarding the Protection of the Rights of the Children in Conflict with the Law

An overview of the existing body of national laws shows that Mauritius has a corpus of legislations that deals with the situation of children in conflict with the law. However, some areas of our existing legislation may be source of concern.

3.1 Strengths of the Mauritian Legal Framework Concerning Children in Conflict with the Law

Several laws or regulations as well as the Constitution provide guidance about how to deal with children in conflict with the law in a way that respects and protects their rights: the Juvenile Offenders Act, the Legal Aid and Assistance Act, the Ombudsperson for Children Act, the Probation of Offenders Act and the Probation Hostel and Home Regulations.

3.1.1 The 1968 Constitution of Mauritius

The starting point in the analysis of the existing national legal framework regarding children in conflict with the law is the Constitution of Mauritius since it is the supreme law of the country. The Constitution makes provision for the respect of a number of rights which apply to children in conflict with the law mainly in Sections 5 and 10.

Protection of right to personal liberty (Section 5.1)

Section 5 is of particular interest to the rights of children in conflict with the law. Section 5(1) on Protection of Right to Personal Liberty provides that no person shall be deprived of his personal liberty except as may be authorised by law and in some of the situations permitted by law. In case of minors under 18 years, Section 5(1)(f) specifically provides that the deprivation of liberty may **only** be authorised by law “*for the purpose of his education and welfare*”. This constitutional provision is essential with regards to juvenile offender justice as it establishes that the personal liberty of a minor

cannot be taken away from him or her as a means of punishment alone! A minor cannot therefore be detained in a RYC or CYC, unless it is for his education and welfare.

Right to fair trial (Sections 5 and 10)

Supply of charges. Section 5(2) of the Constitution provides that any person (therefore, including a minor) 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*”. This constitutional right is essential to a fair trial. It is therefore crucial to ensure that the minor has actually understood what he or she was told so he or she can give a proper defence statement, if appropriate. Further, as the prosecution bears the burden of proof in criminal cases, the minor can choose to remain silent. However, if there is a *prima facie* case against the minor in question, his silence could play against him in a subsequent hearing. Therefore it is important for the minor to be made aware of this option and the possible resulting consequences as early as possible. That is why access to legal advice, at the very initial stages of arrest or detention, is so important.

Access to legal facilities. Sections 5(3) and 5(4)(d) of the Constitution provide that, upon arrest and/or detention, any suspect (therefore including a minor) shall be afforded reasonable facilities to consult a legal representative of his own choice. It is therefore important to inform the minor of his right to legal advice. Section 10(2)(d) further provides that every person (therefore, including a minor) who is charged with a criminal offence shall be permitted to defend himself by a legal representative of his choice or “*where so described*” by a legal representative provided at the public expense.²⁵

Preparation of defence. According to Section 10 of the Constitution “Provisions to secure protection of law”, every person (therefore, including a minor) who is charged with a criminal offence shall “*be afforded a fair hearing within a reasonable time by an independent and impartial court established by law*”.

²⁵ Section 10(2)(d) of the Constitution: “Every person who is charged with a criminal offence (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 described, by a legal representative provided at the public expense.”

Reasonable detention. According to Section 10(2)(a) of the Constitution, any person (therefore, including a minor) is presumed innocent until proven guilty. Hence, the minor should certainly not be treated as a culprit while on remand in a detention place.

Section 5(3) of the Constitution further provides that a person (therefore, including a minor) must be tried within a reasonable time. If not, he is to be released either conditionally or upon reasonable conditions. This right applies to a minor who is remanded to the RYC or CYC because he has to be aware that if he undergoes a very long time in the detention place, it can constitute a solid ground to apply for bail.

Protection from inhuman treatment (Section 7)

The second main relevant section of the Constitution which concerns children in conflict with law is Section 7 “Protection from inhuman treatment”. According to Section 7(1) no person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.

This means that the minor has to be treated properly in the detention place and that prison officers cannot resort to any inhuman or degrading treatment.

Protection from discrimination (Section 16)

Section 16 of the Constitution establishes that no person (therefore, including a minor) shall be treated in a discriminatory manner by public officials or by public authorities²⁶. This shall apply to institutions where children in conflict with the law are detained.

3.1.2 The Juvenile Court

The Juvenile Offenders Act 1935 (JOA) provides for the setting up of a Juvenile Court (for minors between the ages of 14 and 18 years). According to Section 3 of the JOA entitled “Constitution of Juvenile Court”, the jurisdiction of the Juvenile Court,

²⁶ Section 16(2) of the Constitution: “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”. 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” (Section 16(2) of the Constitution).

exercised by a District Court, extends to the hearing and determination of trials of all juveniles charged with offences except for offences like murder, manslaughter and larceny.

Section 6 of the JOA highlights the importance of a dedicated court for minors. As per the JOA, the proceedings concerning a juvenile are to be held in a separate room from the regular proceedings. The procedures are in held in chambers and are not open to the general public. Access is usually restricted to Court officers, parties, counsel, newspaper representatives of good faith and such other authorised persons²⁷. These legal provisions provide for the protection of the privacy of the minor.

Judgement in the best interests of the child

According to the JOA, if a juvenile admits to the offence, or if he is found guilty, the court gathers such information about his general conduct, his home surroundings, his school record and medical history so that a judgement is given “in his best interests”.

This particular provision of the JOA is in line with Article 3 of the UNCRC which stipulates that the best interests of the child shall be taken into account.

According to Section 11(9) of the JOA, “*no prosecution shall be instituted against a minor except on an information filed with the consent of the Director of Public Prosecutions*”. This is an important element as the Director of Public Prosecutions (DPP) has the discretion to institute proceedings.

Period of detention

Section 22 of the JOA entitled “Methods of dealing with juveniles” specifies the minimum and maximum period of imprisonment for juveniles. It stipulates that where

²⁷ Procedure in Juvenile Court as defined by Section 6 of the JOA:

- (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.

the Court decides to send the offender to a Rehabilitation Youth Centre, the period of detention for which the offender shall be sentenced shall be “*not less than 3 years nor more than 5 years*”.²⁸

Restrictions on punishment of juveniles

Section 15 of the JOA restricts punishment that could be applied to juveniles. Section 15(1) stipulates that “*A juvenile under the age of 14 shall not be ordered to be imprisoned or sentenced to penal servitude for any offence, or be committed to prison in default of payment of a fine, damages, or costs*”.

On the other hand, a young person²⁹, that is a person between 14 and 18 years of age as defined in the JOA, can be imprisoned but cannot be sentenced to penal servitude for any offence.

However, do note that article 16 of the JOA specifies that in case of certain serious crimes such as manslaughter, attempt at or of complicity in murder or wounds and blows causing death, if the Court “*is of opinion that none of the other methods in which the case may be legally dealt with is suitable, the Court may sentence the offender to be detained for such period as may be specified in the sentence*”.

²⁸ Section 22(2) of the JOA “Methods of dealing with juveniles”: “(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”.

²⁹ As defined in the JOA, “*juvenile*” means a person under the age of 18 and “*young person*” means a person who has attained the age of 14 and is under the age of 18.

3.1.3 The Community Service Order Act 2002 (as amended in 2009)

Section 3(1)(a) of the Community Service Order Act 2002 as amended in 2009 states that:

“Where a court 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.”

3.1.4 The Reform Institutions Act 1988

The Reform Institutions Act 1988 makes provision for the possibility of early release from detention of minors. This is in compliance with the United Nations Convention on the Right of the Child.

Article 37 of the UNCRC states that the imprisonment of a child should be *“for the shortest appropriate period of time”*. According to Article 51 of the Reform Institutions Act 1988, a convicted (including a minor) detainee who has served not less than one half of his sentence can be released on parole by the Minister on the recommendation of a Parole Board.³⁰

According to Section 47(1)(a) of the Reform Institutions Act 1988, the Commissioner of Prisons has the power to grant leave to a detainee in a Rehabilitation Youth Centre or a Correctional Youth Centre³¹. Article 46 of the Reform Institutions Act 1988 also makes provision for a leave of absence to be granted by the Commissioner of Prisons to a juvenile detainee in some circumstances³². The officer in charge of a Rehabilitation

³⁰ Article 51 “Parole Board and release on parole” of the Reform Institutions Act 1988: “(1) There shall be a Parole Board which shall be composed of such persons exceeding 10 as the Minister may appoint. (2) The Minister may, on the recommendation of the Parole Board (a) release on parole a convicted detainee who has served not less than one half of his sentence or at least 16 months thereof, whichever expires the later.”

³¹ Reform Institutions Act 1988, article 47(1)(a) “After care order”: “The Commissioner may permit a detainee in a Correctional Youth Centre or a Rehabilitation Youth Centre, as the case may be, who has served a minimum of 6 months, to live under the charge of suitable and willing person”.

³² Reform Institutions Act 1988, article 46(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

Youth Centre or a Correctional Youth Centre may also grant leave of absence to a detainee *“for such period and on such conditions as he thinks fit”*³³.

Article 53 of the Reform Institutions Act 1988 makes provision for a Board of visitors appointed for the RYCs and CYCs whose members are nominated by the Minister³⁴. The functions of the Board of Visitors are to enquire into the condition of detention of the detainees and report to the Minister on any cases of abuse, any repair which may be urgently required and any matter which it may consider expedient (Section 54(1) of the Reform Institutions Act 1988).

3.1.5 The Bail Act 1999

Section 3A of the Bail Act 1999 stipulates that the Court *“shall endeavour to hear and determine any application for bail within the shortest delay”*, to ensure the protection of the right to liberty. However, according to Section 4, the Court may also refuse to release a defendant or a detainee on bail, in some circumstances. In the case of minors, the Bail Act in its Section 4 entitled *“Refusal to release on bail”* specifies that the Court may refuse to release a minor either *“for his own protection”* or *“for his own welfare”*.

3.1.6 The Legal Aid Act 1973 (as amended in 2012)

Under the Legal Aid Act 1973, any person (therefore, including a minor) who is a party to civil or criminal proceedings can benefit from legal aid provided that his monthly earnings are less than Rs 10, 000 and his net worth is less than five hundred thousand Mauritian rupees. Section 7A makes special provision for minors, namely: *“(…) 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”*. **Therefore under this Section 7A of the Legal Aid Act 1973, when a minor charged**

the institution in nary clothes and under escort, for the purpose of viewing the body before burial or cremation.”

³³ Reform Institutions Act 1988, Section 46(1) *“Leave of absence”*.

³⁴ A Board assigned to a Correctional Youth Centre or a Rehabilitation Youth Centre shall be composed of not less than 8 members. The Chairman of the Board shall be designated by the Minister and shall be a Senior Magistrate. Articles 53(2)(b) et 53(3)(a) of the Reform Institutions Act 1988.

with a crime or misdemeanour applies for legal aid, his application shall not be refused.

Section 9 of the Legal Aid Act 1973 also makes provision for the assignment of a barrister or an attorney, or both, to assist any person including a minor who has been granted legal aid.

3.1.7 The Probation of Offenders Act (as amended in 2009)

Section 3(1) (a) of the Probation of Offenders Act (as amended in 2009) provides that the Court may make a probation order where a child is convicted for an offence whose sentence is not fixed by law. The Court can consider circumstances like the nature of the offence, the character, antecedents, age health, mental condition and home surroundings of the minor before making a probation order.³⁵

Section 3A “Report by Probation Officer” provides that a probation officer may make a report to assist 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. In case the child is not represented by a counsel or attorney, the report shall be given to his parent or guardian if present in court.

Under Section 4(1)(a), a probation order shall “*have effect for such a period being not less than one year nor more than three years*”. Section 4(b) stipulates that 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

³⁵ 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.

of the offender or for preventing a repetition of the same offence or the commission of other offences.

According to Section 4(c) of the Act, the Court may impose one or more of the following requirements:

- A. an attendance centre;
- B. a curfew;
- C. a drug or alcohol treatment; and/or
- D. a residence.

Section 4(6) stipulates that “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”.

According to Section 20 “Exemption from police supervision”, a minor subjected to a probation order shall not be supervised by the Police.

3.1.8 The Probation Hostel and Home Regulations 1989

The Probation Hostel and Home Regulations 1989 were introduced by the Minister of Social Security, National Solidarity and Reform Institutions under Section 17 of the Probation of Offenders Act 1946 which provides as follows:

“The Minister may make regulations in respect of-

- (a) the duties of a Principal Probation Officer;
- (b) the duties of probation officers;
- (c) the constitution and duties of a Probation Committee;
- (d) the form or records to be kept under this Act;
- (e) the remuneration of any person appointed to carry out any duties under this Act and the fees and charges to be made for any act, matter or thing under this Act to be done or observed; and
- (f) generally for the purposes of this Act.”

I have to point out that Section 17 of the Probation of Offenders Act 1946 has been repealed and replaced in Section 14 of the PROBATION OF OFFENDERS (AMENDMENT) ACT 2009.

“Section 17 of principal Act is repealed and replaced by the following section –

17. Regulations

- (1) The Minister may make such regulations as he thinks fit for the purpose of this Act.
- (2) Without prejudice to the generality of the powers conferred by subsection (1), the regulations may provide for –
 - (a) the composition, powers and duties of a Probation Committee;
 - (b) the powers and duties of probation officers;
 - (c) the allowance payable to any person, other than a public officer, required to carry out any duties under this Act;
 - (d) the levying of fees and charges; and
 - (e) the amendment of the Schedule.”

I would like to draw attention to the fact that the Probation Hostel and Home Regulations were made in 1989 under Section 17 of the Probation of Offenders Act 1946 and no amendments have been made to these regulations to date.

3.1.9 The Ombudsperson for Children Act 2003

According to the Ombudsperson for Children Act 2003, the Ombudsperson for Children has the duty to ensure that “*the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and associations of individuals*” (Section 5.a).

In carrying out these duties, the Ombudsperson for Children has the right and duty to visit premises where a child is present, including places of detention and educational or health institutions:

“For the purposes of an investigation under this Act, the Ombudsperson for Children may (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.” Article 7(2)(b)(i).

The Ombudsperson for Children can also advise the relevant Ministries and authorities on the situation in RYCs, CYCs and probation centres. She can also make proposals to the Minister on legislations and policies.³⁶

3.2 Areas of Concern in the National Legislation Framework

Several sections of the existing legislation have raised my concern especially regarding the sentencing procedures and also the fact that there are insufficient provisions specifically addressing the situation of children in conflict with the law.

³⁶ Section 6 of the Ombudsperson for Children Act 2003: “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”.

3.2.1 Areas of Concern in the Juvenile Offenders Act 1935 as amended in 1998

Joint trial with an adult

According to the Juvenile Offenders Act 1935 where a minor is charged jointly with an adult accused, the minor can be tried by a court other than the Juvenile Court.³⁷ Provision is not made for a separate trial. It is unfortunate to note that a minor is not given the status of a child just because he has been jointly accused with an adult.

Ambiguity regarding the bail of a minor

According to Section 9 of the Juvenile Offenders Act 1935, when a minor has been arrested and cannot be brought forthwith before a court, the police officer of the station to which he/she is brought may release him/her on a recognisance bond after enquiry.

There are no guidelines on which the police officer is to base himself to decide as to whether the minor should be released on recognisance bond. Further, this is in conflict with the Bail Act 1999, which stipulates that it is the Bail and Remand Court which decides on the recognisance bond and sureties.³⁸

The need for separate Juvenile Court

Section 3 of the JOA makes provision for the administration of juvenile justice by setting up juvenile courts. It stipulates that:

“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”.

The Juvenile Courts are currently sitting in the District Courts before a magistrate exercising jurisdiction in the district. According to Section 3(3) the JOA, “every

³⁷ Section 4(b) of the Juvenile Offenders Act “Assignment of matters to Juvenile Court”: “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”.

³⁸ According to Section 5(1) of the Bail Act 1999, the defendant or detainee who is released on bail shall be released on his own recognisance to appear before a Court for his trial. He/she may be required to provide such number of sureties as the Court deems necessary to guarantee his appearance.

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". In other words, it can be before any magistrate who may not necessarily be acquainted with the specifics of cases or hearings involving juveniles. **It would be undoubtedly be appropriate to set up a specialised and separate Juvenile Court.**

No clear definition of the age of criminal responsibility

The JOA defines the "young person" as one "who has attained the age of 14 and is under the age of 18". The same legislation makes provision for cases where the young person is under the age of 14. Section 11(2) of the JOA, for instance, stipulates that:

"Where a juvenile under the age of 14 is brought before a Juvenile Court for an offence, (...) the case shall finally be disposed of in such Court, and it shall not be necessary to ask the parent or guardian whether he consents to the juvenile under the age of 14 being dealt with in the Juvenile Court."

I therefore note with concern that there is no provision in the law to fix a minimum age of criminal responsibility.

Detention of "uncontrollable" juveniles

Another major area of concern in the JOA is Section 18 on "uncontrollable juveniles". Any parent or guardian of a juvenile can represent on oath before a Juvenile Court and declare that he/she is unable to control the juvenile³⁹ and the latter is sent to the RYC.

The same applies to Section 19 of the JOA "Children liable to be committed" where any police officer can bring before a Juvenile Court a minor found begging, wandering, having bad behaviour or even a minor being ill-treated or neglected. The Juvenile Court can then order the juvenile to be sent to the RYC until the age of 18 years or for any shorter period.

³⁹ Section 18(1) of the JOA specifies the condition of admission of a juvenile under the label of "uncontrollable": "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."

These sections of the law regarding “uncontrollable children” or “children liable to be committed” are status offences. A status offence is a noncriminal act that is considered a law violation only because of a youth’s status as a minor. Typical status offenses include truancy, running away from home, violating curfew, underage use of alcohol, and general ungovernability.⁴⁰ Although these children are not criminals, they may nevertheless be subject to arrest and detention. **It is of utmost concern to me that under these sections, the child is sent to be detained when he or she has not committed any crime.** Children who commit status offences and find themselves within the juvenile justice system often have little parental or community support. Yet the minor is tagged as “uncontrollable” or “beyond control” but he/she barely receives psychological or rehabilitative help.

The Riyadh Guidelines call for the repeal of status offences; this issue should be treated as a social welfare issue under the child protection system. The UNCRC has also criticised the use of any form of detention for children who have not committed a crime, but have simply been abandoned or mistreated or who are beyond parental control. **In line with this, I therefore recommend that Sections 18 and 19 of the JOA be repealed.**

3.2.2 Areas of Concern in the Reform Institutions Act 1988

The Reform Institutions Act 1988 regulates the treatment of convicted and unconvicted detainees in the RYCs and CYCs. Section 23 provides that within 24 hours of admission to a place of detention, the minor must take a bath, be examined by a medical officer and be provided with sufficient information as to earnings and privileges. The proper methods of making complaints concerning food, clothing, bedding and other necessities shall also be explained to the detainee. The detainee shall, according to Section 25, be supplied with clothing and adequate bedding for warmth and health. The medical officer can recommend additional clothing and bedding which shall be supplied to the detainee. **However, there is no mention in the section about the minor being informed of his rights. This approach is based on preserving only his basic physical needs.**

⁴⁰ www.ojjdp.gov/mpg/litreviews/Status_Offenders.pdf

Inhuman treatment of detainees

According to the Reform Institutions Act 1988, a minor can be subject to punishment like confinement in a separate cell for a maximum of two weeks, deprived of the right to play and of pocket money for a maximum period of three months.⁴¹ An officer can even make use of force on a minor to compel obedience⁴². These aforementioned provisions are in contradiction with the following laws:

- **Section 7 of the Constitution “Protection from inhuman treatment”;**
- **Section 13(1) of the Child Protection Act “Ill Treatment”;**

“Any person who ill-treats a child or otherwise exposes a child to harm shall commit an offence”;
- **Rule 27 of the Probation Hostel and Home Regulations 1989 which forbids corporal punishments of any kind; and**
- **International guidelines concerning children in conflict with the law.**

It is worth pointing out that research supports the shaping of behaviour with positive discipline rather than punishment in the rehabilitative process of children.

Grant of leave or aftercare order

Section 47 of the Reform Institutions Act 1988 makes provision for aftercare order to be granted by the Commissioner of Prisons to juvenile detainees in RYCs and CYCs:

“The Commissioner may permit a detainee in a Correctional Youth Centre or a Rehabilitation Youth Centre, as the case may be, who has served a minimum of 6 months, to live under the charge of suitable and willing person.” (Reform Institutions Act 1988 Article 47(1)(a) “After care order”)

⁴¹ Section 37 “Punishment of detainees”, Section 38 “Punishment of minor”, Section 39 “Punishment of young offenders for defaults in a Correctional Youth Centre” and Section 40 “Stage”.

⁴² According to Section 12(1)(d) and (e) of the Reform Institutions Act 1988 “Use of force” : “No officer shall use force against a detainee except such force as is reasonably necessary – (d) to compel obedience to an order which the detainee wilfully refuses to obey; (e) to maintain discipline in the institution.”

Our investigation revealed that it is the Board of Visitors who grants the right of leave to RYC inmates. There is no mention in the legislation of the Board of Visitors being entitled to grant leave or aftercare order.

The functions of the Board of Visitors, as specified by the Reform Institutions Act 1988 are to enquire⁴³ into the condition of detention of the detainees and report to the Minister on any abuse committed on children in the institution; any repair which may be urgently required and any matter which it may consider expedient (Section 54(1)(a), (b) and (d) of the Reform Institutions Act 1988). It is to be noted that Section 54(1)(c) which provides that the Board of Visitors may “*hear any complaint which may be made by a detainee and, where the detainee so requests, hear the complaint privately*” was repealed in 2012.

The member of the Board of Visitors shall always keep a record of his/her visit⁴⁴. During our investigation, the Officer in charge of the RYCs was not able to hand over any reports of visits carried out by members of the Board of Visitors.

3.2.3 The Rehabilitation Youth Centre (RYC) Regulations 1936 and Correctional Youth Centre (CYC) Regulations 1947

The Rehabilitation Youth Centre (RYC) Regulations 1936 make provisions for the industrial education⁴⁵ of boys but they make no mention of RYC for Girls. The

⁴³ To this effect, a member of the Board of Visitors shall visit the institution every month (Section 54(2) of the Reform Institutions Act 1988). The member shall inspect:

- (a) any part of the institution;
- (b) the detainees at work, in hospital or in separate or other rooms or wards;
- (c) all the books, journals and records relating to detainees.

