



PROPOSITION FOR THE CHILDREN'S BILL

JULY 13, 2015

This document was prepared by a platform of Non-Governmental Organisations (NGO's) and individual members of the civil society working with children across various sectors, including education, health and rights. The NGOs and individuals who contributed to this document are:

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As a network of NGOs and individuals who care for the children of Mauritius, we are here to help and work together with the Government for the betterment of Mauritian children and advocate for their rights. Several recommendations are being made via this document for the completion of the children's bill.

1. Legal status of the Convention

The CRC is not a legal document and thus cannot be used by the law. We recommend that the CRC becomes a legal document that can be used by the Court of Mauritius.

2. Non Discrimination

The KDZM recommends that a Committee is set up to implement all types of direct and indirect discrimination towards a