⁴⁴ According to Section 55(1) of the Reform Institutions Act 1988 “Board minute book”: “There shall be kept in every institution a Board minute book in which a visiting member shall –

- (a) record his visit and any suggestion or remark which he may have to make;
- (b) enter any irregularity in the administration of the institution which he disco’ or any improvement or repair which he thinks necessary for the institution;
- (c) register the name and number of any detainee who has complained to him and the nature of his complaint.”

⁴⁵ Rehabilitation Youth Centre (RYC) Regulations 1936 Section 8: “the industrial education of the boys shall consist of training in the agricultural work, carpentering, tinsmith's work, stonemason's work, and such other work as may, from time to time, be approved by the Commissioner, and shall comprise the household service of the school, namely: cooking, cleaning, washing and repairing clothes.”



Rehabilitation Youth Centre (RYC) Regulations 1936 stipulate that *“the Rehabilitation Youth Centre is instituted to provide for the detention and the ordinary and industrial education of male persons below the age of eighteen years”* (Section 2) and that *“all the boys, unless exempted by the chief officer, shall attend school”* (Section 7).

It is also a matter of concern that the Rehabilitation Youth Centre (RYC) Regulations 1936 in their Section 13 make provision for the infliction of corporal punishments:

“The Commissioner shall have power to order the infliction of punishments specified in Schedule B of these regulations and no punishment shall be inflicted except by order of the Commissioner.”

The above-mentioned Schedule B of the regulations provides the list of offences committed by boys and the subsequent punishments which may be inflicted such as: confinement in detention room, stone breaking, extra fatigue duty, loss of privileges, wearing distinctive clothes. Section 14 even regulates how these corporal punishments should be inflicted:

“No order for the infliction of corporal punishment shall be carried out until the medical officer, after inspection and examination, shall have reported on the form of Schedule C to these regulations that the boy is fit to undergo corporal punishment. All corporal punishment shall be inflicted in the presence of the Commissioner and of the medical officer.”

According to the Rehabilitation Youth Centre (RYC) Regulations 1936, the RYCs were placed under the responsibility of the Commissioner of Prisons. In 2005, a decision of the then Minister of Social Security, National Solidarity, Senior Citizens Welfare and Reform Institutions placed the RYCs under the aegis of his ministry. However, there is neither a written policy nor a law amendment to support this ministerial decision. Though officers of RYCs believe that confusion exists, the legislation states very clearly that the RYCs still fall under the responsibility of the Commissioner of Prisons. The Heads of the RYCs are from the Mauritius Prison Services and remain accountable to the Commissioner of Prisons. **Section 3 of the Rehabilitation Youth Centre Regulations 1936 stipulates that the Commissioner of Prisons “shall be in charge of the general control and administration of the school, and shall be in authority over all members of the staff in the school”.**

Section 4 of the Correctional Youth Centre (CYC) Regulations 1947 provides that there shall be four grades of detainees⁴⁶: “ordinary grade”, “probationary grade”, “special grade” and “penal grade” and that children detained in the penal grade for “*gross misconduct*” or “*idleness*” shall be “*subjected to the conditions of imprisonment with hard labour*”, which is contrary to international conventions on the rights of children.

⁴⁶ Correctional Youth Centre (CYC) Regulations 1947 Section 4 “Gradation of detainees”:
 “(1) There shall be four grades of detainees: ordinary, probationary, special grade and penal grade.
 (2) (a) a detainee shall on admission be placed in the Ordinary Grade.
 (b) may after four months from the date of his sentence, subject to his work and conduct being satisfactory, be promoted to the Probationary grade
 (c) may after remaining in the probationary grade for no less than 8 months be promoted to the special grade
 (d) may for gross misconduct or idleness be placed in the penal grade. detainees in the penal grade shall be subjected to the conditions of imprisonment with hard labour”.

Chapter 4:

Mauritius Fails to Act on the UNCRC Committee's Concerns about the Administration of Juvenile Justice

Chapter 4: Mauritius Fails to Act on the UNCRC Committee's Concerns about the Administration of Juvenile Justice

I mentioned in my introductory notes that since 1996, the Committee of Experts of the UNCRC has urged the Republic of Mauritius to undertake a reform of its legislation to better promote the rights of children in conflict with the law. Though some positive initiatives have been taken, the UN Committee when analysing the Mauritian periodic reports, is still concerned with the limited compliance of Mauritius to the UNCRC.

4.1 Articles of the UNCRC concerning Juvenile Justice

Article 37 of the UN Convention on the Rights of the Child

According to Article 37 of Convention on the Rights of the Child, 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.

Article 40 of the UN Convention on the Rights of the Child

According to Article 40(1) of Convention on the Rights of the Child, State Parties shall:

“Recognise the right of every child alleged as, accused of, or recognised 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.”

Article 40(2) of Convention on the Rights of the Child also mentions that, *“having regard to the relevant provisions of international instruments”*, State Parties shall ensure that:

- (a) No child shall be alleged as, be accused of, or recognised 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.

Article 40(3) of Convention on the Rights of the Child considers that State 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.”

Section 40(4) of Convention on the Rights of the Child also mentions that 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”.

4.2 Compliance to the UNCRC Recommendations

When the Expert Committee of the UNCRC analyses the second periodic report in 2006, it welcomes the information “*that the juvenile justice system will be reviewed*” but it expresses concerns about notably, “*the lack of a clear legal provision for the minimum age of criminal responsibility*”. The Committee is furthermore concerned “*about the limited use of alternative socio-educational measures and the frequent use of deprivation of liberty*” and recommends that the Republic of Mauritius:

- (a) “*Establishes by law a minimum age of criminal responsibility set out at an internationally acceptable level;*
- (b) *Increases availability and accessibility of alternative measures for child offenders using probation services;*
- (c) *Takes all necessary measures, in addition to the ones listed in (b), to limit the de facto use of deprivation of liberty, and ensure that it is genuinely used only as a last resort; and*
- (d) *Regularly conduct training programmes concerning relevant international standards for all professionals involved with the system of juvenile justice.”*

It is interesting to note that in her annual report 2008-2009, the then Ombudsperson, Mrs Shirin Aumeerudy Cziffra, mentions that the Mauritian Government intends to amend several laws to better protect the rights of children in conflict with the law. She further states that the Juvenile Offenders Bill is being finalised and that the Reform Institutions Act 1988 is also in the process of being amended “*to provide for a thorough care system for juveniles in the custody of the Rehabilitation Youth Centre (RYC)*”. As a matter of fact the Attorney General’s Office in 2010 was in the process of amending the Juvenile Offenders Act 1935. The Ministry of Social Security and Reform Institutions prepared a draft bill. The main objects of the bill were to:

- (a) make provision for mediation between interested parties to determine whether or not, in the case of an offence other than a serious one, a diversionary measure is not a satisfactory alternative to prosecution;
- (b) require a court before which a juvenile is convicted to call for a pre-sentence report from a probation officer;

(c) make better provisions for dealing with uncontrollable juveniles.

Unfortunately, the new piece of legislation which would have definitely helped to improve the situation of children in conflict with the law, has never been enacted. In this, Mauritius fails to comply with Article 4 of the UNCRC which stipulates that *“all States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the UNCRC.”*

Plans for the rehabilitation of young offenders have not materialized

In 2001, the Ministry of Social Security and Reform Institutions commissioned a study on the rehabilitation of young offenders in Mauritius. The authors of the report⁴⁷, Dr A. Payneeandy and Mr Vassen Naeck stated that:

“The whole rehabilitation system needs improvement because these centres are in one way or another, under prison administration and the latter is being run by rules, regulations and traditions dating back to British colonial rule.”

The researchers insisted that without proper training in communication skills and psychology, it is difficult for officers to implement good rehabilitation plans. They also pointed out that the officers of the RYCs and CYCs lacked the necessary motivation to *“carry their work in a diligent manner”*.

Until today RYC and CYC staff members work in very difficult conditions as mentioned by the 2001 report. Human resources are lacking, for each shift there are only 75% of officers who work; they feel very insecure, especially the staff at RYC Girls. When I interacted with the officers they expressed the need to access specialised training.

Following the above mentioned report and violent incidents which occurred in 2005 at the RYC Girls, an action plan was drawn by the Ministry of Social Security and Reform Institutions in 2006. It is to the credit of this Ministry that immediate measures were taken to improve the situation at the RYCs and CYCs:

⁴⁷Payneeandy S. Naeck, V. 2001, *The Rehabilitation of Juvenile Offenders in Mauritius*, Rose-Hill, Mauritius.

- security features were improved;
- officers were replaced;
- there were significant changes in the activities organised; and
- more Rehabilitation officers were recruited.

Contacts were established with experts in Reunion Island through the French embassy in Mauritius to elaborate a proper rehabilitation programme for inmates and to train officers. Professionals from Reunion Island came to Mauritius from 18 August 2008 to 22 August 2008 and they drafted a report related to the needs of children, the legal framework, pedagogy and training of staff. **Unfortunately their recommendations were never implemented.**

In May 2015, a report was published by prison institutions and recommendations were made to improve educational facilities, library facilities, medical services, clothing and bedding in dormitories and cells (debugging, repainting, and repairs of electric cables). **Unfortunately, very few of these recommendations have been put into practice.** And today, it is not surprising that after having considered the consolidated third to fifth periodic reports on 14 and 15 January 2015, the Committee of Experts of the UNCRC raises once again a number of issues concerning the administration of Juvenile Justice in Mauritius.

Juvenile justice system not fully in line with the UNCRC

In its concluding observations (2015) the Expert Committee expresses its concerns on *“the absence of a clear legal provision for the minimum age of criminal responsibility, the absence of juvenile justice tribunals with specialised judges”*. The Committee is also concerned about:

- (a) *“the lack of systematic information to children of their rights when deprived of their liberty and of legal aid to juvenile offenders as well as the frequent trials of children in conflict with the law in absence of their legal representatives or guardians;*

- (b) inadequate alternatives to imprisonment; the preventive detention of children who cannot pay bail and the detention of children together with adults by the Police;*
- (c) children as being “beyond control” being placed in closed institution on request of their parents in accordance with Section 18 of the Juvenile Offenders Act;*
- (d) the lack of progress in restructuring the institutions for the rehabilitation of minors in conflict with the law, and in properly training rehabilitation personnel.”*

In light of the UNCRC Committee on the Rights of the Child General Comment No. 10 (2007) on children’s rights in juvenile justice, the Expert Committee of the UNCRC, in its concluding observation (2015) urges the Republic of Mauritius to bring its juvenile justice system fully in line with the Convention and other relevant standards. In particular, the Committee recommends that the State Party:

- (1) Establish in law a minimum age of criminal responsibility** in accordance with an internationally acceptable standard and refrain from sentencing minor offenders as adult;
- (2) Expeditiously establish juvenile justice tribunals and procedures** with adequate human, technical and financial resources, designate specialised judges for children and ensure that such specialised judges receive appropriate education and training;
- (3) Ensure the provision of information to children on their rights when deprived of their liberty** and independent legal aid at an early stage of the procedure and thorough legal proceedings and ascertain that no child is sentenced in the absence of their legal representatives or guardians;
- (4) Promote alternative measures to detention**, such as diversion, probation, bail, mediation, counselling, or community service and ensures that detention is used as a last resort and for the shortest possible period of time and that it is reviewed on a regular basis with a view of withdrawing it;

- (5) **Refrain from detention of children without release on bail**, and removes all children in conflict with the law from adult detention facilities;
- (6) **Repeal Section 18 of the Juvenile Offenders Act “Uncontrollable juveniles”** and provides families with difficulties for the upbringing of children with necessary support and counselling services, including through the involvement of NGOs;
- (7) **Restructure the reform institutions for the rehabilitation of minors in conflict with the law**, in particular through the enhancement of education and training for children in rehabilitation centres, and the provision of adequate psychiatric, psychological and social counselling, and provide adequate training to the rehabilitation personnel.”

In the same report, the Committee also urges Mauritius:

“To take all necessary measures to address those recommendations included in the concluding observations of the second periodic report under the Convention (UNCRC/C/65/Add.35), that have not or not sufficiently been implemented, particularly those related to the absence of a Children’s Bill (para.11), children with disabilities (para.51), sexual exploitation (para.65), and juvenile justice (para.67).”

Mauritius must shoulder its responsibilities

It is high time that Mauritius shoulders its responsibility to ensure that the rights of children in conflict with the law are respected. It is not enough to have signed and ratified the UNCRC. Mauritius has the duty to act accordingly. It has to be explained that Mauritius being a dualist country when it signs and ratifies a convention, the latter does not automatically enter into force and does not per se have legal effects in the country.

The UNCRC needs to be domesticated. It is observed that the 1996 and 2015 concluding observations have been followed and have been incorporated in the Children’s Bill.

Now the said bill has to be converted into a domestic act, it now bears the above explained force of law. But the Children's Bill will only partly improve the situation of the children in conflict with the law which brings me to state the urgency of the Juvenile Justice Bill to be enacted.

Chapter 5:

Deplorable Living Conditions in Detention Centres for Children

Chapter 5: Deplorable Living Conditions in Detention Centres for Children

It is the duty of the Ombudsperson for Children to make sure that the rights of children in conflict with the law are respected in the institutions where they are detained.⁴⁸ The Ombudsperson for Children is mandated to visit those places.⁴⁹ During my visits, I discovered that life in detention centres is extremely difficult for the children. They neither have adequate education nor health care. Meaningful recreation and leisure activities are still lacking. Dinner is served at 5.00 pm and they are locked up in their cells at 8.00 pm. Abandoned by friends and relatives they often feel a deep sense of bitterness.

In all the detention centres most children cannot manage their anger and act out in violence. At the RYC Girls serious incidents have occurred several times. Unfortunately, to date, there is no specific programme which helps children to learn how to deal with threat and their resulting anger. On several occasions I made it a point to listen to what they had to say and gave them the opportunity to express their feelings of anger.

“Madam ou nek dir moi kalme. Pa kapav kalme. Mo papa dormi ar mwa. Mo gagn enn zanfan. Apre li al dir lakur mo move, mo beyond control! Mo anvi touy li. Moi mo fermé, li, li pe marse partou. Li fini detrir moi. Ki oule. Mo fer la raz, ban la rod ar mwa, mwa ousi mo donne. Pa dir mwa pas kraze. Mo pou kraze moi”. (Resident RYC girls)

“Kot finn dir pas gagn drwa ekrir ene ti let pou mo kopinn. La vi dan bez isi. Dimann enn ti permission, mo anvi ekrir enn ti let damour mo

⁴⁸ Section 5(a) of the Ombudsperson for Children Act: “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”.

⁴⁹ Section 7(2)(b)(i) of the Ombudsperson for Children Act: “For the purposes of an investigation under this Act, the Ombudsperson for Children may (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”.

kopinn RYC girls. Wi mo anvi bat misye X. Mo anvi donn li kut pied , li manze mo kran". (Resident RYC boys)

"Kumadir pe dormi lor feray mem sa. Ena pinez ek pinez morpin ici. Get mo lebra. Gagn pike partou. Ena lezar, ena lera, kancrela et buku moustik. De fwa bizin tir fouro depi matela pou kouver, lerla dormi lor leponz". (Resident RYC boys)

It is important to point out that being locked up damages a child's mental health, development and overall well-being. Psychologists have assessed detention environments as "mental illness factories" and argued that they are not a place for children.

5.1 Living and Sanitary Conditions

On the 5 February 2016, I visited the Petite-Rivière Detention Centre for juveniles. I was really horrified by the living conditions of the minors detained in the centre, more precisely by the existing unhygienic conditions and by the fact that there is absolutely NOTHING detainees can do, EXCEPT WAIT. They spoke of their hopelessness in those terms:

- A *"Kouma dir zaimo ici. Pa sorti ditou. Péna naryen pou fer. Fini mort."*
- B *"Santi pi tou letan. Kouma mo pou manze. Loder la fatig nou 24 lor 24. Senti mari, mari pi. Nou couma lisyen."*
- C *"Plito mo mor."*
- D *"Parfwa anvi al twalet gard pa vinn ouver kaso."*

These children are losing the most important years in their development. It is of utmost importance that policy decision makers be reminded that children's rights are inherent, inalienable and universal. The Republic of Mauritius is breaching Articles 37 and 40 of the Convention of the Rights of the Child and international standards on the administration of Juvenile Justice.

On 9 February 2016, I wrote to the Commissioner of Police and recommended that urgent actions be taken to:

- (1) improve the living conditions of children detained at Petite-Rivière Detention Centre and in the long run, a more convenient building should be identified to accommodate detainees;
- (2) identify age-appropriate activities and propose them to all young detainees;
and
- (3) sensitise police officers on the rights of children living in detention as a result of being in conflict with the law.

I must admit that I was pleasantly surprised that immediate actions were taken to refurbish the Petite-Rivière Juvenile Detention Centre. Provisions were made to give detainees the possibility of watching T.V. These were positive measures but unfortunately not sufficient to bring meaningful change in the lives of detainees.

Most of the children living in detention as a result of being in conflict with the law come from poor broken families, have been victims of different forms of abuses and could not achieve educational goals. We must remember that these children are committed to RYCs and CYCs for rehabilitation. **But nobody can rehabilitate children in RYCs and CYCs in its present state!** This is impossible mission. The physical environment of these centres is simply not conducive to rehabilitation. Judge Robert Ahnee rightly pointed out in 1999 that:

“The general impression of juvenile facilities is one of dullness, confinement, non-stimulation and badly furnished.”

In RYCs and CYCs, children are made to feel they are in a prison as from day one. It is difficult for them to believe that they are detained for their welfare and rehabilitation. At 7.15 am, they have breakfast and proceed with the daily cleaning and chores. ‘Schooling’ starts at 9.00 am and ends at 3.00 pm, in between they have a lunch break and vocational training. Dinner is served at 5.00 pm, and they are back to their rooms at 8.00 pm. Each child at the RYCs has a personal room with a single bed and a cupboard

to keep his/her personal belongings. He/she is allowed to personalise his/her room. Religious pictures or sayings were found on the walls. The rooms resemble cells. They are not well ventilated and are stuffy. The windows have bars. In the room, the grievances of the inmates can be felt through the expressive drawing and art pieces specifically on the walls. Their small poems stuck on the walls clearly describe their pain, regret, hardships and personal confessions.

5.1.1 RYC Girls

Girls at the RYC were seen cleaning the bathrooms and toilets of the centre. It was explained that to maintain cleanliness, the children are directed to share the chores on a rotary shift. The bathrooms and toilets are in a deplorable state, malodorous and germ-infested. Two girls were seen cleaning a broken toilet and vase (made out of ceramic). There was not enough safety or supervision since the broken ceramic could have caused them injuries. It is simply not right to have them cleaning those disgusting unhygienic toilets and bathrooms. The drains were blocked and water was stagnating on the floor. The old, unmaintained, mouldy bathrooms and toilets halt them from personal hygiene. Even daily showers are a mission as most of the shower floorings are cracked. Most of the toilets are out of use and clogged. For the one or two toilets that can be used, they were horrendous and not sufficient for the number of residents. Further, the officers locked the rooms at night. The girls are given a potty in case they have an emergency. This practice is undoubtedly very humiliating.

5.1.2 RYC Boys

The situation is not better at the RYC Boys. The drainage system was blocked and it was very difficult to get inside the bathroom area. The bad smell emanating from the toilets was unbearable. Several doors were broken. Pigeon excrements were found in the toilets. All the toilet bowls were stained and many were unusable.



5.1.3 CYC Boys

The boys at the CYC are locked inside the whole day, except for one hour in the morning. The dormitories lack ventilation and natural light. They smell badly and the atmosphere is stuffy. There are bugs in the mattresses. At the CYC, the toilets do not have doors. Many flush tanks were broken and faeces were seen in the stained toilet bowls, leaving an unbearably bad smell.

5.1.4 Detention Centre of Petite-Rivière

There is only one toilet in the detention centre of Petite-Rivière. During our first visit to the centre, the smell emanating from the toilet was unbearable. The cells had poor ventilation. The children flocked near the doors which open on the corridor to get some fresh air. I wrote to the Commissioner of Police who took immediate action and important refurbishment work was carried out.

The sanitary conditions in which our children are living violate many of their rights like the right to health, the right to dignity and contravene international norms and standards. The United Nations Guidelines provide that children should have access to sanitary installations “*of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean decent manner*”. It is indeed humiliating and degrading to be treated in such a way, especially when it comes to the personal hygiene of a person.

It is shocking that children are treated like prisoners. They are psychologically affected as detention is hard to bear even for strong adults. The sleeping area should be a peaceful place. Every child has the right to good conditions of living even if they are deprived of their liberty. All the reform institutions for children in Mauritius aim at rehabilitating the child. But this aim will never be attained if he/she is not treated with dignity and if he/she is living in deplorable conditions.

5.2 Common Rooms

At the RYCs, the ground floor is used for multiple purposes like playing indoor games, watching television and having dinner. It is most of the time in a mess with chairs scattered around and the dining tables are left in a disorderly manner. Most of the time you would hear children and officers shouting to make themselves heard.

At the CYC Boys, the children are kept in groups and each group is confined in a separate section of the building. They do not have any contact. One group uses the kitchen as common room, a second group the TV room and a third group the corridor. No activity is carried out.

The common room area could be used for more meaningful activities if it is properly designed, for example: like having a proper dining room; a more comfortable TV room where the viewers would not be disturbed; and a therapeutic area.

5.3 Education and Vocational Training

“Dan klas aprann zis desin maternel. Profeser la nek vinn la pou touy letan. Li dormi dans klas. Gagn enn papye blan, letan klas fini retourn li papye blan la parey, vid.” Inmate of CYC (Boys)

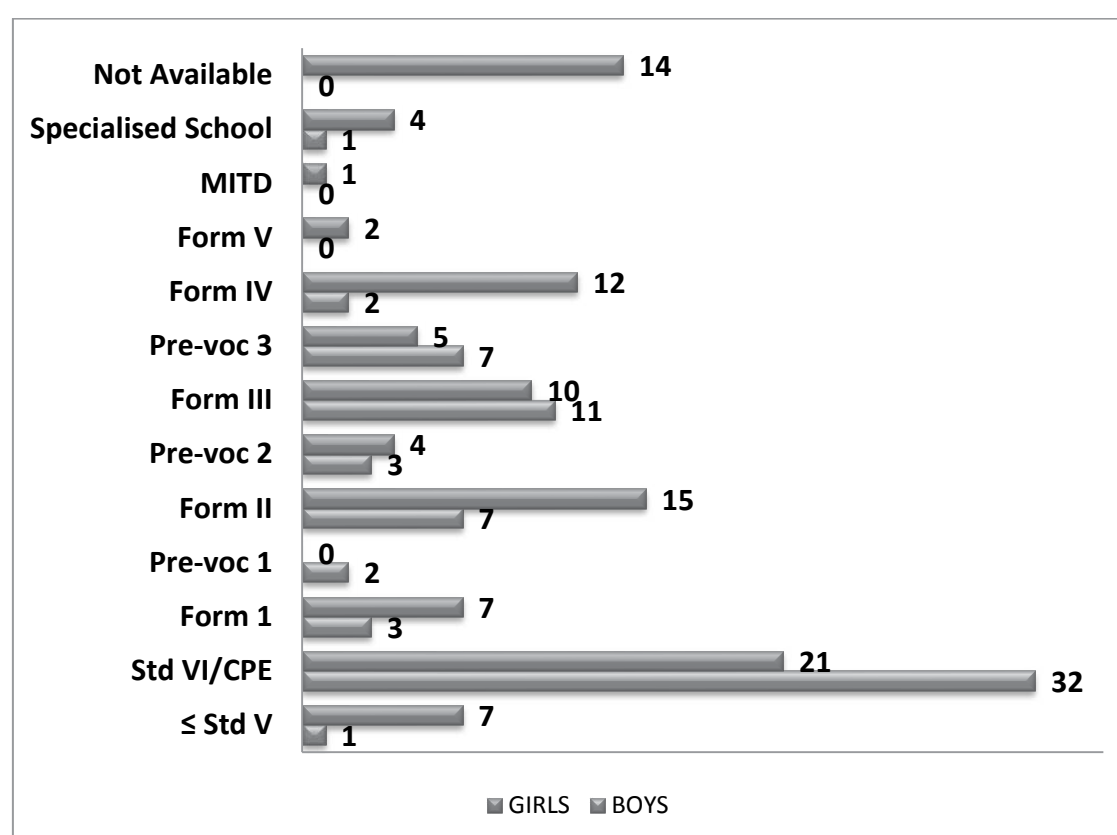
The right to education is stipulated in Article 28 of the UNCRC and according to the Education Act, education is compulsory to all children up to the age of 16 years. Education is an important component in the rehabilitation process. However, in Mauritius, the right of the inmates to education in institutions is not always respected.

At the RYCs, education is provided within the four walls of the centre. The Ministry of Education, Human Resources, Tertiary Education and Scientific Research has posted a Primary School Educator in each centre to run classes from Standard One to Standard Six on a half day basis. This situation is very discriminatory and the inmates do not benefit from “Quality” education. It is very difficult for the teachers to run these classes as the children are not of the same academic level. They do not have the required material to make their teaching appealing for the inmates. The old furniture and the

physical setting contribute to making the atmosphere unfriendly and not conducive to learning.

A quick glance at data provided on the RYCs (Boys and Girls) in Figure 2 hereafter shows that the children were attending an educational or vocational institution prior to their committal at the centre. It is unfortunate to note that formal secondary education is not provided to the RYC inmates. As far as children of the Detention Centre of Petite-Rivière are concerned, they are deprived of their right to education.

Figure 2: Educational background of inmates upon admission at RYC (2011- 2015)



In the past, children were allowed to attend vocational training classes at the Mauritius Institute of Training and Development (MITD) and specialised schools run by NGOs. In 2014, following an instruction from the State Law Office (SLO), this “privilege” was discontinued. The argument to support this decision was that the Reform Institutions Act does not specifically envisage the removal, even temporarily of an inmate from the RYC premises for the purpose of regular schooling activities. The SLO advised that the relevant legislation and regulations be amended before envisaging sending children to schools outside the compound of the RYC.

5.4 Admission, Registration, Movement and Transfer

Children's personal files lack important documents including medical reports, disciplinary proceedings or other legal records. But the files also show that several children have been on remand for more than a year. What are the justifications for being on remand for so long? I believe that this is impacting negatively on their development.

It is stated in the Standard Minimum Rules for the Administration of Juvenile Justice, that detention pending trial shall be used as a last resort and for the shortest possible period of time and that each case shall be handled expeditiously.

Despite these provisions, there are more children on remand in the RYCs and CYCs compared to the number of children convicted.

Another concern is the form used to record the juvenile's personal information. During my enquiry the form reads as: 'Name of prisoner'. Thus, the children are being labelled as prisoners despite the fact that these institutions are not supposed to have the same characteristics of a prison.

Although, upon arrival the child is referred to a psychologist, there are no regular follow-ups or records demonstrating his/her progress. There are no social reports in the personal files of most of the children. I would like to point out that reports play an important role in the assessment of children in order to elaborate individualised educational and therapeutic plans. In addition, it is also said that the child is medically examined before admission. Yet, the question remains why are these medical assessments not included in their personal files?

All children should be made aware of their rights and responsibilities upon admission to the centres. Unfortunately, I have noted that most of the inmates were neither aware of their rights nor their responsibilities.

5.5 Lack of Meaningful Activities

*“Pena internet, pena video game, nu plin!
Nou pa gagn drwa fer la siest. Nou kas ku lor sez.
Nu bisin fer rol malad pou nou kapav al lopital, lerla gagn sorti, kapav
trouv enn ti mamzel mars ar so ti sak. » (Inmates of RYC Boys)*

At the RYCs and CYCs, children complain that they are not allowed to practice activities of their choice. They are most of the time confined inside the centres where only dominoes or ‘carom’ are available. The children stated that they should be able to celebrate festivals. At CYC, children are not allowed to go outside, except for one hour in the morning, despite the fact that the yard is secured by concrete walls and barbed wires on the top.

Our investigation showed that there was no proper rehabilitative work being carried out. During our site visits we observed that most of the time, the children are watching television or left idle doing nothing or playing indoor games. In the morning, the main activity is cleaning and for two hours those who want to attend “school” can do so. The others just chat or wander around. The children do not learn life skills which would help them to become more responsible and confident. They do not receive proper counselling and psychological support. The visit of the psychologist is too rare and there is no proper follow up.

Also the attitude of some officers towards the children is not conducive to rehabilitation and may trigger negative behaviour on the part of the children. The children do not learn anything about manners, etiquettes and way of living. Mild indiscipline is tolerated.

At the CYC (Boys) and the Detention Centre of Petite-Rivière, children are not treated with dignity. They are locked almost the whole day. Their food is served through the bars. They do not receive any psychological support.

At the Probation Hostel for boys, while the inmates are allocated private accommodation on the first floor, the Houseparent’s quarters, the hall and the kitchen are located on the ground floor. Unfortunately, at the Hostel, the post of the couple to act as Houseparents is vacant, defeating the philosophy of the institution. We met two

male Relief Assistant Houseparents who were looking after the children from 4.00 pm to 7.00 am.

For the past six months, the children at the Probation Hostel for boys have not received any visit from the psychologist. It is of utmost importance to recruit a psychologist. Individualised rehabilitation plans have to be elaborated in consultation with the child and his parents. Home visits should cease to be a privilege as they contribute to the rehabilitation process.

Chapter 6:

Causes of Violent Behaviour and Impact of Detention on Children in Conflict with the law

Chapter 6: Causes of Violent Behaviour and Impact of Detention on Children in Conflict with the Law

6.1 Causes of Violent Behaviour

Most violent behaviours are learned behaviour. We all have some predisposition for violent behaviour but most persons including children adopt non-violent ways of achieving their purposes which are effective in most situations. Generally speaking, traditional norms and values hinder the use of violent behaviour. There is extensive research on causes of violent behaviour in children which may lead them to be in conflict with the law. Some of the main causes are discussed below:

1. Exposure to Violence

Children exposed to violence have a tendency to display violent behaviour as a replication of the environment they live in. The initial causes of violence can be found in the early learning experiences in the family. The risk of developing conduct disorder is even higher among children if they are raised in an unfavorable family situation. Children who are exposed to violence undergo lasting physical, mental, and emotional harm and are more likely to engage in violence themselves.

2. Victims of abuse

Children who experience physical, sexual and psychological abuse may resort to the same type of behaviour. Child abuse victims are more likely to exhibit anti-social behaviours, including borderline personality disorders and violent behaviour.

3. Poor Parenting

Various aspects of parenting may contribute to violent behaviour in children: poor supervision; erratic, harsh discipline; parental disharmony; rejection of the child; and limited involvement in the child's activities. Parents who exhibit such

behaviour engage in a parent-child interaction pattern that may inadvertently prompts aggressiveness in their children.

4. Social and Economic Factors

A variety of social and economic factors can create conditions that lead to violence among children and teens. These factors may include stressful family situations such as single parenting, drug and alcohol issues, the breakup of a marriage, parental unemployment, poverty and severe deprivation.

5. The Media

Some research has shown a correlation between media violence and real-world violence. For example, a 2010 study led by researchers from Columbia University and Mount Sinai Medical Center in New York found that adolescents who viewed more than one hour of violent scenes on television a day, were more likely to commit violent acts as adults. Bandura (1961) conducted a study to investigate if social behaviours (i.e. aggression) can be acquired by observation and imitation. The experiments are empirical approaches to test Bandura's social learning theory. The social learning theory claims that people learn through observing, imitating, and modeling. That is, children learn social behaviour such as aggression through the process of observation learning - through watching the behaviour of another person, watching violent movies, playing violent video games amongst others. This study has important implications for the effects of media violence on children.

Most RYCs and CYCs children were not brought up in conditions which involve loving parents or family members. They could neither access good quality education nor the necessary positive discipline. Indulging in violence can be very normal for them, as it represents a way to vent out their frustration.

Bearing in mind that most adolescents are in a delicate puberty phase, it is quite normal that at times, they may be rebellious. What they need at this crucial stage of development, is psychological support and meaningful and self-fulfilling activities. Unfortunately at the RYCs and CYCs, meaningful activities are reduced to a minimum.

The minors find themselves living in confinement. Bored and frustrated, they resort to violence.

I would also like to mention that some children living in detention centres did not display any violent behaviour initially. Unfortunately, mingling with other detainees, they succumb to peer-pressure and resort to violence.

6.2 Impact of Detention on Children

The effects of detention on children are serious and complex. Regardless of the conditions in which children are held, a number of studies have shown that detention has a profound and negative impact on children's health and development. Even very short periods of detention can undermine a child's psychological and physical well-being and compromise their cognitive development.

Interference with developmental process

A child is full of energy as he/she grows and comes across the various developing stages of childhood. Childhood is a very important phase of an individual since it is the building block of someone's entity. The impact of placing children in detention can cause tribulations in their growth, nurturing, and general psychological and physical health. Detention interferes with the normal growth and development of children as it deprives them of the opportunities for play, exploration, and learning. The kind of environment generated in the detention centres, and the conditions of that confinement, conspire to create an unhealthy environment. Far from receiving effective treatment, young people with behavioural and mental problems simply get worse in detention, not better.

Detained youth who are on remand can spend from a few days to months in locked custody. Often, detained youths are housed in overcrowded, understaffed facilities - an environment that again conspires to breed neglect and violence.

Recidivism

Detention can also increase the rate of recidivism instead of lowering it. Many will find it hard to reintegrate society in a proper way, and as a result, resort to unlawful activities

to lead their life. The justice system should resort to a more restorative and rehabilitative approach, and law provisions that are already available such as mentoring and community service orders should be used in a more effective way. Detention as such should be a last resort.

S. Payneeandy and V. Naeck stated, “*treatment in these centres is more of a disciplinary nature rather than of a rehabilitative one*”.⁵⁰ Hence it will be necessary to adopt a restorative approach when dealing with children in conflict with the law.

⁵⁰ Payneeandy S. Naeck ,V. 2001, The Rehabilitation of Juvenile Offenders in Mauritius, Rose-Hill, Mauritius.



Recommendations

Chapter 7:

Recommendation - The Need for Small Therapeutic Units

Chapter 7: The Need for Small Therapeutic Units

It is of paramount importance to review punitive approaches to address juvenile crime and start to adopt a more rehabilitative one. I believe that there is an urgent need for therapeutic interventions in particular through small therapeutic units to deal compassionately with youth accused of crimes and to consider them more worthy of rehabilitation and education than detention.

7.1 Factors Contributing to Juvenile Delinquency

Each juvenile offence is an outcome of complexity of causes, some of whose origin date back years before the committal of the offence:

- ✓ Separation from parents, siblings, and wider family
- ✓ Poor family support
- ✓ Emotional, physical, sexual abuse and neglect
- ✓ Exposure to domestic violence
- ✓ Specific offending behaviour
- ✓ Disrupted care/parenting and/or interrupted care
- ✓ Parental mental health and/or addiction problems
- ✓ Loss of carers through death, abandonment or imprisonment
- ✓ Life circumstances that require a child to live away from home
- ✓ Other traumatic experiences
- ✓ Inadequate parental care and control

7.2 Therapies Recommended

The treatment interventions should include being placed in juvenile treatment programs, group therapy, and individual counselling/therapy. The number, intensity, and type of interventions for each youth are based upon their level of risk to reoffend.

Education programs, group therapies, and mapping-enhanced counselling interventions, help young people to improve their motivation and ability to re-enter the community as positive, productive, and law-abiding citizens.

Research suggests that the most effective community-based programs are those which put emphasise on family interactions. Functional Family Therapy for instance has been effective at helping 11 year old to 18 year old youth to overcome delinquency, substance abuse, and problems with violence.

Therapists, often through home visits, focus on improving family functioning by helping family members develop better problem solving skills and enhance emotional connections. The parents are motivated to provide appropriate structure, guidance and limits for their children.

7.3 Small Therapeutic Units Can be Effective

Children of RYCs and CYCs are among the most vulnerable people in the Republic of Mauritius. Unfortunately it is to be noted that their interests are not being well served. I have pointed out earlier that these children are likely to have suffered significant abuse in their families. When placed in a centre with other similarly traumatised children they are at high risk of experiencing additional trauma. For Rehabilitation Centres to be effective they HAVE TO BE SMALL and provide for children's wellbeing in the same way as good parents would.

Only in small therapeutic units (home based placements) can children with complex needs:

- (1) be safe and stable;
- (2) develop quality relationships with adults;

- (3) deal with their traumatic experiences by undergoing intensive therapies;
- (4) access individualised care and support; and
- (5) fulfil their personal development needs.

The effectiveness of small therapeutic units depends on:

- (1) the commitment, skills and qualifications of the staff. They need to learn how to care for this specific group of children. The creation of a therapeutic care team is also essential;
- (2) the ability of staff members to reinforce rules in a non-punitive way;
- (3) the extent to which the physical and emotional environment is healing;
- (4) the availability of good meals and clean clothes; and
- (5) the availability of individualised therapeutic and educational plans.

“Therapeutic change comes from caring people. If we are able to help a child connect with and develop a relationship with one person, we have contributed to the psychological rebirth of a child.”⁵¹

⁵¹ Australian Childhood Foundation

Chapter 8:

Recommendation - Good Practices in Mauritius and Abroad

Chapter 8: Good Practices in Mauritius and Abroad

Historically, there are two major approaches when dealing with children in conflict with the law. One is punitive and criminalising; the other is restorative. In the past, the approach when dealing with children and youths with behavioural problems was geared towards punishment. However, international evidence has shown that this may be detrimental to the development of children. The UNCRC favours community-based approaches with welfare orientation, reserving detention as a last resort option. We have assessed good practices in Mauritius, Spain and New Zealand which are compliant to the recommendations of the UNCRC where children in conflict with law have been successfully rehabilitated.

8.1 Good Practices in Mauritius

8.1.1 The Probation Hostel for Boys and the Probation Home for Girls

The Probation Home for girls and the Probation Hostel for boys are semi-open reform institutions, in contrast to the RYCs and CYCs. The main function of Probation Home for girls and the Probation Hostel for boys is to provide residential rehabilitative treatment to convicted juveniles and uncontrollable juveniles committed by the District Courts.⁵² These two probation institutions provide residential treatment for young offenders aged up to 18 years, for a period not exceeding three years.⁵³

The residents come mainly from broken families hindering their development. A child is received at the Hostel or Home only if their “*period of residence is intended to be of sufficient duration to enable him to complete the scheme of training provided in the Hostel or Home.*”⁵⁴

⁵² Annual Report of the Probation Hostel for Boys 2015.

⁵³ Annual Report of the Probation and Aftercare Service 2006.

⁵⁴ The Probation Hostel and Home Regulations 1989.

The rehabilitative treatment is carried out in a congenial family-like environment under the care of a warden, a steward and a housemother.⁵⁵ The children, both girls and boys participate in a variety of activities like gardening, sports, outings which aim at developing human values and a sense of discipline in the residents.

A medical officer calls at these institutions once a month for a medical check-up of the residents. Until recently, a psychologist was also attending to children.

The residents of compulsory school age have to attend mainstream or vocational schools outside the centre. Even those who can barely read or write are enrolled in educational institutions which respond to their educational needs. They receive a pocket money of twenty rupees daily. Children above compulsory school age may continue their education or they are assisted in finding a suitable employment if the Managing Committee considers it to be in their best interests. Moreover, children are allowed to go for home visits every month. Their parents may also visit them at the centre on a weekly basis. The use of corporal punishment is prohibited.

The conditions of living at the two institutions respect the privacy and dignity of the residents. They are provided with clean bedding, healthy food, adequate space to interact with peers and to carry out leisure activities in the open air.

All the above mentioned facilities are in line with the United Nations Convention on the Rights of the Child.

Provisions for satisfactory management

The Probation Hostel and Home Regulations was introduced in 1989 by the Minister of Social Security, National Solidarity and Reform Institutions. It addressed the issues of the management in both institutions; the admission and discharge procedures; the role of the staff; and the conditions in which the residents should be kept.⁵⁶ These regulations established a Managing Committee appointed by the Minister to run each

⁵⁵ The Probation Hostel and Home Regulations 1989.

⁵⁶ The Probation Hostel and Home Regulations 1989, Section 18 “Supervision, food and clothing”, Section 19 “Scheme of training” and Section 20 “Occupation”.

institution. The Managing Committee has the duty to “*ensure that the condition of the hostel or home and the training and welfare of the residents are satisfactory*”.⁵⁷

The day-to-day running of the institution is carried out by the warden under the supervision of the secretary of the Committee. The warden is a senior probation officer and the secretary is a principal probation officer. According to the regulations, the warden is responsible for the proper running of the hostel or home. He shall also be accountable for the proper keeping of files and records like the daily register, the log book, the progress reports and the books of accounts.

The satisfactory enforcement of the regulations is the responsibility of the Commissioner of the Probation and After Care. The Commissioner or his/her representative shall visit the two institutions at least once a month to make sure that the hostel or home is being run in accordance with the regulations and also in order to advise the staff “*as to the best way of dealing with each resident in order to give him an incentive to better living*”.⁵⁸

On-site visit

When I visited the Probation Hostel for boys, there were 8 residents only. The hostel has bedding capacity of 20 residents⁵⁹ and some spaces in the rear building were underutilised. If we take into account that the hostel receives a grant of around 1,200,000 MUR (excluding wages) from Government last year, **we can question whether the hostel is being used to its optimum capacity.**

All the residents of the hostel were attending an educational institution. Students of Standard Six benefitted from remedial teaching after school. The children are responsible for the cleaning of the hostel and they help in the kitchen. They also participate in gardening and sport activities. Outings are regularly organised for their welfare and they are sensitised on various social issues.

⁵⁷ The Probation Hostel and Home Regulations 1989 Section 6 “Duties of Committee”.

⁵⁸ The Probation Hostel and Home Regulations 1989 Section 32(a).

⁵⁹ The Probation Hostel and Home Regulations 1989 Section 7(1): “the number of residents in a hostel or home at any time shall not exceed 20.”

The files of the residents were well kept by the warden. The warden ensures proper follow-up of all residents.

Table 5: Number of residents at the Probation Hostel during the past five years (2011-2015)

Year	No. of boys
2011	6
2012	4
2013	7
2014	8
2015	9

The Probation Home for girls is managed in the same way as the Probation Hostel for Boys. It has its Managing Committee, warden and secretary to ensure the proper running of the centre. Last year, this home received a grant of 1,300,000 MUR (excluding wages) from Government. The Probation Home for girls is spacious, warm and conducive to rehabilitation. One room is used as dormitory for the inmates, one as TV room, one as classroom and two as the houseparents' quarters. It is interesting to note that the Houseparents have their private space.

At the time of the visit there were four girls at the home. All of them were labelled as "children beyond control". They were attending mainstream secondary schools. Mother and father substitutes are appointed to take care of the children. A houseparent helps the couple to look after the girls. The inmates help in all household chores. Outings are organised regularly and the girls benefit from talks on different issues. The atmosphere was very family-like.

Table 6: Number of residents admitted during the past five years at the Probation Home (2011-2015)

Year	No. of girls
2011	7
2012	8
2013	4
2014	7
2015	10

8.1.2 Sports Programme for Rehabilitation Youth Centres (RYCs) by the Ministry of Youth and Sports

The Ministry of Youth and Sports has devised a project of sports programme for rehabilitation of children residing at RYCs. Sports have a positive impact on both the physical and psychological development of an individual. Recent researches also portray sport-based programmes as a potential panacea to curb behavioural problems among youngsters. Not only do sports provide opportunities to learn particular social skills, such as tolerance and respect for others but they also foster social inclusion at community level.

Coaches from the Ministry of Youth and Sports with the collaboration of regional sports facilitator proposed the following sports for the youths residing at RYCs: judo, karate, educational boxing, weightlifting and tae kwon do (see Table 7).

Table 7: Daily schedule of sports activity at RYCs

DAYS	ACTIVITY	TIME SLOT 1 10:00 – 11:00	TIME SLOT 2 11:00 – 12.00
Monday	Judo	RYC Girls	RYC Boys
Tuesday	Karate	RYC Girls	RYC Boys
Wednesday	Educational Boxing	RYC Girls	RYC Boys
Thursday	Weightlifting	RYC Girls	RYC Boys
Friday	Tae Kwon Do	RYC Girls	RYC Boys

These sports were selected with the aim of helping these youngsters deal with their behavioural problems. For each sport, a specific training schedule has been devised and will be adjusted according to the youngsters' fitness level. For example, the educational boxing will be conducted once a week for a period of three months after which behaviour change of the youngsters will be evaluated. Each child has his/her own individualised fitness programme.

On 4 August 2016, my officers called at the RYCs to get the opinions of the inmates on the sport programme. Most of the children were participating in a sports gala organised by the Ministry of Youth and Sports in Vacoas. This is very positive. Comments of the RYC inmates:

- ‘Mo zoue la box aköz pou reysi zwenn bann zanfand deor’
- ‘La box develop mo la vi pou vinn enn bon athlet’
- ‘Mo aprann respe dan la box’
- ‘Profeser dir nou respe nou kamarad. Donn nou not lor respe- Respe adverser’
- ‘Zido bon pou la sante’



8.2 Good Practices at International Level

8.2.1 The New Zealand Juvenile Justice System

The Youth Justice system in New Zealand recognizes that the cognitive level of children should be taken into consideration when dealing with children in conflict with the law. This system lays emphasis on the fact that children and adult offenders should be treated differently.

Offences by children and young persons can be symptomatic of wider issues in terms of care and protection. If these children are dealt with through a traditionally adversarial criminal justice approach, the result may be destructive. The New Zealand Youth Justice system recognises and upholds the rights of children and young people as a distinct group, and provides an individualised response to youth offending.

Restorative Justice

One of the most significant features of the Youth Justice system in New Zealand is the way that the statutory framework of the Children, Young Persons, and Their Families Act 1989 (CYPF Act) enables restorative justice principles to be implemented. The restorative justice model has been adopted in practice through the Family Group Conferencing (FGC). The CYPF Act 1989 ensures supervision of the restorative justice approach by the Courts, an approach that is available to all young persons who come within the jurisdiction of the Youth Court.

A significant feature of FGCs is the widespread use of community-based solutions to offending, with the corollary that numbers of incarcerations for young persons are reduced. **The Youth Justice model in New Zealand therefore emphasizes both diversion and de-carceration. The Republic of Mauritius can inspire itself from the CYPF Act to devise policies pertaining to children.**

Family Group Conferences are organised by a Youth Justice Co-ordinator whose task is to ensure that as many key participants as possible are able to attend the FGC. There is an expectation that during FGCs, Youth Justice Co-ordinators will facilitate, and achieve whenever possible, active participation of the young offender and his/her family. The participation of young people in FGCs is expected, including any young

person who is detained in custody unless it is not possible for him/her to do so. Young offenders are given the opportunity to:

- discuss the offence and accept responsibility for it;
- discuss possible causes of the offence;
- participate in the formulation of a plan to rectify the causes of the offence and repair the harm caused by it;
- present the plan to other FGC participants;
- apologize and express remorse to the victim;
- answer any questions posed by the victim if he/she is present; and
- where relevant, present the plan to the Judge when the matter returns to the Youth Court

Family Group Conferencing served as a catalyst to free the juvenile offender from the ‘infernial’ cycle of court and prison and better rehabilitate and empower him/her to work in making things right. **As a result, nearly half of all family group conferences have been handled without any court intervention. It will be a good initiative to introduce FGC in Mauritius too.**

Example of New Zealand Family Group Conference:

“A 16-year-old was arrested and charged with aggravated robbery. Potentially, she could have faced a sentence of imprisonment and a criminal record. But today, thanks to her own efforts and the hard work of those who supported her, she now faces a bright future and is living offence-free in the community. The Youth Justice Co-ordinator with Child, Youth and Family Services says the youth justice system aims to hold young people accountable while also helping them avoid reoffending and that “evidence shows that once young people have a criminal record they are much more likely to re-offend and have poor life outcomes. This young person is a very intelligent, resourceful young woman – she could be or do whatever she sets her mind on

and we wanted to help make sure she got the chance to do that, while still being accountable for her actions”.

The Youth Court ordered a Family Group Conference for the young person, her family, her victim and the various agencies involved. The young person said the Family Group Conference was one of the hardest experiences of her life:

“The Family Group Conference was really hard; it was the first time I’d been through something like that. Before going to the conference I felt stuck, like I couldn’t see the way forward. One of my victims came to the conference. Seeing her was heart-pounding; I was really tensed. I gave written apologies to my victims and a verbal apology to the one who attended the conference. For me, the verbal apology was the hardest thing ever. I didn’t want to do it but I knew I needed to, that it was the right thing to do. After the FGC we shook hands; that was pretty great.”

Regarding the recommendations of the FGC, she said:

“The recommendations were there for me to show I was remorseful, to be accountable for what I’d done. They were really hard! I had to follow my bail conditions and go to counselling. I had to go live in another place and I had to pay reparation for the damage I’d done. Going away was really hard, I missed my family and home. But I felt really lucky with the people I went to stay with, they made me feel safe and welcomed. It was a hard thing but a good idea; it gave me time to think.”

The Youth Justice Co-ordinator says this particular FGC was an example of why FGCs work for young people:

“Her family was prepared to hold her accountable for her offending, and to support her to not reoffend. Her family’s commitment made all the difference to the outcomes for her. At the conference she, her family, her victim and the agencies agreed to a plan for her. The plan was not an easy ride for her but she stuck to it.”

All the specialised professionals emphasize how important co-operation between the various agencies is in supporting young people to be accountable for their offence and to live law-abiding lives:

“This case is an example of the youth justice system doing what it is designed to do. She was held accountable but was also given a chance. Youth Aid sees itself as part of the youth justice team, it’s about getting the right outcome for everyone - the victim, the young person, the family. The only way we can achieve this is by all the agencies working together.”

The young person was given several months to implement the FGC recommendations and was monitored by the Youth Court during that time. She then appeared in the Youth Court for all the matters to be determined. The youth advocate explains:

“The last appearance was very emotional. The outcome still needed to be determined and was not guaranteed. After detailed questioning by the Youth Court judge and confirmation that all matters had been completed the police consented to a discharge. After the discharge was granted and the young person was free to go, she took the opportunity to personally thank her family, those who had assisted her, and in particular, the Youth Aid Officer and the Youth Court Judge. This included a handshake for the judge.”

Principal Youth Court Judge Becroft was the presiding Youth Court Judge and he acknowledged the enormous effort put in by the young person’s family and the youth justice agencies involved. He commented on the commitment shown by the young person herself to follow her FGC plan to the letter. Judge Becroft stressed that this was just the beginning for her and that the foundations had been laid for her to go on successfully.

“The family is both the fundamental unit of society as well as the root culture of it. It is a perpetual source of encouragement, advocacy, assurance and emotional refuelling that empowers a child to venture with confidence into the greater world and to become all that he can be.” (Marianne E. Neifert)

8.2.2 La Zarza Re-Educational Centre in Spain

La Zarza re-educational centre for juveniles is found in Spain. It is moderated by Diagrama, a non-profit organisation. Since its establishment in 2007, Fundación Diagrama has worked towards the comprehensive care of minors and young people, promoting their rights. Fundación Diagrama has collaborated with the International Juvenile Justice Observatory (IJJO).

The IJJO promotes and encourages the improvement of juvenile justice systems and policies, the implementation of international standards, the strengthening of professional competence in the field, and the exchange of innovative good practices.

Historically in Spain, juveniles were locked up in similar conditions to adults and when they reached the age of 18, they would directly be transferred to adult jails. However in 1992, a law was passed requiring the juvenile justice system to operate according to international rules and standards on children's rights. In case detention of children was necessary, they would also have to be nurtured, educated and rehabilitated.

As soon as children arrive at La Zarza, they are put through an induction lasting around 20 days, during which they are medically and psychologically assessed. Every day they see a psychologist who ensures individualised follow-up. **The practice of monitoring the child on an individual basis is an important practice and should be adopted in our Mauritian context so that rehabilitation can be more effective.** Each day, they earn credits for good behaviour – or lose them for bad behaviour. As a result, children are motivated to behave well.⁶⁰

La Zarza re-educational centre is still a detention place, but there are many good practices which could inspire Mauritius.

⁶⁰ “Tough love: is this a model prison for children?”, *The Guardian* 7th November 2014 [accessed at <https://www.theguardian.com/society/2014/nov/07/tough-love-young-prisoners-spain-model-prison>]

8.2.3 Youth-focused Justice System in New-Brunswick, Canada

It is worth mentioning that New Brunswick's rate of youth charged for criminal offence has been decreasing since the enactment of Canada's youth crime legislation, the *Youth Criminal Justice Act*, in 2002. The *Youth Criminal Justice Act* is meant to create a separate justice system for youth. New Brunswick has in the past few years begun to make real progress in youth criminal justice issues. New Brunswick aims at leading the way by diverting youth away from court.

Government's Provincial Crime Prevention and Reduction Strategy has worked with police and civil society to develop a **Youth Diversion Model**. In his report "More Care Less Court", the Child and Youth Advocate of New Brunswick promotes community-based sentences and states that incarceration should be the last resort.

Considering the fact that children and youth are gradually developing in maturity and thus have less capacity for moral judgement than adults, the Supreme Court of Canada has recognized that youths should be presumed to be less morally blameworthy.

Under the *Youth Criminal Justice Act*, diversion from prosecution comes in the form of *Extrajudicial Measures*. They refer to measures which are outside the formal criminal justice system of prosecution. Diversion entails measures that are proportionate to the severity of the offence without severe sanctions. Diversion is all about community and family supports.

Extrajudicial measures

Police and prosecutors play an essential role in diverting youth away from repeated crime and custody. Police can give verbal warnings, and this is often sufficient to stop a youth from repeating the crime. They can also issue written police cautions to parents and youth. They can refer a youth to a program to address the underlying cause of the youth's behaviour. Prosecutors can also play a role in this less institutional approach, by administering written 'Crown cautions'⁶¹ to parents and youth.

⁶¹ A Crown caution is when the Crown attorney, who's the lawyer who presents the case against you, explains the impact of what you've done and what the law could do to you if you're caught doing the



Youth Justice Committees

The Attorney General is sanctioned under the *Youth Criminal Justice Act* to officially designate community-based Youth Justice Committees. A youth justice committee can hold a case conference about a particular youth. It can coordinate the work of community groups, government agencies and schools to ensure support services, mentoring, supervision and rehabilitation are provided in ways that address the youth's needs. Youth Justice Committee can also provide support to youths following their release from custody: assisting in securing volunteer work; helping youths become involved in extracurricular activities; helping youths transition effectively back into the classroom; and connecting youths to existing services and programs in communities.

Prosecutorial Screening of Youth Charges

In the province of New-Brunswick, prosecutors screen all charges before proceeding to court. The *Youth Criminal Justice Act* provides for prosecutorial screening of youth charges to ensure that Extrajudicial Measures and Extrajudicial Sanctions are routinely used to divert youth away from the 'charge-prosecute-incarcerate' sequence.

same thing again. They might tell you this or put it in a letter. You're **not** found guilty and don't get a youth court record.



Chapter 9:

More Recommendations

Chapter 9: More Recommendations

9.1 The Urgent Need to Repeal Section 18 of the Juvenile Offenders Act

I believe that the Government should repeal Section 18 of the Juvenile Offenders Act as recommended by the UNCRC Committee of Experts and to provide support and counselling services to families with difficulties in the upbringing of children instead of sending them to the RYC. The children defined under this section should be considered as children in need of care and protection.

An Integrated Child Protection System must be devised at the level of the Ministry of Gender Equality, Child Development and Family Welfare to protect the rights of children labelled as beyond control. Tailor made care and protection plans should be devised and implemented.

9.2 The Personnel

Since 1996, the UNCRC Committee of Experts has recommended the State to *“regularly conduct training programmes concerning relevant international standards for all professionals involved with the system of juvenile justice”*. I firmly believe that without the appropriate training of the RYC and CYC officers, the chaotic situation will remain unchanged. So, I propose that all staff from administrators to officers to supporting staff should be sensitised and trained about issues related to rehabilitation and children’s rights and the law.

Cooperation with other countries should be envisaged and the officers should be given the opportunity to go on study tours to learn on how children in conflict with the law are being considered. An exchange programme with Reunion Island was established and a few officers went to Réunion Island for training. Unfortunately, the programme was discontinued. I recommend that the Ministry of Social Security, National Solidarity and Reform Institutions re-establishes contact with the Reunion counterparts to resume the programme.

A “*groupe de parole*” must be set up to enable officers to express themselves freely. This “*groupe*” may be moderated by a therapist. The deliberations should remain confidential. The officers have to face the anger and frustration of the inmates on a daily basis and this may affect their personal lives. It is very important for them to vent out their feelings in a secured setting where he/she will not be judged. Such “*groupe de parole*” will help in preventing burn out.

9.3 Prevention

As an Ombudsperson, I believe that all authorities concerned should be more proactive and take necessary social measures to tackle the problem at the root cause level. Well-structured programmes should be developed to empower parents on how to deal with their children in this fast changing world. Policies on how to prevent juvenile delinquency should be developed. The government and civil society organisations should initiate consultations and an action plan with smart objectives. There is an urgent need to recruit social workers, street educators and family counsellors to work with vulnerable children and their families.

The UN Guidelines on the Prevention of Juvenile Delinquency (Riyadh Guidelines) stipulated that the following should be included in any comprehensive prevention plan:

- (a) In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;
- (b) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;
- (c) Mechanisms for the appropriate co-ordination of prevention efforts between governmental and non-governmental agencies;
- (d) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;
- (e) Methods for effectively reducing the opportunity to commit delinquent acts;

(f) Community involvement through a wide range of services and programmes;

(g) Close interdisciplinary co-operation between national, state, provincial and local governments, with the involvement of the private sector, representative citizens of the community to be served, and labour, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;

(h) Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes;

(i) Specialised personnel at all levels.

I recommend that the authorities adopt the provisions of the Riyadh Guidelines in the elaboration of the Prevention policy and Action plan.

9.4 Legal Aid

Legal Aid Act

Article 37 (d) of the UNCRC states that “Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance...”. In light of the above, I recommend that the Legal Aid Act be amended to provide for a minor to be assisted by Counsel, from the moment he/she is arrested.

9.5 Reform on Juvenile Justice

As I mentioned earlier, the Republic of Mauritius has legislation dealing with juvenile offenders but it does not totally reflect the philosophy and principles of the UNCRC and other international standards and guidelines.

Considering that:

1. There does not appear to be a formally established inter-agency and inter-ministerial protocol on juvenile justice issues,
2. The special needs of juveniles are poorly assessed and managed, even if the UN Committee on the Rights of the Child insists on the fact that effective monitoring and evaluation enables states to develop and refine initiatives,
- 3(a) Pre-trial diversion does not exist in the Mauritian Juvenile system so that the child may be 'diverted' before the case is taken by the court and could participate in a programme to address his/her offending behaviour
- 3(b) That diversion programmes providing educational opportunities in a supportive infrastructure are quasi-inexistent,
4. Our legislation does not contain a minimum age of criminal responsibility although in its General Comment No. 10 (2007), the UNCRC Committee on the Rights on the Child encourages state parties to increase their minimum age of criminal responsibility,
5. Although status offenders are not criminals (The Riyadh guidelines call for the repeal of status offences), they are arrested and detained in Mauritius, finding themselves in the Juvenile Justice System with little or no legal support,
6. Many children languish in pre-trial detention in violation of Article 37 (b) of the UNCRC. International law severely limits the circumstances in which children can be detained.

It is thus of utmost importance that Mauritius embarks on a juvenile justice legislative reform. This reform should be a participatory process which does not fail to take into account the views of children in conflict with the law. I also believe that in order for any new law related to Juvenile Justice to be effective, it should be preceded by a comprehensive policy paper.

9.6 A Juvenile Justice Bill

A Juvenile Justice Bill will enable the State to domesticate the provisions made in the UNCRC and other international guidelines with regards to children in conflict with the law. The present legislations were voted in parliament before the adoption of the UNCRC by the United Nations General Assembly and its ratification by Mauritius.

Some years back, there were consultations with different stakeholders in view of the elaboration of a Juvenile Justice Bill but as at date, no proposed bill has been circulated. I would strongly recommend that the Mauritian authorities concerned refers to the model law on Juvenile Justice and related commentary published by United Nations on Drugs and Crime (UNODC) to draft the long awaited Juvenile Justice Bill.⁶² This model law on Juvenile Justice was inspired by a draft prepared by Renate Winter in 1997. Carolyn Hamilton elaborated the first draft of this model law in 2011 and it was reviewed by a group of experts in Vienna in March 2011.

Following the expert group meeting, the model law was further established by another group of experts under the supervision of Valérie Lebaux, Chief of UNODC Justice Section. The model law on Juvenile Justice is designed to provide legal guidance to states in the process of Juvenile Justice Reform.

“It translates compelling International Juvenile Standards and Norms into a national context and aims at harmonizing national legislation with international requirements.”

“The target audience of this Model Law is broad. It is focused towards key role players involved in the juvenile justice process, such as legislators who are involved in drafting or revising juvenile justice law.”

⁶² UNODC, Justice in Matters Involving Children in Conflict with the Law. Model Law on Juvenile Justice and Related Commentary, United Nations, New York, 2013[https://www.unodc.org/documents/justice-and-prison-reform/Justice_Matters_Involving-Web_version.pdf]

9.7 The Setting Up of a Specialised and Separate Juvenile Court

Article 40(3) of the UNCRC encourages States Parties to set up separate systems of justice for juveniles. In its Concluding Observation made in February 2015, the Committee of Experts of the UNCRC recommended that the Republic of Mauritius should:

“Expediently establish juvenile justice tribunals and procedures with adequate human, technical and financial resources designate specialized judges for children and ensure that such specialized judges receive appropriate education and training”.

Presently, the Juvenile Courts are sitting in the District Courts before a Magistrate exercising jurisdiction in the District. In other words, it can be before any district Magistrate who may not necessarily be trained to hear cases involving juveniles. In many countries, the Magistrates are supported by professionals like a psychologist and a child welfare specialist.

I propose that the Government of Mauritius sets up a specialised and separate Juvenile Court.

Specific attention should be paid to the physical layout of the Court as mentioned by C. Hamilton:

“In order to achieve a child-sensitive environment, States need to pay attention to the physical layout of the court and the seating arrangements. Parents (or another appropriate person, such as a social worker where the child is without parental support) should be seated with their child, and the child should be next to his or her lawyer. This form of seating arrangement promotes communication and helps draw the child into the process as an active participant. Judges should be seated on the same level as the child, and not on raised benches, so that they can speak to the child more easily. This

*can, in turn, help the child to participate in the proceedings more effectively.”*⁶³

Such courts shall be chaired by specialized Magistrates. The child will benefit from the services of a lawyer free of charge. Social workers shall be attached to the Juvenile Court to assess the needs of the child and ensure completion of the magistrate’s order.

⁶³ C. Hamilton, *Guidance for Legislative Reform on Juvenile Justice*, Children’s Legal Centre and United Nations Children’s Fund (UNICEF), Child Protection Section, New York, 2011, p. 14.

PART III.

The Ombudsperson for Children's Visit to Agalega



19-24 February 2016

Scope and Purpose



Scope and Purpose

The Ombudsperson for Children's (OC) prime responsibility is to ensure that the rights, needs and interests of children are being respected in the Republic of Mauritius and this includes of course children of Agalega.⁶⁴ In this capacity, in February 2016, I visited Agalega where about 100 children live. The purpose of the mission was to take stock of the situation of children living on the island and assess whether their rights are being respected as per the Convention on the Rights of the Child (UNCRC).

Since the establishment of the Ombudsperson for Children's Office (OCO), it is the first time that an Ombudsperson for Children visits Agalega. My predecessor, Mrs R. Narayan had initiated actions at the Outer Islands Development Corporation (OIDC) to visit Agalega in November 2012, but they did not materialise due to technical problems which caused the cancellation of the maritime trip. The only official visit to Agalega was carried out in 2013 by the former Administrative Head of the office.

On 17 February 2016, I, along with two investigators, left Mauritius on the Trochetia ship. We had initially planned a stay of 3-4 days in Agalega, but a significant delay in the departure of the ship to Mauritius enabled us to spend a week in Agalega. This gave us more time to carry out an in-depth investigation on the conditions of Agaleen children. The official mission in Agalega lasted from 19 to 24 February 2016. The objectives of the mission and the means to achieve them are as follows:

Objective 1: Collect first-hand information on the general conditions of living of Agaleen families.

This was done by door-to-door visit to meet people in their households and interviewing them informally.

Objective 2: Take stock of the difficulties encountered by the officers of the OIDC and different stakeholders working in Agalega.

⁶⁴ Section 5 of the Ombudsperson for Children's Act 2003. The Republic of Mauritius also includes Rodrigues, Tromelin, Chagos and St Brandon. Had there been children living in St. Brandon, I would have visited them as well.

I had a roundtable meeting with the staff of the OIDC, the Officers in Charge of North and South Agalega and all stakeholders, namely the medical practitioner, nursing officers, members of *Movement pour le Progrès d'Agaléga* (an NGO), the rector of Medco, the headmaster of primary schools, educators, police officers, SMF officers, and officers on mission. We were able to understand the difficulties they encounter in implementing the UNCRC in Agalega and discuss ways and avenues for more effective collaboration among them so as ensure that the rights of children are not baffled.

Objective 3: Sensitise children, parents and all stakeholders working on the islands on the role of the OC and the importance of the UNCRC.

The following activities were organised: door-to-door visits; meeting with Parents Teachers Association (PTA); outdoor games; and classroom activities. During a roundtable meeting with all stakeholders, they were sensitised on rights-based approaches to development, good governance, sustainable development, leadership, enforcement of law, management of resources and time.

Objective 4: Examine the difficulties met by the educational staff in pre-primary, primary and secondary schools in providing quality education service to pupils.

This required on-spot visits to schools, inspections of residential quarters of educational staff and taking note of their complaints.

Chapter 1:

Situational Analysis of Agalega

Chapter 1: Situational Analysis of Agalega

1.1 General Context of Agalega

The islands of Agalega are located in the Indian Ocean, about 1122 km north of Mauritius. The islands have a total area of 2,600 hectares; the north island is 12.5 km long and 1.5 km wide and the south island is 7 km long and 4.5 km wide. Agalega forms part of Constituency No.3 Port-Louis Maritime and Port-Louis East. It is of geo-political and strategic importance to Mauritius, which is certainly not limited to its Exclusive Economic Zone (EEZ).

The Mauritius Trochetia goes to Agalega four times a year to replenish food stock and other products. The economy of the archipelago is based primarily on the exportation of coconut oil.

During colonial administration, Agalega suffered from a state of neglect and was even described as the “Cinderella” or forgotten island of the Republic of Mauritius. There was practically no development at that time. Concrete actions were not taken until the creation of the OIDC in 1982.

Agalega islands are managed by the OIDC under the aegis of the Ministry of Ocean Economy, Marine Resources, Fisheries, Shipping and Outer Islands. The recurrent budget of the OIDC for running the islands for the year 2015-2016 is R145 million.⁶⁵

Economic development allowed Agalega to integrate mainstream economic process and the introduction of money in July 2002 marked the beginning of a new era. Children were able to buy delicacies and sweets of their own choice from their pocket money. The hairdresser on the island started charging a fee for his service. Mauritians who were posted on the island were able to buy fish from suppliers.⁶⁶

⁶⁵ Source: OIDC.

⁶⁶ Sandragassen Rungasawmi, *Agalega 2000 – Facing New Challenges, A Socio-economic Stud*, Pg 52.

The OIDC is responsible for providing suitable housing accommodation to its employees in Agalega, as per the OIDC Act 1982.⁶⁷ No piped water supply system exists in Agalega. Water for drinking and cooking purposes is collected mainly through run-offs from roof tops. Water for other purposes is obtained from wells. There is also no piped sewerage system but some buildings are equipped with flush toilet facilities connected to soak pits.

1.2 Child Rights Issues in Agalega

1.2.1 Sexual Abuse

According to information obtained from the OIDC,⁶⁸ there are currently two unreported cases of teenage pregnancy in Agalega. One teenage mother got married to her child's father following birth of the infant in 2015. The other teenage mother is under the care of her parents. According to police records from Agalega Police Station, only 1 case of sexual intercourse with a minor under 16 has been reported during the past 5 years. In Agalega, people live in one small community which makes them reluctant to lodge cases against each other. Underreported cases of sexual abuse might be due to a lack of awareness of child rights, fear of retaliation, stigma, social exclusion, weak monitoring and reporting mechanisms.

1.2.2 Drug and Alcohol Abuse

It seems that drug abuse is an issue in Agalega, affecting particularly the youth. On 17 April 2016, the police and the Special Mobile Force reportedly raided the place of a suspected cannabis dealer.⁶⁹ Another major problem affecting the youth is alcohol consumption, leading to disruptive behaviours and delinquency. During a brainstorming session we conducted among Agaleen youths living in the islands of Mauritius and

⁶⁷ Section 24(1) of the Outer Islands Development Act (OIDC) Act 1982.

⁶⁸ OIDC, *Brief on Agalega*.

⁶⁹ "21 plants de cannabis retrouvés à Agaléga", *Le Matinal* [<http://www.lematinal.com/faits-divers/3321-21-plantes-de-cannabis-retrouvees-a-agalega.html>]

Agalega, it was reported that the lack of leisure and sports activities in Agalega drove various youngsters to find their enjoyment in the consumption of alcoholic drinks.

1.2.3 Lack of Leisure and Sports Activities

It is positive to note that the Ministry of Youth and Sports (MYS) organises activities for Agaleen youths living in the island of Mauritius, for instance in the last Easter school holidays, the MYS had organized beach games at Belle Mare, coastal walk along Pointe-aux-Piments and “*randonnée*” at the National Park and “*cueillette goyave de Chine*”.

Unfortunately, on the islands of Agalega, children are left idle during school holidays. Not only children lack sports equipment but there is no proper infrastructure to cater for the sports. There exists a football ground but the land is uneven; there is a leisure park in Agalega but is unutilised.

1.2.4 Unhygienic Environment

Clean environment and a good hygiene are essential for the survival and development of children.⁷⁰

Though Agalega is a beautiful island, it is marred by its environmental conditions: stray dogs and rats are a real scourge there. I was aghast to see the overpopulation of stray dogs on the island, not to mention that they could be carrying scabies or other diseases which can affect the population and in particular children who are more vulnerable. In the

past, the OIDC had taken initiatives to have pest control over the island but at the time of my visit, I took note that no monitoring was being done.



⁷⁰ “Overpopulation of strays a public health hazard”, *Jamaica Observer News*, 14 April 2011 [http://www.jamaicaobserver.com/mobile/columns/Overpopulation-of-strays-a-public-health-hazard_8633394]

1.2.5 Lack of Motivation to Attend School

The right to education is a fundamental and universal right. It is important that children learn in-depth information about the islands that form part of the Republic of Mauritius and not just from a couple of lines in the CPE textbooks. The aim of education as per Article 29 of the UNCRC shall be to develop “*the child's personality, talents and mental and physical abilities to their fullest potential.*” In order to ensure that the educational institution system in Agalega is compliant to the UNCRC, my investigators and I carried out:

- (1) a visit to all educational institutions in both North and South Agalega;
- (2) a lengthy discussion with the educational staff; and
- (3) a PTA meeting on 19 February 2016 in Jacques Le Chartier primary school to sensitise parents and teachers on the role of the OC, parental responsibility and the importance of education.

I was informed that the CPE pass rate in 2015 was 0%. The following questions arise:

- **Are Agaleen children not interested in education?**
- **What can be done to motivate them to attending school?**
- **Are educators delivering their services effectively?**
- **Is lack of technology and internet facilities responsible for the children's failure?**

It must be highlighted that nowadays sustainable development cannot be achieved without proper access to the Internet.

The mission visited the pre-primary school in North Agalega and found broken bottles and a billhook (“*la serpe*”) in its premises. The potential danger that this may cause to

children should not be ignored. I drew the attention of the staff on basic knowledge regarding the rights of children to a safe environment.

1.2.6 Teachers Living in Deplorable Conditions

As per the scope of our visit, my investigators and I inspected the houses of the staff of the Ministry of Education and Human Resources, Tertiary Education and Scientific Research. We were shocked by their conditions of living: unrepaired toilets; leakage in houses; damaged wooden ceiling; proliferation of pests (lizards and rats); amongst others. There is no possible compromise on hygiene. The basic human rights of these teachers are being violated and it is not surprising if this impacts negatively on their work. If living conditions are not conducive for educators living in Agalega, they will not be able to impart education to pupils effectively.



These people have agreed to work in difficult conditions but they need not be compelled to live in unhygienic environment. Furthermore, we noticed that teachers in Agalega are facing the following problems:

- (1) they are the only Government officials who do not receive one bottle of drinking water from their parent Ministry;
- (2) they are not thoroughly informed about the realities/conditions of living in Agalega prior to their departure to the island; and
- (3) they neither have a telephone line, fax machine, nor access to the internet.⁷¹

Good governance contributes to good quality education. It is important that the educators receive basic facilities and live in hygienic conditions in order to promote sustainable quality education. This is the foundation for improving the lives of children.

⁷¹ “Rita Venkatasawmy, Ombudsperson for Children: ‘Il n’y a toujours pas d’Internet à Agaléga!’ », *l’express* 8 March 2016 [<http://www.lexpress.mu/article/277399/rita-venkatasawmy-ombudsperson-children-il-ny-toujours-pas-dinternet-agalega>]

1.2.7 Corporal Punishment

According to a socio-economic study carried out by Sandragassen Rungasawmi (2002) in Agalega, some children reported being regularly reprimanded and at times beaten for failure to complete their daily chores.⁷² In 2016, the situation has not changed. Children find it “normal” that their parents beat them.

1.2.8 Difficulty in Enforcing Law and Order

The police are mandated to enforce law and order on the islands. The different units of the police force which are presently in Agalega are: (i) the Police Department; (ii) the National Coast Guard and (iii) the Special Mobile Force.

During my mission in Agalega, I visited two police stations, North and South. To my dismay, the police stations were poorly maintained, underequipped, infested with bugs, and stray dogs are a nuisance in the police compound! Police Officers cannot enforce law and order effectively when they are living in such unhygienic conditions. These issues need to be tackled urgently.

In spite of complaints received in Agalega, the police officers find it difficult to take sanctions against youth or adults who infringe the law. The police as an institution do not seem to command respect and is not perceived as enforcing law and order in Agalega as it does in Mauritius.

1.2.9 Health Sector Issues

Two health centres, one on the North Island and one on the South Island provide health care services to the inhabitants. There is one resident doctor who covers the health centres in both North and South Agalega. There are two nursing officers, one in the health centre on the North Island and one in the South Island, and one Charge nurse in

⁷² SandragassenRungasawmi, *Agalega 2000 – Facing New Challenges, A Socio-economic Study*.

the health centre in the North Island. The resident doctor oversees the functioning of both health centres and refers patients to Mauritius for diagnosis, further investigation and treatment. Both health centres are old, untidy and do not have adequate medical equipment.

About 50 employees come yearly to Mauritius for medical treatment. They are followed up mainly at Dr Jeetoo Hospital as most of them reside in the vicinity of Port Louis.

Regarding children, it has to be noted that they do not eat fruits and vegetables, as a result of which their teeth are severely affected due to vitamin C deficiency. This was reported by the dentist who was recently on mission to Agalega. Lack of vitamin C in the diet is a type of malnutrition which can result in a condition called “scurvy”. Symptoms of scurvy include easy bruising, easy bleeding and joints and muscle pain.⁷³

Good nutrition is the basis of child survival, health and development. Moreover Article 24 of the UNCRC 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.”

Another important issue is that the youths need to be educated on their sexual and reproductive health. There is no sexual and reproductive health program devised in educational institutions in Agalega. Adolescents have rights as per the UNCRC which include the right to reproductive health information and services. According to the UNCRC Committee on the Rights of the Child General Comment no. 15 (2013), children have the right to the enjoyment of the highest attainable standard of health:

“States should review and consider allowing children to consent to certain medical treatments and interventions without the permission of a parent, caregiver, or guardian, such as HIV testing and sexual and

⁷³ <http://patient.info/health/vitamin-c-deficiency-leaflet>

*reproductive health services, including education and guidance on sexual health, contraception and safe abortion”.*⁷⁴

Children represent the future of our nation and as such, it is important that attention be given to their health status. It is only through the fostering of appropriate caring practices at the community and household levels that the child’s right to the highest attainable standard of health can be realised.

1.2.10 Poor Infrastructure

Housing conditions are among the most important factors that can ensure a child’s healthy growth and development. Growing up in bad housing can have long-term negative effects on a child’s life chances because it impacts on the child’s learning process and education. Moreover, most behavioural problems in adulthood may take their origin in childhood when children grew up in poor housing conditions.⁷⁵

According to Article 27 of the UNCRC, children have the right to a standard of living that is good enough to meet their physical and mental needs. Therefore, adequate standard of living must be considered in terms of sufficient resources and knowledge to create a caring and nurturing environment in which the child can grow and reach his/her full potential. In Agalega, poor maintenance of infrastructure was observed: houses, schools, police station, hospital, ports, airports, telecommunications, and sanitation need major refurbishment.

During a meeting in my office in Mauritius, the General Manager of the OIIC informed me that a desalination program is in the pipeline in North and South Agalega. The site for the desalination process has already been identified; pure drinking water would soon be a reality in Agalega, which is very positive. I believe that the provision of good infrastructure services is important in order to provide a positive impact on the lives of children.

⁷⁴ The Committee on the Rights of the Child of the UNCRC, *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)* [<http://www.barnombudsmannen.se/globalassets/dokument-for-nedladdning/publikationer/general-commen-nr-15.pdf>]

⁷⁵ Lisa Harker, *Chance of a lifetime - the impact of bad housing on children's lives*, September 2006 [https://england.shelter.org.uk/_data/assets/pdf_file/0007/66364/Lifechancereport.pdf]

1.2.11 Social Integration

I have noted with concern that the foster home of *Les Amis d'Agaléga*, an NGO based in Roche-Bois, Mauritius, is facing financial crisis and might therefore be compelled to shut down. The foster home needs a budget of Rs 35,000 monthly for its sustenance. Without financial assistance, this NGO would not be in a position to provide foster care services to Agaleen children.

As the State of Mauritius is a signatory to the UN Convention on the Rights of the Child, the State has the duty to make sure that there is no disparity between the children living in the Island of Mauritius and the children living in the Islands of Agalega. It must be ensured that the Agaleen children are well taken care of when pursuing their education in the Island of Mauritius. It is important that Agaleen children are integrated and empowered in the Republic of Mauritius.

1.2.12 Lack of Participation from Children

Agaleen children do not have a culture of participation and are not encouraged to voice out their opinions. Without an opportunity to question, challenge, debate and participate, their capacity to learn is limited. According to Article 12 of the UNCRC, State 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.”

Article 15 of the UNCRC stipulates that “*States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly*”. Children’s views and opinions need to be taken into consideration as their expression can contribute positively to decisions that affect the realisation of their rights and wellbeing.

- ❖ In light of the above articles of the UNCRC, I decided to set up a student council in the MEDCO College of Agalega. On 23 February 2016 at 9.45 am, an official ceremony was organised, in the office of the Resident Manager, in my presence

and that of the Deputy Manager of OIDC, the Human Resource Manager of OIDC, the Rector of MEDCO, and investigators of the OCO. The members of the student council promised to serve the island to the best of their capacities.

- ❖ The OCO cannot work in isolation. It always seeks the collaboration of children and young people. We need young people, with their unique skills, energy and ideas, to be torchbearers and to uphold, protect and promote children's rights.

“Every child and young person under 18 years of age has the right to participate and have their opinions included in decision-making processes that relate to their lives” (Article 12, UN Convention on the Rights of the Child)

On 5 March 2016, I set up a network of young ambassadors of the OCO.⁷⁶ Two Agaleen youths, namely Saronne Marina and Cedric Rekha, were elected by their peers in Agalega to represent the children of the island. Subsequently, two Chagos youths were also designated as ambassadors of the OCO. Ms Saronne Marina was part of the delegation of the OCO mission to Rodrigues from 21 to 26 March 2016.



⁷⁶ “Ombudsperson for Children: Mise en place d’un réseau de jeunes ambassadeurs », *Le Mauricien* 15 March 2016 [<http://www.lemauricien.com/article/ombudsperson-children-mise-en-place-d-reseau-jeunes-ambassadeurs>]



Chapter 2:

Summary of Recommendations for Agalega

Chapter 2: Summary of Recommendations for Agalega

In the light of Section 6(e) of the OCA, I am thereby making the following recommendations for Agalega:

- Being part of the Republic of Mauritius and Constituency No. 3 - Port-Louis Maritime and Port-Louis East, Agaleen children's rights should be respected, protected and promoted.
- All stakeholders should get training in child rights issues. Engaging stakeholders to promote child rights can help them adopt sustainable development strategies in the best interests of children. In Agalega, institutions dealing with children, need to be driven by ethical behaviour, efficiency, honesty, trust, integrity and accountability.

Outer Islands Development Corporation (OIDC)

1. The police station, schools, hospital, quarters of the school staff and residents' houses should be maintained and monitored regularly.
2. The OIDC should provide for a boat with a roof cover so that children of Agalega can travel to either sides of the island without being affected by poor weather conditions.
3. The OIDC should carry out regular pest control operations on the island.
4. The OIDC needs to regularly dispose of the amount of solid wastes/marine litter from the sea, such as plastic items, sandals, bottles amongst others and the wastes to be disposed of in Mauritius. It is reassuring to note that the OIDC has already initiated actions in this regard.
5. The OIDC should ensure that the Mauritius Shipping Corporation Ltd renovate the children's corner in Trochetia ship.

Ministry of Education and Human Resources, Tertiary Education and Scientific Research (MEHRTESR)

1. In light of Article 12 of the UNCRC, the MEHRTESR should ensure that the views of children are expressed and heard on matters concerning them.
2. The causes of poor CPE performance need to be identified. Monitoring and evaluation should be carried on a regular basis. Since the Nine-Year Schooling program will be implemented in our educational system in 2017, the MEHRTESR should provide regular knowledge-sharing. Educators need to get appropriate and specialised training to work in Agalega.
3. The initial years of a child's life are very crucial for his/her development and appropriate actions need to be taken to empower Agaleen children. The initiative of the Early Childhood Care and Education Authority (ECCEA) for having provided an experienced educator, to train pre-primary school teachers needs to be encouraged and maintained.
4. Educational textbooks need to provide in-depth information on Agalega.
5. All educational institutions in Agalega should be equipped with telephone/fax and internet facilities.
6. In light of Article 17 of the UNCRC which stresses that every child should have the right to free and open access to information, the MEHRTESR should provide a library with various types of books for children and young adults in Agalega to facilitate his/her learning process.
7. The main shop in Agalega should provide basic school materials, such as school uniforms, shoes, socks, umbrellas, school bags, textbooks, jackets, fans, tracksuits and t-shirts for physical education;
8. I reiterate that teachers should be exposed to the social and cultural context of Agalega, prior to their posting. Their living conditions on Agalega need to be upgraded urgently. Each educator should be provided with at least one bottle of drinking water daily.

Ministry of Social Integration and Economic Empowerment (MSIEE)

1. The MSIEE should carry out a survey to take stock of the situation of families and children in Agalega. School uniforms, books, school bags, social aid can be granted to them if the names of families feature in the social register.
2. Projects such as a *projet de parrainage* can be undertaken to monitor and empower children living in Agalega.

Ministry of Public Infrastructure and Land Transport (MPILT)

As the housing conditions are in a deplorable state, it is suggested that in the future, the construction of houses will need to have the assistance of the MPILT so that the houses have a minimum living duration of at least 50 years before renovations are carried out

Mauritius Police Force

1. The police department needs to carry out regular sensitisation programs among youth and adults, about the ill-effects of alcohol, drugs and cigarettes in Agalega.
2. The police officers working in Agalega should be provided with a more conducive working environment and, modern equipment to the police officers working in Agalega.
3. There should be better law enforcement in Agalega.

Ministry of Health and Quality of Life (MOHQL)

1. The MOHQOL needs to undertake the responsibility to fulfil each child's enjoyment to the highest attainable standard of health, as explicitly recognised in the UNCRC.
2. The MOHQOL should carry out awareness-raising campaigns on sexual, reproductive and nutritional health of youth in Agalega.
3. The MOHQOL should develop health and wellness policies and programs in collaboration with Agaleen school-family-community partnerships.

4. The MOHQOL should delegate a paediatrician and a gynaecologist on regular tour of service to the island in order to examine Agaleen children and pregnant women.

Ministry of Technology, Communication and Innovation (MTCI)

1. The MTCI should make provision for internet connectivity in Agalega.

Ministry of Agro Industry and Food Security (MAIFS)

1. The Mauritius Society for Animal Welfare (MSAW), under the MAIFS, should conduct a sterilisation campaign in order to control the canine population in Agalega as well as educating the population about their responsibility to animal welfare.
2. The Ministry of Agro Industry and Food Security should delegate an officer to Agalega in order to train people on subsistence agriculture and poultry farming.

Ministry of Youth and Sports (MYS)

The MYS should encourage sports activities, such as football, badminton and volleyball among children and youth in Agalega. The Ministry should cater for proper sports infrastructure and train young Agaleens in leadership and management skills. Monitoring and evaluation need to be ensured.

PART IV.

Rodrigues



Scope and Purpose



Scope and Purpose

Since the setting up of the OCO in 2003, it is common practice to visit Rodrigues in order to take stock of the situation of children in the island. I undertook an official visit to Rodrigues from 21 to 26 March 2016 during which I met with the Chief Commissioner, Mr Serge Clair, and the Deputy Chief Commissioner, Mrs Gaspard Pierre Louis.



Left: Young ambassador of the Ombudsperson for Children's Office from Agalega

The main objectives of my visit were to monitor children's rights and empower professionals working with children. This year's visit was marked by a significant paradigm shift: a profound analysis of the situation of children in Rodrigues in close **collaboration** with all Rodriguans stakeholders.

As I strongly believe that the relationships among the islands of the Republic should be strengthened, I have recently set up a network of Young Ambassadors from the islands of Mauritius, Rodrigues, Agalega and the Chagos community. Saronne Marina, young Agaleen 'Ambassador' for the Ombudsperson for Children, has been part of the official delegation to Rodrigues.

During my mission, I made it clear that Rodriguans should take ownership of the development of their island especially in the field of promotion and protection of children's rights. Active citizenship of Rodriguans was promoted. With the enactment of the Rodrigues Regional Assembly Act 2002, the island has assumed administrative autonomy. I believe that Rodrigues could endorse this philosophy of autonomy in the field of child rights by contributing substantially to drafting of the periodic reports submitted to the UN Committee on the Rights of the Child.

Government and NGO representatives were invited to attend a two-day sensitisation workshop on the importance of:

- (i) monitoring and evaluation in the promotion of children's rights and
- (ii) good governance in the promotion of children's rights.

I paid particular attention to the issues concerning children in conflict with the law, children in alternative care and children living in poverty.

Throughout my visit, I solicited the views of different stakeholders regarding the situation of children in the island, the measures that have yielded some success, as well as those that need to be strengthened, so that targeted recommendations could be formulated.

Chapter 1:

Rodrigues Island with its Own Specificities



Chapter 1: Rodrigues, an Island with its Own Specificities

Rodrigues is located 650 km east of Mauritius. The volcanic island has a total surface area of 108 km² and an estimated resident population of 41,788 (based on the 2011 census data) with a number of **13,930 children under 18**.

Rodrigues is part of the Republic of Mauritius but has its own specificities. The main economic activities on the island are fishing, stockbreeding and cultivation. The island's charm and authenticity result from its natural, mostly untouched simple beauty. Rodrigues is a clean country and has a pollution-free environment, portraying the Rodrigues Regional Assembly's (RRA) commitment to protecting the environment.

In the economic field, the Rodriguans have intelligently developed their handicrafts and local products. In terms of political autonomy, the Regional Assembly Act 2002 has led to the setting up of the Rodrigues Regional Assembly comprising of 18 members and an Executive Council headed by a Chief Commissioner.

Chapter 2:

The Rights of Children as an Issue of Good Governance



Chapter 2: Good Governance: a sine qua non condition to promoting the right of children

According to the United Nations, a sine qua non condition to the full implementation of the UNCRC is good governance. The performance of any government in their role as protector of children's rights, needs to be assessed according to its international commitments, in particular, their commitment to comply with the UNCRC.

Ensuring the proper functioning of public institutions in the Republic of Mauritius is integral to good governance identified as central to human rights realisation and development. In this regard, we have to ask ourselves: Does the Rodriguan system put children first? I believe that considering children's rights from this perspective may have a real impact on the lives of children.

To be successful, the UNCRC's principles need to be implemented in an integrated and coordinated way. For example, law enforcement institutions and the judiciary, the social services, education, health and any other department of the RRA should work in close collaboration to elaborate policies concerning children's rights.

Good governance implies transparency, political leadership, reporting, national strategy on child rights and collecting information. I believe that we need to reflect on how good governance can be an integral part of our child rights monitoring strategy in Rodrigues.

Chapter 3:

Sensitisation Workshop in Rodrigues

Chapter 3: Sensitisation Workshop in Rodrigues

The Ombudsperson for Children's Office cannot afford to work in isolation. A collaborative approach to promoting child rights is needed. I invited all stakeholders of Rodrigues to attend a two-day sensitization workshop on the importance of:

- (a) monitoring and evaluation in the promotion of children's rights; and
- (b) good governance in the promotion of children's rights.

A participatory approach was adopted for the workshop. During the workshop, Rodriguans were empowered to consolidate their role as Child Rights Activists. The workshop enabled participants to draft brief reports on the situation of children in Rodrigues and reflect on the ways and means to improve the lives of children collectively. Participants reported on five main themes namely:

- the family/children as victims of abuse;
- education;
- health;
- leisure; and
- children in conflict with the law.

Evaluation and monitoring of the situation of children in Rodrigues is the cornerstone for further development in the field of child rights. It is of paramount importance to adopt an objective approach when reflecting on whether Rodriguan children's rights are respected. The participants agreed that the reality should not be brushed under the carpet or else negative repercussions may be felt in the long run.

The Regional Assembly Act 2002 confers to Rodrigues an autonomous status which enables the development of tailor-made policies for Rodriguan children, taking into account identity, culture and other specificities. The civil society in Rodrigues should also be able to stand up for the children of their island.

Chapter 4:

Situation Analysis



Chapter 4: Situation Analysis

4.1 Vulnerability of Rodriguan Families

From an operational study on Street Children in Rodrigues conducted by the Mauritius Family Planning and Welfare Association in 2010-2011, it appears that on a sample of 289 children, 54.2% declared that they were living with at most 1 parent (one or none). A total of 39.9% replied that they stayed with their mother only while 6.3% declared that they were living with their father only. 8% of the interviewees were either living with other family members, friends or alone. As shown in Figure 3 below, the main reason why interviewees do not live with their parents is because the parents are abroad (43.8%).

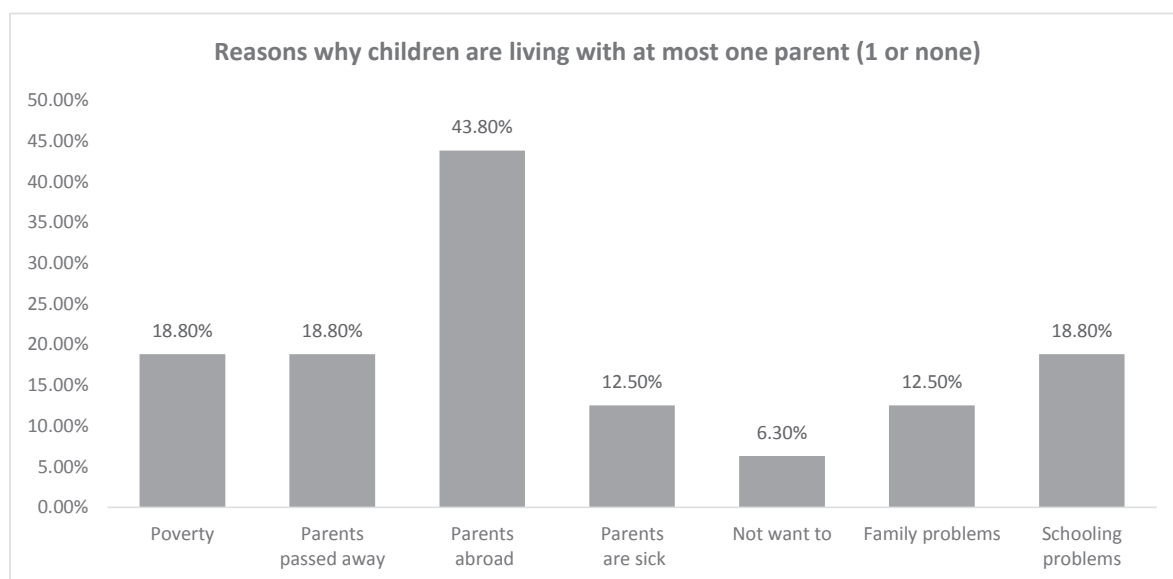
The UN Special Rapporteur on the sale of children, child prostitution and child pornography⁷⁷, Najat Maala M'jid points out the vulnerability of the Rodriguan family due to unemployment which obliges parents to immigrate to Mauritius and leave their children behind:

“Rodrigues suffers also from a high rate of unemployment, which has a significant impact on the family. Reportedly, parents leave Rodrigues to go to Mauritius, in an attempt to find better jobs, leaving their children behind in the care of grandparents or other family members.”

Grandparents do have a significant role in the lives of their grandchildren but cannot be a substitute to parents. Based on information received, in such conditions Rodriguan grandparents often find it very challenging to raise their grand-children alone.

⁷⁷The Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maala M'jid undertook an official visit to Mauritius from 1 to 11 May 2011, during which she met with stakeholders in various districts of Mauritius and Rodrigues.

Figure 3: Graphical representation of the reasons why children are living with one parent or none



Source: Mauritius Family Planning and Welfare Association

The role of the family as an institution has been gradually undermined in Rodrigues. Out of 12,000 families, there are 2,500 single-parent families who benefit from social aid. In 2014 and 2015, there were 628 and 480 reported cases of family conflict respectively (See Table 9).

I consider that policymakers should not ignore the prevalence and devastating effects of the absence of the father figure in a child's life. During my meetings with the Chief Commissioner and the Deputy Chief Commissioner, we discussed the problem thoroughly. They were also very much concerned by the problem.

As highlighted in the Report of the Special Rapporteur on the sale of children, child prostitution and child pornography⁷⁸, teenage pregnancy is another major issue faced by the Rodriguan society:

“The main difficulties facing children in Rodrigues include high dropout rates, intrafamilial abuse, failing parents and parental alcoholism, as well as teenage pregnancy, in part due to insufficient and inadequate sexual education.”

This observation is substantiated by statistics showing the number of live births by mothers aged under 18 years in Rodrigues (Table 8).

Table 8: Number of live births by mothers aged under 18, island of Rodrigues

Age	2014	2015
Under 15	2	0
15	5	8
16	14	9
17	22	14
Under 18	43	31

Source: Statistics Mauritius

Children victims of different forms of abuse are placed at Foyer Marie Madeleine de la Croix at Baladirou. Presently, women victims of domestic violence are also placed at the foyer because there is no other place of safety for battered women. However it is important to separate children victims and women victims. There is a dire need for the setting up of a place of safety for battered women in Rodrigues.

According to Section 3A of the Child Protection Act, “Child Mentoring Scheme”, children aged 10 to 16 who are “*victims of neglect*”, suffer “*from mild behavioural problems*”, are “*in distress*” or have “*problems of social adaptation*” can be placed under the Child Mentoring Scheme. The law provides that the child placed under this scheme shall be assigned a child mentor who shall provide him/her “*with guidance*,”

⁷⁸ The Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maala M’jid undertook an official visit to Mauritius from 1 to 11 May 2011, during which she met with stakeholders in various districts of Mauritius and Rodrigues.

There are 12,000 families in Rodrigues. The Family Protection Services have to overcome daily challenges to accomplish their tasks. Table 9 below shows the number of requests received by the Police Family Protection Unit (PFPU). The CDU is facing a fierce problem of shortage of staff with only two Family Welfare Officers.

There is also a shortage of staff in the field of psychology. There are no family counsellor in Rodrigues and no appointed psychologist to provide support to children victims and families in distress.

Table 9: Number of requests received by the Police Family Protection Unit

Nature of case	Number of cases for 2014	Number of cases for 2015
Family conflicts	628	480
Sexual abuse	10	23
Attempt upon chastity	3	5
Teenage pregnancy	38	21
Ill-treatment	1	3

Source: Police Family Protection Unit, Rodrigues

⁷⁹ Section 3A(3)(b)(i).

In order to enable children living in disadvantaged and marginalised families to enjoy their rights to adequate housing, education and health, the UNCRC Committee of Experts (2015) in their concluding observations recommends that Mauritius:

“Consider conducting targeted consultations with families, children and children’s rights civil society organizations and NGOs on the issue of child poverty to strengthen or determine strategies and measures for fulfilling children’s rights in the National Child Protection Strategy and other poverty reduction strategies.”

The UNCRC Committee of Experts (2015) also advocates that Mauritius:

“Should enable children living in disadvantaged and marginalised families and those living in remote areas, including the islands of Rodrigues and Agalega, to enjoy their rights to adequate housing, education and health. In particular, the State Party should strengthen the network of social housing, support child day-care centres to enable mothers to join the workforce, improve access to education from the age of 3 years and strengthen community health centres.”

Based on statistics from the police and information collected from stakeholders concerned, we understand that the number of cases of sexual abuses lodged at the Rodrigues Court has increased over the past two years but there is much delay in processing of these cases.

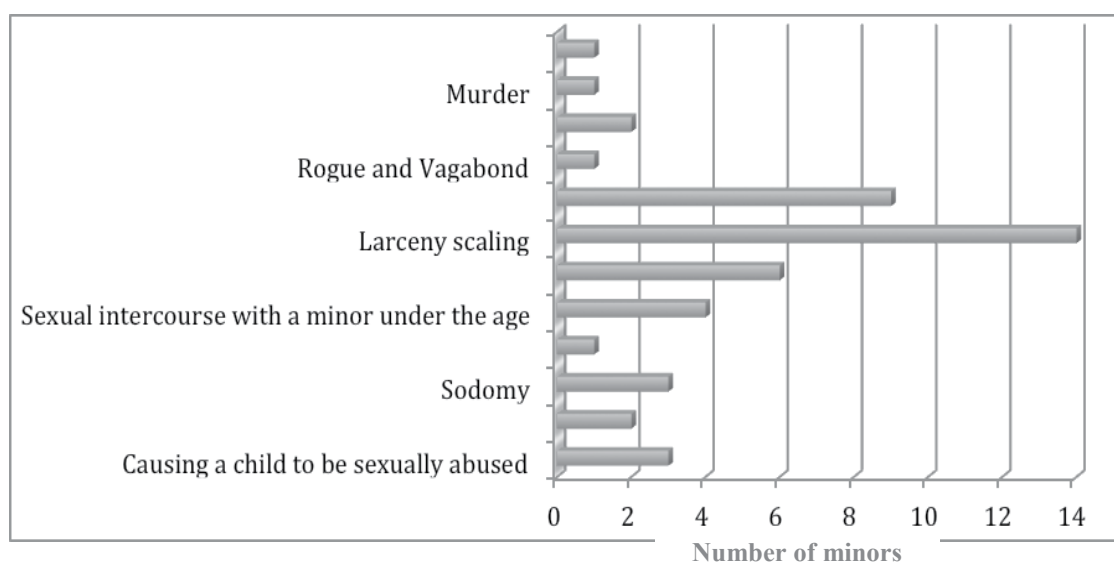
It has been reported that the victims, especially minors are intimidated and frightened to depone in court as they often have to face the alleged perpetrator. There is no Victim Support Officer to help the child go through the judicial procedures.

4.3 Children in Conflict with the Law in Rodrigues

Children in the Island of Rodrigues continue to be victims of an outdated juvenile justice system. The juvenile justice system in Rodrigues which is not child-friendly is inevitably detrimental to children in conflict with the law.

Figure 4 below shows that among the offences committed by minors, larceny scaling is the most common one. During our investigation, social workers and police officers repeatedly highlighted the fact that many children end up being accused of larceny. They also argued that these children are not criminals but are living in absolute poverty and are deprived of almost all their basic needs. They insisted on the fact that deviant behaviour can be a reflection of a deep suffering linked to poverty.

Figure 4: Graphical representation of the number of children committing specific offenses



Source: Police Department of Statistics

The response to deviant behaviours should take into account all the factors that led the child to steal or to commit other offence. The court should respond accordingly.

Extensive literature exists on the correlation between poverty and juvenile delinquency (Ernest W. Burgess, 1952). The standard of proof in delinquency court is determined in large part by the socioeconomic class of the accused, rather than by the nature of the forum (Tamar Birckhead, 2012). This was also acknowledged by the Beijing Rules with the “proportionality principle”:

“The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.”

This principle is well-known as an instrument for curbing punitive sanctions:

“The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reactions.”

There is no appropriate institution to cater for juvenile offenders in Rodrigues. Pending the determination of the court, juveniles are sent to RYC in Mauritius. From 2008 to 2013, 18 juvenile offenders were sent to RYC and CYC in Mauritius. It is worth pointing out that the psychological effects of removing a child from his or her natural environment can be extremely damaging.

I believe that Rodrigues needs community-based structures to rehabilitate juvenile offenders as prescribed by the Riyadh Guidelines:

“Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.”

The Riyadh Guidelines also encourage State Parties to set up prevention plans including in particular youth participation in delinquency prevention policies and processes, including “recourse to community resources” (Section III.9). They insist that emphasis should be placed on:

“Preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations.”

The setting up of a Rehabilitation Youth Centre (RYC) in Rodrigues is currently under consideration. I propose that the RRA sets up small therapeutic units as the UN Guidelines highlight the importance of “deinstitutionalisation”.

In this line of thought, the setting up of Probation Homes in Rodrigues would be more appropriate. Small therapeutic units and Probation Homes better respond to the needs of the juveniles as they provide a conducive homely environment.

Good Practices

A good practice is that on the initiative of the magistrate, the court in Rodrigues operates fully as a juvenile court thrice a year, during the school holidays.

Moreover, there has been recent development regarding juvenile justice in Rodrigues. A Juvenile and Family Division has been inaugurated on 6 August 2016. This division is innovative. It provides children and family with a conducive atmosphere. The division will serve the following purpose:

- (i) Serve as a waiting room for children;
- (ii) Enable juveniles on remand to meet their counsel in a child-friendly and welcoming place;
- (iii) Serve as a sensitive witness room to help children complainants who do not want to face their perpetrators and who are deposing in criminal cases;
- (iv) Serve as a waiting room for victims of domestic violence;
- (v) Serve as an information centre for children in conflict with the law and victims of domestic violence;

- (vi) Serve as a pick up point. Parents who are divorced may collect their children from the division instead of the police station;
- (vii) Enable children to meet the Judge in Chambers.

4.4 Education in Rodrigues

Education is a fundamental human right and essential for the exercise of all other human rights. It promotes individual freedom and empowerment and yields important development benefits.

The findings of the Special Rapporteur on the sale of children, child prostitution and child pornography⁸⁰ are as follows:

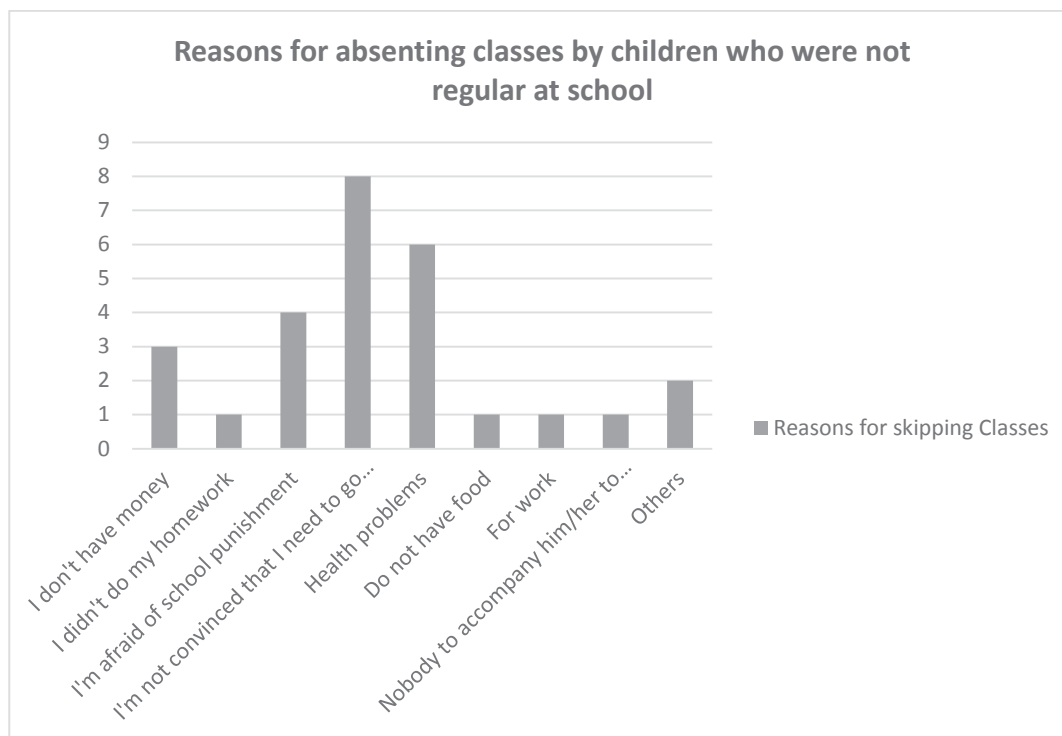
“The main difficulties facing children in Rodrigues include high dropout rates, intrafamilial abuse, failing parents and parental alcoholism, as well as teenage pregnancy, in part due to insufficient and inadequate sexual education.”

“Another concern is that children do not believe that school will bring any added value to their lives: the lack of viable job opportunities after high school graduation reportedly leads youth to drop out of high school.”

An Operational Study on Street Children in Rodrigues (2011) conducted by The Mauritius Family Planning and Welfare Association on the basis of interviews with children from Standard 1 to Form III allows better understanding of the reasons for absenteeism in Rodrigues schools. Out of a sample of 289 children, the main reason for skipping classes was that *“children were not convinced that they really needed to attend school”* (See Figure 5). Other reasons mentioned by the children, apart from lack of motivation, were health issues and the fear of school punishment.

⁸⁰ The Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maala M’jid undertook an official visit to Mauritius from 1 to 11 May 2011, during which she met with stakeholders in various districts of Mauritius and Rodrigues.

Figure 5: Graphical representation of distribution of reasons for absencing classes by the children who were not regular at school at the moment of interview



Source: Mauritius Family Planning and Welfare Association

In year 2015, the percentage pass at CPE level was 73.35 %.⁸¹ The stakeholders who attended the workshop in Rodrigues, mentioned that:

- The RRA has introduced coaching sessions after school hours for slow learners.
- As from 2016, the ‘Association des écoles maternelles de Rodrigues’ has decided to admit children aged 3 years old before 1 April in their pre-primary schools. This initiative led to an intake of an additional 100 children to a structured education system as compared to the intake of the previous year.

4.4.1 A Revolutionary Model of Community Schooling

Community schooling, I believe, could be a wise response to the challenges posed by education in Rodrigues. During my mission, I had the opportunity and great satisfaction to visit Araucaria Community School. The concept of community schooling is a laudable initiative that should serve as a model to the world. The concept of “Nou lékol” creates a sense of belonging among participants. It reflects a vision for Rodrigues. Community management and community participation are the cornerstones of this new model of education. Small class population; participation of parents in school; community school gardening and proximity define this new education concept. Presently, there are three community schools and two others are under construction under the same concept.



Article 29 of the UNCRC stipulates that education should develop respect for the child’s own cultural identity, language and values and for the national values of the country in which the child is living and/or from which he/she may originate.⁸² Compliance with the values embodied in Article 29(1) requires that schools be child-

⁸¹ Source: Mauritius Examination Syndicate

⁸² The article emphasizes that the curriculum must be of direct relevance to the child’s social, cultural, environmental and economic context and to his or her present and future needs. Curriculum must take full account of the child’s evolving capacities; the school environment itself must thus reflect the freedom and the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin called for in Article 29 (1) (b) and (d) of the UNCRC.

friendly in the fullest sense of the term and that they be consistent in all aspects with the dignity of the child. Curricula must therefore be regionally-specific, respecting the specificity of Rodrigues.

I believe that community schools are on the right path to embracing the aims of education as elaborated by the UNCRC Committee on the Rights of the Child General Comment No.1 (2001):

- The holistic development of the full potential of the child, including the development of respect for human rights;
- An enhanced sense of identity and affiliation;
- His/her socialization and interaction with others and with the environment.

In community schools, agriculture and farming are part of the curriculum. The concept of community schooling is also in line with the United Nations Environment Programme (UNEP) which promotes Sustainable Agriculture and Rural Development (SARD). UNEP stipulates that governments should at appropriate level and with the support of the relevant international and regional organizations, promote educational and vocational training for farmers and rural communities through formal and non-formal education.

The community schools are tailor-made to the needs of the Rodriguan children and are in harmony with the specificity of the island. It is a revolutionary concept to education. A total number of twenty children per class favours individual rapport between pupils and teachers while offering a conducive learning social environment. The social life and family situation of each child are familiar to the teacher. Parents are allowed access to classes, encouraging the involvement of parents into the education journey of their wards. Getting the community to get involved in the education of children is a promising idea. This will no doubt ensure inclusive and equitable quality education and promote lifelong learning opportunities.

4.5 Right to Health

Article 24 of the UNCRC recognizes 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. It also establishes that “*States parties shall strive to ensure that no child is deprived of his or her right of access to such health care services*”. According to the third principle, “*the right to life, survival and development*” (Article 6), States Parties must undertake to ensure the survival and development of the child to “*the maximum extent possible*”. The article lists some of the measures to be taken by States parties to ensure the full implementation of the right to health such as measures aimed at:

- Diminishing infant and child mortality;
- Combating disease and malnutrition;
- Ensuring appropriate prenatal and postnatal health care for mothers;
- Developing preventive health care;
- Abolishing traditional practices prejudicial to the health of children.

4.5.1 Maternity and Paediatrics

During my visit to Queen Elizabeth Hospital at Crève-Coeur, I checked the maternity ward, nursery and pediatric ward. The hospital is well equipped I must say. Antenatal care facilities are offered at the hospital, as well as in area health centres and community centres.

Medical officers and social workers reported that, despite the facilities being offered, many pregnant women do not take advantage of these. Sensitisation in this respect would be needed so that mothers and babies are not put at risk unnecessarily. Post-natal care is offered in baby clinic for regular check-ups and vaccination. I took note that authorities are aware that it is of paramount importance to monitor babies’ growth and development.

Rodrigues needs resident gynaecologist, paediatrician, psychiatrist and psychologist. The rapport of trust between the professional and the patient is difficult to establish when each month a different one is posted in Rodrigues. Pregnant women or women who have recently given birth may have psychological problems that require the expertise and support of mental health professionals. Unfortunately, there are no such professionals in Rodrigues.

4.5.2 Synthetic Drug Consumption

Another area of concern for Rodriguan children is the disastrous consequences of synthetic drug consumption. It has been reported that synthetic drugs have made their way to Rodrigues. It is the duty of everyone to protect our youth through the dissemination of information and aggressive sensitization campaigns as recognized by the UNCRC Committee on the Rights of the Child General Comment 4 (2003) on “Adolescent health and development in the context of the Convention on the Rights of the Child”⁸³.

The Committee in this General Comment affirms *inter alia* that States Parties have the obligation to ensure that all adolescents are provided with accurate and appropriate information on how to protect their health and development and practice healthy behaviours; this includes information on the use and abuse of tobacco, alcohol and other substances, safe and respectful social and sexual behaviours, diet and physical activity.

The UNCRC also contains provisions which are directly related to health such as the obligation of States Parties to protect the child from:

- All forms of physical and mental abuse while in the care of parents or legal guardians (Article 19);
- Economic exploitation and performing work that is likely to be hazardous to a child’s health (Article 32);
- Illicit use of narcotic drugs and psychotropic substances (Article 33); and
- Sexual abuse and exploitation, abduction, trafficking and sale of children (Articles 34–36).

⁸³ UN Doc. CRC/GC/2003/4, 1 July 2003.

4.6 Right to Leisure and Lack of Recreational Activities

Play, leisure and recreational activities are fundamental to the healthy development of adolescents. Yet, youngsters in Rodrigues often complain that there are not enough leisure activities in the island.

Article 31 of the UNCRC recognizes that every child has the right 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. It stipulates that State 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.

Participants of the workshop have noted the lack of activities for young people. Our children need to develop interests for reading, sports, music, theatre, culture amongst others. They need to have hobbies. Hobby and interest circles as well as youth clubs should be set up. Exchange programs among children of the Republic of Mauritius could be set up to broaden the perspectives of the new generation.

Participants of the workshop recognise that Rodrigues' history and culture are yet to be discovered by the young generation. The government should aim at building theatres, conservatory of music, library in the island to cater for the needs of the young people. It would be an intelligent response to the curse of cigarettes, alcohol and drugs.

I believe that a comprehensive Play/Activity Audit (used by the UK government) need to be effected across Rodrigues so that an in-depth assessment of the following may be carried out:

- playgrounds;
- supervised activities;
- activity groups;
- sports facilities;
- informal play environment;
- open spaces;
- parks;
- library; and

- opportunities to play a musical instrument.

The audit will detail:

- What facilities are being offered;
- How many places are available;
- Age group;
- Opening times;
- Who is able to access the service;
- Do they cater for children and young people with additional needs, disabled facilities/access, and
- Costs.

Moreover, the use of youth centres needs to be optimized. Youth officers should continue to provide programs that are educative and promote equality of opportunity, that are participative and empowering and are fun, challenging and exciting. Through activities and tailor-made programs young people should be encouraged to express views and opinions and participate in decision making.

I believe that the young Rodriguan people are living in a fragile society and they must be empowered to take control of their lives.

4.7 Visit to Foyer Marie Madeleine de la Croix

Article 9 of the UNCRC provides that the State shall ensure alternative care to children who are deprived of a family and who needs special protection. The Foyer Marie Madeleine de la Croix has been set up in Rodrigues to accommodate children placed under an Emergency Protection Order or Committal Order. The Foyer is under the aegis of the Deputy Chief Commissioner's Office and the Vicariate of Rodrigues.

Monitoring the rights of children of the Republic of Mauritius in Residential Care Institutions is the prerogative of the OC. During my visit to Rodrigues, I effected daily visits at the Foyer including spot checks in the evening. The investigators inspected the foyer and initiated dialogue with the children.

The team of the foyer consists of three administrative staff and six caregivers. At the time of the visit at the foyer, the children were under the care and responsibility of three adults. As at date, there are 25 children who have been placed at the Foyer.

Observations

- All children attend school.
- The foyer is spacious.
- It is a small team but they do their best to care for children.
- An expansion project was under way at the time of the visit. A separate building for the nuns and a boy's wing are under construction. Moreover, a piece of land will now be utilized for cultivation purposes.
- There is no regular water supply.
- The compound is spacious but there is neither playground nor green space.
- There is no proper ventilation. During summer, children suffer from the heat.
- The quantity and quality of food need to be improved. There is no attached psychologist to the foyer.
- There are no therapeutic activities.
- There are no individualized care programs.

Chapter 5:

Summary of Recommendations for Rodrigues

Chapter 5: Summary of Recommendations for Rodrigues

1. It is recommended that small therapeutic units and probation homes be set up in Rodrigues for the rehabilitation of children in conflict with the law
2. Court response to young offenders should consider the possible relationship between low income and juvenile delinquency. The court should also consider the “principle of proportionality” as proposed in the Beijing Rules.
3. A specific place of safety for women in distress needs to be set up.
4. School curricula must be regionally-specific, respecting the specificity of Rodrigues to motivate students.
5. Sensitisation to antenatal care facilities is needed so that mothers and babies are not put at risk unnecessarily.
6. There is a need for a resident gynaecologist, paediatrician, psychiatrist and psychologist in Rodrigues.
7. A comprehensive Play/Activity Audit must be conducted across Rodrigues so that an in-depth assessment of what is needed in terms of leisure is carried out. The government should aim at building theatres, conservatory of music, library in the island to cater for the needs of the young people. Besides, the use of youth centres need to be optimized.
8. The RRA could set up exchange programs among children of the Republic of Mauritius to broaden the perspectives of the new generation.
9. Qualified staff should be recruited to improve services provided by the CDU in Rodrigues.
10. Recommendations concerning Foyer Marie Madeleine de la Croix:
 - (i) The quantity and quality of food at Foyer Marie Madeleine de la Croix in Baladirou, Rodrigues need to be improved.
 - (ii) The Foyer should be maintained on a regular basis.

- (iii) It is a priority to ensure regular water supply in the foyer.
- (iv) Therapeutic activities and individualized care programs need to be introduced to support children who have been removed from their family.
- (v) Carers should have basic and ongoing training.
- (vi) Play is a fundamental aspect of children's development and they need a dedicated space to play safely. I recommend the creation of a playground in the yard.
- (vii) I suggest that air conditioners and/or fans be installed in the foyer for the comfort and well-being of children.
- (viii) Regular monitoring and evaluation have to be carried out by competent authorities.

11. The recruitment of two educational psychologists.

12. It is a must to provide a vehicle to the officers of the Brigade pour la Protection des Mineurs and the Police Family Protection Unit to enable rapid and effective intervention.

PART V.

Activities



Chapter 1:
***Activities of the Ombudsperson
for Children's Office***

Chapter 1: Activities of the Ombudsperson for Children's Office

From July 2015 to July 2016, the OCO organised a series of activities to promote rights and best interests of children and compliance with the UNCRC. Investigators have also actively participated in activities organized by different stakeholders in the Republic of Mauritius and abroad. At the OCO we firmly believe that we cannot and should not work in isolation.

Our annual report is the product of all the activities carried out by the OCO which includes dialogue with providers of children's service and policy makers.

I would like to insist on the fact that our office held regular dialogues with:

- children, especially those in vulnerable situations and their families;
- NGOs promoting children's rights; and
- different ministries and other public bodies responsible for providing services to children.

The different activities organised by the OCO and dialogue with important stakeholders enabled investigators and myself to gather vital information on the situation of children in the Republic of Mauritius. Stakeholders' dialogues play a crucial role in promoting children's rights as they increase all parties willingness to commit themselves.



Staff meeting in the conference room of the Ombudsperson for Children's Office

1.1 Main Activities

The main activities of the OCO from July 2015 to July 2016:

- On a daily basis, investigators handled complaints concerning violation of children's rights
- Ongoing investigations following complaints received
- Investigations on my own motion:
 1. *The situation of children in conflict with the law focusing on RYCs and CYCs*
 2. *The situation of Agaleen children in the Republic of Mauritius*
 3. *The situation of children in Rodrigues Island*
 4. *Case of alleged malpractice at a trust fund*
 5. *Case of upheaval in a shelter*
- Mediation services
- Secondary research
- Drafting of advocacy documents
- Media interviews
- Training sessions for OCO staffs
- Sensitisation workshops on children's rights in Mauritius, Rodrigues and Agalega (for children and professionals providing services to children)
- Talks on UNCRC, child abuse, the importance of education and problems faced by children in Mauritius
- Regular monitoring visits to RCIs, RYCs, CYCs, Crèches, primary and secondary schools and hospitals.
- Report Writing
- Meetings

1.2 Meetings

1. Management meetings
2. General staff meetings
3. Investigators meetings
4. Group and individual meetings with personnel of RCIs, RYCs , CYCs , NGOs , different ministries and other public bodies
5. Group and individual meetings with children
6. Consultative meetings with relevant stakeholders
7. Regular meetings with Honourable Minister of Gender Equality, Child Development and Family Welfare.
8. Meetings with Minister of Social Security, National Solidarity and Reform Institutions, Minister of Education and Human Resources, Tertiary Education and Scientific Research, Minister of Youth and Sports and the Attorney General.
9. Meeting with international Human Rights Advocates.

At the Ombudsperson for Children's Office, we believe that meetings improve the quality of our work. For example management meetings and other staff meetings enable members of staff to keep each other updated with work matters. Meetings also help a team arrive at a unanimous decision when decision-making is needed.

Group and individual meetings with children have helped our office to create a space so that they can be listened to. **Without knowing what children think it is difficult to advocate for them. Listening to children is more than just hearing their voices!** One has the duty to take their views into consideration in all decisions concerning them.

1.3 Prize Giving Ceremony at Gaetan Raynal State College

Dear Students, “Do not be afraid to voice out your opinions” –

The Ombudsperson for Children

“When people don’t express themselves, they die one piece at a time” –

Laurie Halse Anderson



Students wrote to me: “We may not remember everything you said but we will remember your message and advice”.

The college years are some of the best...

Prize Giving Ceremony at Gaetan Raynal State College



“Education’s purpose is to replace an empty mind with an open one” –

Malcolm Fobes

1.4 Prize Giving Ceremony at Belle Rose State Secondary School (SSS)

“Children must be taught how to think but not what to think”-

Margaret Mead



The OC welcomed by members of Student Council

“The foundation of every state is the education of its youth”-

Diogenes

At Belle Rose SSS, the cultural show presented by students was very beautiful!

1.5 The Ombudsperson for Children's Office in collaboration with the National Children's Council celebrating the Day of the African Child



Venue	:	Voilà Hôtel, Bagatelle
Date	:	03 June 2016
Time	:	09.00hr - 15.30hr
Guest of Honour	:	Honorable Mrs Marie Aurore Perraud Minister of Gender Equality, Child Development & Family Welfare
VIP guests	:	Children from RCIs, RYCs & CYCs Belle Rose SSS Sir Abdool Raman Osman SSS

- ❖ The Day of the African Child is celebrated every year on 16 June.
- ❖ Launched in 1991 to commemorate the Soweto Uprising by the Organisation of the African Unity (OAU) formerly known of African Union.

Day of the African Child



- ❖ On that day children were encouraged to express themselves through artistic activities. They danced, they sang, recited poems, ‘bat ravan ek djembé’.



Day of the African Child



Laura Beg....Our surprise guest!

Laura Beg is not only a great singer but a child rights activist also!

Thank you Laura!!!

1.6 Like all Children of the World Agaleen Children have the Right to Express Themselves



Children were sensitised on their rights



Swearing in Ceremony of the President of the Student Council



Setting up of a student council at MEDCO College

1.7 Talk at Rodrigues College

I visited Rodrigues from 21 to 26 April 2016. I was accompanied by two investigators and we organised two main activities targeting school children and adults working with children respectively.

During my mission to Rodrigues, I delivered a talk at Rodrigues College for students aged between 15 and 18 years. My talk focused on Rights and Responsibilities of young people. After the session, students were asked to register as Young Ambassadors of the OC.



I had the pleasure to meet the Rector and Deputy Rector of the College. We discussed about the challenges facing the Rodriguan society and their impacts on children.



Sensitisation workshop in Rodrigues

Stakeholders in Rodrigues attending a two-day sensitisation workshop on the importance of monitoring and evaluation and good governance in the promotion of children's rights.

During the sensitisation workshop in Rodrigues, the participants were required to report on five main themes namely: Children victims of abuse; Education; Health; Leisure; and Children in conflict with the law.



Group Discussions



Meeting with key stakeholders in Rodrigues



Intelligence Unit (Police Department)



Police Family Protection Unit



Child Development Unit

1.8 Sensitising members of the Police Force

On 6 June 2016, I, accompanied by an investigator, sensitised around 80 newly promoted police sergeants for an hour at the headquarters of Prison Training Centre. Firstly, I spoke on the role and functions and the type of cases that we receive at the office. Secondly, I raised certain pertinent issues which involve the police force such as: access of minors to night clubs; and youth violence.

I stressed that the police has a key role to play in society and the police should develop a culture of human rights. Lastly, I reiterated my wish to work in closer collaboration with the police.



Workshop by Police District Headquarters Metropolitan Division North



On voluntary observance of the Law & its legal implications on prescribed behaviour



1.9 Courtesy Visits to Ombudsperson for Children



Human Rights advocates from Rwanda accompanied by Hervé Lassemillante(NHRC)



Visit of a delegation from International School of Social Work - Switzerland

1.10 Young Ambassadors of the Ombudsperson



Saronne Marina from Agalega

“I love my island and I want all children to access quality education. I will promote the rights of Agaleen Children”

Saronne Marina was part of the OC’s delegation to Rodrigues.

“I want Agalega to be as clean as Rodrigues”



Zakariyyah Bawamia

A short exposé on the massacre of black children of Soweto in 1976.

“Today we remember children of Soweto indeed they were very brave”

Young Ambassadors of the Ombudsperson



*“Am proud to be an ambassador of the OC, and I will do my best to promote the rights of Children”,-
Poovarajen*

Canjamalay Poovarajen

“Almost everything that is great has been done by youth” -

Benjamin Disraeli

1.11 Investigators of OCO at work



Sandhya Johaheer



Sharonna Pillay Mauree



Yecha Rhungapen-Veeramootoo



Ismael Areff Bawamia

1.12 Media Interviews

Media professionals are well placed to keep children's rights on the news agenda. They challenge those who fail to meet their commitment to children.

Since I took up new responsibility as Ombudsperson for Children, I have worked closely with the media and from December 2015 to July 2016, I have given more than 50 media interviews.

I believe it's important to talk to the media because media is the most powerful tool of communication



The MBC interviewing the staff of OCO

1.13 Mission in Paris 27-30 June 2016

Conference

The mission in Paris from 27 to 30 June 2016 was multifaceted. The main objectives of our mission in Paris were:

- (i) to attend the international conference: *Enfant, Europe, Urgence Protection et Avenir Des Enfants Migrants: Un Défi pour L'Europe* ; and
- (ii) to attend meetings at the office of the Défenseur des droits

The conference was about the protection and future of migrant children in Europe. The speakers acknowledge that there is a moral obligation to protect children during migration. Unfortunately, there are limited actions to protect children. The protection system does not respond to the needs of migrant children. The heavy administrative burden and the fact that no one informs the children about their rights make it very hard for migrant children to enjoy these rights. Professionals are not well informed. Children on the move are at the mercy of abuse and torture, trafficking and illness. They are at risk of being separated from their families and they are even detained sometimes. The guarantee of the actual access of migrant children to all their fundamental rights, without discrimination remains a challenge.

Even if Mauritius is not directly concerned by this issue, we have been sensitized to the problematic. It also offered a platform for networking with ombudsman for children from other countries. I met the Commissioner for Children of Great Britain and the Défenseurs des enfants of France.



The Ombudsperson for Children with the Commissioner for Children of Great Britain & the Défenseur des enfants of France

Official visit to the office of the Défenseur des droits

The mission to Paris has also been the opportunity to go on a study tour. The study tour programme consisted of meetings with the heads of the different departments of the office of the Défenseur des enfants of France. It has been an opportunity to exchange ideas and good practices, get an insight into the day-to-day running of the institution and discuss future collaboration.



Department dealing with complaints at the office of the Défenseur des enfants



Comité d'évaluation du pôle enfant at the office of the Défenseur des enfants

A 'Programme des Jeunes Ambassadeurs' has been implemented since 2007, having as mission the promotion of children's rights by young ambassadors. Presently, sixty-six young ambassadors have been recruited.



The Ombudsperson for Children discussing with the head of the 'programme des jeune sambassadeurs'

Meeting of the OC with the Défenseur des enfants Gèneviève Avenard

My meeting with the Défenseur des enfants, Mrs Geneviève Avenard was fruitful.

The objective of the meeting was to share ideas on the question of children's rights and enhance the cooperation between both institutions on different fronts, be it periodic consultations, exchange programs or technical cooperation.

Mauritius has deep and friendly relations with France. Considering that Mauritius is a member of the Organisation International de la Francophonie (OIF) and the OCO is a member of the Association des Ombudsman et Médiateurs de la Francophonie (AOMF), this meeting was very important.



The Ombudsperson for Children and Investigator Y.R.Veeramootoo discussing with the Défenseur des enfants, Mrs Geneviève Avenard

1.14 International Summer Course on the Rights of the Child

5th Edition- Children deprived of liberty and youth criminal justice

The International Summer Course on the Rights of the Child at Moncton University, Canada attended by myself and an investigator has undeniably been rich in knowledge and ideas. It has examined situations where children are deprived of liberty as well as their right to a separate criminal justice system.

We have benefitted from high level expertise and a wealth of experience from best practices around the world in the field of juvenile justice.

Networking among child rights' experts and professionals has been an important aspect of this one-week summer course. It has been an opportunity for Mauritius to be represented on an international platform where child rights' experts meet to exchange ideas and learn from each other.

My intervention has had a significant impact in terms of international representation and recognition. I presented the findings of my investigation on the juvenile justice system of Mauritius.

A common cause to all child rights' experts present is to militate for 'more care and less court'. Keeping youth out of the criminal justice system is the way forward.



Group photo of participants - Moncton University, Canada



The Ombudsperson for Children and Investigator Y.R.Veeramootoo with the Défenseur des enfants et de la jeunesse of New-Brunswick, Mr N. Bossé and his team



Mr C. Whalen introducing the Ombudsperson for Children before her presentation



The Ombudsperson for Children delivering her presentation

Chapter 2:

Tables of Activities of the Ombudsperson for Children's Office

Chapter 2: Tables of Activities of the Ombudsperson for Children's Office

Table 10: Visits and meetings of the Ombudsperson for Children's Office to educational institution

SN	Date	Activity	Venue
1	20/08/15	Annual Prize Giving Ceremony	John Kennedy College
2	31/08/15	Launching of Climate Change Education Kit	Mahatma Gandhi Institute
3	30/11/15	Opening Ceremony of the Science of Sports Exhibition	Auditorium, Rajiv Gandhi Science Centre
4	11/03/16	Flag Raising Ceremony	Queen Elizabeth College
5	11/03/16	Flag Raising Ceremony	Safire Nou La Ferm, Verdun
6	26/04/16	Meeting with PTA	Sodnac SSS



SN	Date	Activity	Venue
7	26/04/16	Meeting with PTA	Midlands Government School
8	9/05/16	Honoris Causa : Mr Ban ki Moon	University of Mauritius, Reduit
9	10/05/16	Visit	SSS Pailles
10	10/05/16	Visit	Midlands Govt School
11	25/05/16	Annual Prize Giving Ceremony	Sir Abdool Raman Osman State College
12	27/05/16	Annual Prize Giving Ceremony	Gaetan Raynal State College
13	2/06/16	Annual Prize Giving Ceremony	Belle Rose SSS
14	23/06/16	Annual Prize Giving Ceremony	Terre Rouge SSS

Table 11: Activities with ministries, government bodies and other agencies

SN	Date	Activity	Venue
1	09/09/15	Talk on Child Abuse	Community Centre, Riviere des Anguilles
2	1/10/15	MSSNSRI : International Day of the Elderly 2015	J&J Auditorium, Phoenix
3	05/11/15	MGECDFW: Consultative Meeting on the National Platform to end Gender Based Violence	Gold Crest Hotel, Quatre-Bornes
4	19/11/15	Ceremony in the memory of Late Me Guy Ollivry	Supreme Court
5	22/11/15	MGECDFW: Celebration of the Universal Children's Day 2015	Sir Seewoosagur Ramgoolam Botanical Garden, Pamplemousses
6	11/12/15	Opening Ceremony of the Science of Sports exhibition	Rajiv Gandhi Science Centre

SN	Date	Activity	Venue
7	11/12/15	Workshop on strengthening partnership to address child sexual abuse and teenage pregnancy in the community	MFPWA Headquarters
8	20/01/16	Brainstorming session on Qualitative Research	Mauritius Research Council
9	21/01/16	Workshop on Human Rights Education	MEHRTESR
10	22/01/16	Study visit	Forensic Science Laboratory
11	27/01/16	High Powered Committee	MGECDWF
12	08/03/16	National Dialogue in Connection with Women's Day	MGECDWF
13	17/03/16	Meeting with MRC on Case History	OCO/MRC

Table 12: Meetings with High Officials

SN	Date	Activity	Venue
1	5/11/15	Conférence Trait D'Union sur le thème « Vous avez dit postmodernité » par Monsieur Michel Maffesoli	Institut Français de Maurice
2	12/01/16	Meeting with the General Manager of the OI DC	OCO
3	26/01/16	Meeting with the Officer in Charge	ECCEA
4	4/02/16	Meeting with the Director of MEDCO, Agalega	OCO
5	5/02/16	Meeting with the Chairman of 'Les amis d'Agalega'	OCO
6	14/04/16	Meeting with Commissioner of Prisons	OCO
7	18/04/16	Meeting with the Deputy Chairperson of the National Human Rights Commission	OCO
8	20/04/16	Meeting with the DPP	Office of the DPP
9	25/04/16	Meeting with Minister of Gender Equality	Head Office of the MGECDFW



SN	Date	Activity	Venue
10	5/05/16	Meeting with the Minister of SSNSRI and high officials of the ministry	MSSNSRI
11	6/05/16	Meeting with the General Manager of OIDC	OCO
12	8/05/16	Banquet in honour of Mr Ban Ki Moon, UN Secretary General	SVICC
13	9/05/16	Europe Day	L'Aventure du Sucre, Beau Plan
14	12/05/16	Meeting with Rwanda Delegation	OCO
15	16/05/16	Meeting with Minister of Gender Equality	Head Office of the MGECDWF
16	1/06/16	Déjeuner avec l'Ambassadeur de France. Discussion autour des droits de l'enfant.	Résidence de France a Maurice
17	26/06/16	Meeting with the Vice President of the Republic	Office of the Vice President
18	26/06/16	Half day Workshop	Police Division, North
19	27/06/16 - 30/06/16	Meeting with the Défenseur des droits des enfants	Paris, France

SN	Date	Activity	Venue
20	28/06/16	Conference on the Protection of the Migrant Children in Europe	Paris, France
21	3/07/16 – 8/07/16	International Summer Course on the Rights of the Child	University of Moncton, Canada

Table 13: Talks on Child Sexual Abuse in CAB Offices

SN	Date	Citizens Advice Bureaux	No. of Participants
1	04 /08/15	Petite Rivière	62
2	11/08/15	Bel Air	56
3	25/08/15	Quartier Militaire	31
4	01/09/15	Curepipe	55
5	08/09/15	Pointe Aux Sables	10
6	10/09/15	Quatre Bornes	7
7	15/09/15	Bois Des Amourettes	86
8	22/09/15	Goodlands	20
9	29/09/15	Chemin Grenier	30
10	06/10/15	Route Nicolay	15
11	08/10/15	Rose Belle	20



SN	Date	Citizens Advice Bureaux	No. of Participants
12	13/10/15	Bambous	30
13	20/10/15	Flacq	32
14	22/10/15	Colline Monneron	47
15	27/10/15	Grand Bois	49
16	03/11/15	Saint Pierre	42
17	05/11/15	Rivière Des Anguilles	59
18	10/11/15	Plaine Magnien	29
19	12/11/15	Montagne Longue	44
20	17/11/15	Lallmatie	37
21	24/11/15	Floreal	32
22	01/12/15	Piton	37

Table 14: Talks on Child Sexual Abuse in Social Welfare Centres (September – November 2015)

SN.	Date	Region	No. of participants
1.	25/08/15	Amaury	24
2.	27/08/15	Floréal	61
3.	03/09/15	Petit Raffray	25
4.	04/09/15	Pamplémousses (also Regional Centre)	22
5.	08/09/15	Grand Bay	21
6.	09/09/15	Camp Fouquereaux	25
7.	10/09/15	Nouvelle Découverte	24
8.	11/09/15	Plaine Des Papayes	25
9.	15/09/15	Rivière Du Rempart	8
10.	22/09/15	Piton	26
11.	24/09/15	Mont Roches	35
12.	01/10/15	Roche Bois	30
13.	02/10/15	La Rosa	8
14.	06/10/15	Pointe Aux Piments	10
15.	07/10/15	Montagne Blanche	10
16.	13/10/15	Triolet	15
17.	20/10/15	Long Mountain	44
18.	28/10/15	Mare Tabac	31
19.	29/10/15	Mont Ory	18
20.	30/10/15	L'Escalier	30
21.	03/11/15	Petite Riviere	10
22.	04/11/15	Camp De Masque Pavé	10



SN.	Date	Region	No. of participants
23.	05/11/15	Mon Gôut	35
24.	06/11/15	Bambous	42
25.	09/11/15	Bel Air	77
26.	10/11/15	Surinam	13
27.	19/11/15	Rose-Belle	12
28.	13/11/15	Le Hochet	14
29.	16/11/15	Lady Sushil Ramgoolam SWC Complex (Caroline)	35
30.	18/11/15	Petit Bel Air	10
31.	12/11/15	Case Noyale	18

Table 15: Talks on the role and function of the OCO and on the rights of children in Citizen Advice Bureaux (February to July 2016)

SN	Date	CAB Office	No of participants
1	04/02/16	Rose Hill	17
2	11/02/16	Pamplemousses	19
3	18/02/16	Montagne Blanche	28
4	25/02/16	Vacoas	40
5	03/03/16	Rivière Noire	30
6	17/03/16	Quartier Militaire	40
7	24/03/16	Curepipe	49
8	31/03/16	Pointe aux sables	34
9	14/03/16	Plaine Magnien	66
10	21/04/16	Lallmatie	34
11	28/04/16	Floréal	31
12	05/05/16	Piton	10
13	12/05/16	Midlands	20
14	19/05/16	Grand Bay	15
15	26/05/16	Chemin Grenier	20
16	02/06/16	Route Nicolay	48



SN	Date	CAB Office	No of participants
17	09/06/16	Bambous	6
18	16/06/16	Flacq	15
19	23/06/16	Grand Bois	10
20	30/06/16	Quatre Bornes	32
21	14/07/16	Rose Belle	49
22	21/07/16	Colline Monneron	30
23	28/07/16	Rivière des Anguilles	15

Table 16: Workshops and meetings with children

SN	Date	Activity	Venue
1	9/12/16	Meeting with inmates	RYC Boys and RYC Girls
2	22/12/16	Workshop with inmates of RYC (Boys)	OCO
3	24/12/16	Meeting with inmates	RYC Girls
4	14/01/16	Workshop with residents of RYC Girls	OCO
5	3/02/16	Investigation	Mare d'Albert Swimming Pool
6	5/02/16	Workshop with Std VI pupils on the Friendship Project between children of the island of Mauritius and those of Agalega	Emanuel Anquetil GS
7	19/02/16-24/02/16	Sensitisation on different forms of abuses	Jacques Lechartier GS and St Rita GS, MEDCO, Agalega
8	21/02/16	Treasure Hunt on the rights of the child	Agalega
9	29/02/16	Meeting with inmates	CYC Boys
10	5/03/16	Workshop with Agaleen children living in Mauritius	OCO
11	9/03/16	Brainstorming meeting on the situation of children in RCIs	OCO
12	15/04/16	Meeting with Managers of RCIs	OCO



SN	Date	Activity	Venue
13	10/03/16	High level meeting with all stakeholders (AGALEGA)	OCO
14	12/05/16	Meeting with the young ambassadors of the OC	OCO
15	15/05/16	Preparatory workshop with children of RCIs, RYC's and young ambassadors of the OC (Day of African Child)	OCO
16	1/06/16	Activity with Std VI pupils of Pere Laval RCA School in the context of the Day of African Child	Pere Laval RCA School
17	3/06/16	Day of Reflection, of Dialogue and Friendship in the context of the Day of African Child	Voila Hotel, Bagatelle
18	6/06/16	Lecture on 'Police Violence against Children'	Police Training School
19	8/06/16	Activity with Std VI pupils in the context of the Day of African Child	Beau Sejour GS
20	15/06/16	Activity with Std VI pupils in the context of the Day of African Child	Ste Cecile RCA School

Annex



The Ombudsperson for Children Act (OCA)

THE OMBUDSPERSON FOR CHILDREN ACT 2003

Act No. 41 of 2003 - 10th November 2003

ARRANGEMENTS OF SECTIONS

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

1. Short title

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

2. Interpretation

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

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

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

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

‘public body’ means-

- (a) a Ministry or Government department;
- (b) a local authority;
- (c) a statutory corporation;
- (d) any other company, partnership or other entity of which the Government is, by the holding of shares or some other financial input, or in any other manner, in a position to influence the policy or decision of such body.

3. Establishment of the office of Ombudsperson for Children

- (1) There is established for the purposes of this Act the office of Ombudsperson for Children.
- (2) The Ombudsperson for Children shall be a person who has a wide knowledge of the issues and the law relating to children in Mauritius.
- (3) The Ombudsperson for Children shall take before the President the oath specified in the Schedule before assuming the duties of his office.

4. Appointment of Ombudsperson for Children

- (1) The Ombudsperson for Children shall be appointed by the President of the Republic acting after consultation with the Prime Minister, the Leader of the Opposition, the Minister and such other persons as he considers appropriate.
- (2) An appointment under subsection (1) shall be subject to such terms and conditions as the President may determine.
- (3) The Ombudsperson for Children shall hold office for 4 years and shall be eligible for reappointment for only a second term of 4 years.
- (4) The President may remove the Ombudsperson for Children from office for inability to perform the functions of his office, whether arising from infirmity of body and mind or any other cause, or for misbehaviour.

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

5. Objects of the office of the Ombudsperson for Children

The Ombudsperson for Children shall –

- (a) ensure that the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and associations of individuals.
- (b) promote the rights and interests of children;
- (c) promote compliance with the Convention.

6. Powers and functions of the Ombudsperson for Children

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

- (a) make proposals to the Minister on legislation, policies and practices regarding services to, or the rights of, children;
- (b) advise the Minister on public and private residential placement facilities and shelters established for the benefit of children;
- (c) advise public bodies and other institutions responsible for providing care and other services to children on the protection of the rights of children;
- (d) take such steps as he may deem necessary to ensure that children under the care of, or supervision of, a public body are treated fairly, properly and adequately;
- (e) propose measures to ensure that the legal rights of children in care are protected and that the placement facilities promote the safety of children and conform with such norms as the Ombudsperson for Children may, from time to time, recommend;



- (f) initiate an investigation whenever the Ombudsperson for Children considers that there is, has been or is likely to be, a violation of the rights of a child;
- (g) investigate cases relating to the situation of children in the family, in schools and in all other institutions, including private or public bodies, as well as cases of abandoned children or street children;
- (h) investigate any suspected or reported case of child labour;
- (i) investigate cases concerning a child who is a citizen of Mauritius and who may be abroad at the time of the investigation, or a child who is not a citizen of Mauritius but who is residing in Mauritius;
- (j) investigate complaints made by a child, or any other person, in relation to the rights of any child;
- (k) advise the Minister on the establishment of mechanisms to afford children the ability to express themselves freely, according to their age and maturity, especially on all matters concerning their individual or collective rights;
- (l) advise the Minister on the creation of partnerships with parents, teachers, non-governmental as well as governmental organisations, local authorities and any other stakeholders committed to the promotion of children's rights.

7. Investigation

- (1) Where the Ombudsperson for Children considers, either upon complaint made to him or on his own motion, that it is necessary to investigate a matter relating to the rights of a child, the Ombudsperson for Children shall investigate the complaint in such manner as he considers appropriate.
- (2) For the purposes of an investigation under this Act, the Ombudsperson for Children may -
 - (a) request any person, including any public officer, to provide information concerning a child whose rights have been, are being or are likely to be violated;

- (b) enter premises where –
 - (i) a child is present, either temporarily or permanently, including an educational or health institution and a place of detention, in order to study the environment of such a place and assess its suitability;
 - (ii) a child may be in employment;
 - (iii) there is reasonable ground to believe that the moral and physical safety of a child may be in danger;
 - (c) request the Commissioner of Police to enquire and report to the Ombudsperson for Children on any allegation relating to the breach of the rights of a child;
 - (d) enter any licensed premises where the Ombudsperson for Children suspects that alcohol and tobacco may be handled, consumed or purchased by children;
 - (e) record the statement of any person in connection with an investigation;
 - (f) request the assistance of the Commissioner of Police and the Officer-in-Charge of any public body or institution, as the case may be, to facilitate any entry and effect, where appropriate, any seizure pursuant to paragraphs (b) and (d).
- (3) Following an investigation under subsection (1), the Ombudsperson for Children shall -
- (a) act as a mediator to resolve any dispute relating to the rights of the child,
 - (b) make a report to such person or authority as the Ombudsperson for Children considers appropriate;
 - (c) make proposals of a general nature to the Minister on any matter which may have arisen in the course of the investigation.

- (4) The Ombudsperson for Children shall not investigate any case which is pending before any Court but may refer any child involved in such a case to the Ministry for advice, assistance or counselling.

8. Protection of witnesses

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

9. Immunity from legal proceedings

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

10. Staff of the Ombudsperson for Children

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

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.

12. Regulations

The Minister may –

- (a) make such regulations as he thinks fit for the purposes of this Act;
- (b) after consultation with the Ombudsperson for Children, make regulations for the purpose of regulating the procedure to be applied for the investigation of complaints by the Ombudsperson for Children.

13. Commencement

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

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

André Pompon
Clerk of the National Assembly

SCHEDULE

(section 3)

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

(S).....

Before me,

Date:.....

(S).....

President of the Republic



Bibliography

Bibliography

- *A Guide to Investigations* developed by the Ombudsman for Children Ireland and available for downloading at <https://www.oco.ie>
- Agalega 2000 –facing new challenges: A Socio-economic Study by Sandragassen Rungasawmi
- Annual Report of the Probation and Aftercare Service 2006
- Annual Report of the Probation Hostel for Boys 2015
- Bail Act 1999
- Barkat J. S. 2015, “Blueprint for Success: Designing a Proactive Organizational Ombudsman Program”, *Journal of the International Ombudsman Association*, volume 8, number 1.
- Beijing Rules
- Borstal Institution Ordinance 1947.
- Child Protection Act 1995
- Committee on the Rights of the Child of the UNCRC, *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)* [<http://www.barnombudsmannen.se/globalassets/dokument-for-nedladdning/publikationer/general-commen-nr-15.pdf>]
- Committee on the Rights of the Child of the UNCRC, *General comment No. 2 on THE ROLE OF INDEPENDENT NATIONAL HUMAN RIGHTS INSTITUTIONS IN THE PROMOTION AND PROTECTION OF THE RIGHTS OF THE CHILD*
- Committee on the Rights of the Child reviews, Report of Mauritius 2015.
- Committee on the Rights of the Child, UNCRC, *Consideration of Reports Submitted by State Parties Under Article 44 of the Convention. Concluding Observations: Mauritius*, 17 March 2006.
- Community Service Order Act 2002
- Concluding observations on the combined third to fifth periodic reports on Mauritius, 2015, Committee on the Rights of the Child
- Constitution of Mauritius 1968

- Correctional Youth Centre Regulations 1947
- UNCRC
- Crocker C.A. 2006, *Leashing the Dogs of War: Conflict Management in a Divided World*, Washington DC, US Institute of Peace Press.
- Delinquent by Reason of Poverty by Tamar Birckhead August 20, 2012
- Digest of statistics on Rodrigues 2014 Ministry of Finance and Economic Development Statistics Mauritius
- ENOC: Juvenile Justice- Europe Children's Champions challenge governments to respect young offenders rights (17 October 2010)
- Ghazal Keshavarzian G. 2013, *Protect my future. The links between child protection and good governance*, Family for Every Child [<http://www.familyforeverychild.org/report/protect-my-future-the-links-between-child-protection-and-good-governance>]
- Gottehrer, D., *Fundamental Elements of An Effective Ombudsman Institution* (2009), Plenary Session II: Developing the Working Methods and Tools of the Ombudsman, United States
- Grant, R., *Best Practices Confidentiality* (2000) National Long Term Care Ombudsman Resource Center available for downloading at <http://ltombudsman.org/uploads/files/support/Best-Practices-Confidentiality.pdf>
- *Guide to principles of good complaint handling* (2007), developed by The British and Irish Ombudsman Association and available for downloading at <http://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf>
- Guilloux Y., Chatelain J.-C., Lowinsky D. 2008, "Diagnostic des besoins, préconisations éducatives et formation des acteurs. Rehabilitation Youth Centres Boys & Girls", Mission Ile Maurice du 18 au 22 août 2008, Protection Judiciaire de la Jeunesse de La Réunion, Ministère de la Jeunesse.
- Guzman, M., Verstappen, B., *What is monitoring?* (2003), Human Rights Information and Documentation Systems, International – HURIDOCs, Switzerland
- Hamilton C., *Guidance for Legislative Reform on Juvenile Justice*, Children's Legal Centre and United Nations Children's Fund (UNICEF), Child Protection Section, New York, 2011.
- Harker L. 2006, *Chance of a lifetime - the impact of bad housing on children's lives*,

[https://england.shelter.org.uk/__data/assets/pdf_file/0007/66364/Lifechancereport.pdf]

- Have Access to Play, Leisure, Sporting and Cultural Activities
http://www.cypp.powys.gov.uk/uploads/media/Audit_7_Access_to_Play_bi.pdf
- <http://bizexteam.com/index.php/2011/03/18/how-does-confidentiality-work-with-ombudsman-programs/>
- <http://legal-dictionary.thefreedictionary.com/Ombudsperson>
- <http://prp.gov.wales/docs/prp/toolkit/140217lot2barriersresearchprocurementombudsman.pdf>
- <http://www.5plus.mu/guide-et-services/les-amis-dagalega-lecole-mon-pari-pour-lavenir>
- <http://www.businessdictionary.com/definition/investigate.html#ixzz45acmVdQe>
- <http://www.ibanet.org/>
- http://www.jamaicaobserver.com/mobile/columns/Overpopulation-of-strays-a-public-health-hazard_8633394
- <http://www.lematinal.com/faits-divers/3321-21-plantes-de-cannabis-retrouvees-a-agalega.html>
- <http://www.lemauricien.com/article/ombudsperson-children-mise-en-place-d-reseau-jeunes-ambassadeurs>
- <http://www.lexpress.mu/article/277399/rita-venkatasawmy-ombudsperson-children-il-ny-toujours-pas-dinternet-agalega>
- <http://www.lgo.org.uk/publications/fact-sheets/complaints-about-children-care-services/>
- <http://www.macmillandictionary.com/dictionary/british/investigation>
- <http://www.macropolis.gr/?i=portal.en.the-agera.651>
- <http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx>
- <http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx>
- <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15486&LangID=E#sthash.Gas5F1Vl.dpuf>
- <http://www.ombudsman.europa.eu/activities/speech.faces/en/57366/html.bookmark>
- <http://www.ombudsman.europa.eu/activities/speech.faces/en/59395/html.bookmark>
- <http://www.ombudsmanforum.ca/en/?p=571>
- <http://www.oxforddictionaries.com/definition/english/special-investigation>

- http://www.terredeshommes.org/wp-content/uploads/2013/06/20130315_the_links_between_child_protection_and_good_governance.pdf
- <http://www.un.org/en/ombudsman/principles.shtml>
- <http://www.unesco.org/new/en/right2education>
- http://www.unicef.org/post2015/files/SD_children_FINAL.pdf
- <http://www.who.int/hhr/UNCRC.pdf>
- https://books.google.mu/books?id=2NUPYybt90EC&pg=PA25&source=gbs_toc_r&cad=3#v=onepage&q&f=false
- <https://wcd.coe.int/ViewDoc.jsp?p=&id=1341155&direct=true>
- https://www.amnesty.nl/sites/default/files/public/ukw_eng.pdf
- <https://www.crin.org/en/library/publications/mauritius-childrens-ombudsperson>
- https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwisodqdhIvMAhVLoJQKHS81BhcQFggjMAE&url=http%3A%2F%2Fdocstore.ohchr.org%2FSelfServices%2FFilesHandler.ashx%3Fenc%3D6QkG1d%252FPPrICAqhKb7yhsizrXnxxyBbPFCpqaE7EAbi7FhG0egWHBJPAP5ZAPnYvJNE%252Br7VNj6VAeaofX4UC0bjPneroUpvNN5xeSCKODk4T%252BA6dy7VxWvkzhjI3idEg&usg=AFQjCNEP_xybbXVwMm2uWAY7FWbzDDjJGw
- Industrial Schools Act 1935
- Institute for Competition and Procurement Studies (ICPS), Wales, United Kingdom
- International Covenant on Civil and Political Rights
- It's Poverty, Not the 'Teenage Brain,' That Causes the Most Youth Crime by Lauren Kirchner, March 20 2015
- John S Barkat, "*Blueprint for Success: Designing a Proactive Organizational Ombudsman Program*", Journal of the International Ombudsman Association, volume 8, number 1, 2015 and available for downloading at https://www.ombudsassociation.org/IOA_Main/media/SiteFiles/docs/JIOA-15-V8-1-FNL-FULL.pdf
- Journal of Criminal Law and Criminology, Volume 43 Issue 1, The Economic Factor in Juvenile Delinquency by Ernest W. Burgess, 1952
- Juvenile Justice Act (1992) of New Zealand
- Juvenile Offenders Act 1935
- Legal Aid Act 1973

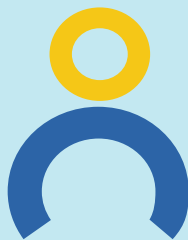


- Mauritius Prison Service Magazine No 6- 2015
- McAuley, K., *A Guide to Complaint Handling*, developed by the Ombudsman for Children Ireland and available for downloading at <https://www.oco.ie/>
- *Monitoring and Documenting Human Rights Violations in Africa* (2000), Amnesty International and Council for the Development of Social Science Research in Africa
- O IDC brief
- O IDC, *Report on Housing Conditions in Agalega*.
- Ombudsperson for Children Act 2003
- Operational Study on Street Children in Rodrigues Financed within the Global Fund/The Mauritius Family Planning and Welfare Association HIV/AIDS Prevention Programme ,2011
- Outer Islands Development Act (1982)
- Pallaver, M., *Power and Its Forms: Hard, Soft, Smart* (2011), A thesis submitted to the Department of International Relations of the London School of Economics for the degree of Master of Philosophy, London
- Payneandy S., Naeck V. 2001,*The Rehabilitation of Juvenile Offenders in Mauritius*, Rose-Hill, Mauritius.
- Prison Fellowship International – Restorative Justice Briefing Paper (November 2008)
- Private O IDC reports
- Probation Hostel and Home Regulations 1989
- Probation of Offenders Act 1946
- Reform Institutions Act 1988
- Rehabilitation Youth Centre – Action Plan (MSSNSRI, Jan 2006)
- Rehabilitation Youth Centre Regulations 1936
- Reif L.2004, *The Ombudsman, Good Governance and the International Human Rights System*, Leiden, Martinus Nijhoff Publishers.
- Reif, L. , *ENHANCING THE ROLE OF OMBUDSMAN INSTITUTIONS IN THE PROTECTION AND PROMOTION OF THE RIGHTS OF PERSONS WITH DISABILITIES* (2012), Faculty of Law, University of Alberta, Canada
- Report on housing conditions in Agalega from the O IDC

- Report on the Special Rapporteur on the sale of children, child prostitution and child pornography, 2011. Najat Maala M'jid
- Riyadh Guidelines
- Rungasawmi S., *Agalega 2000 – Facing New Challenges, A Socio-economic Study*.
- Section 5, Ombudsperson for Children's Act (2003)
- Sociological Impact of Social Change Upon Institution Of Family With Special Focus On Pakistan, Hamadullah Kakepoto
- The “Barriers Recommendations Research Projects” LOT 2: Procurement Ombudsman (2012)
- The best interest of the Child, ENOC Annual Conference, Paris, 23-25 September 2009
- United Nations Convention on the Rights of the Child
- United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)
- United Nations Human Rights, Office of the High Commissioner, “What is good governance?”
[<http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx>]
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 (JDLs)
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (The Beijing Rules)
- UNODC, *Justice in Matters Involving Children in Conflict with the Law. Model Law on Juvenile Justice and Related Commentary*, United Nations, New York, 2013[https://www.unodc.org/documents/justice-and-prison-reform/Justice_Matters_Involving-Web_version.pdf]



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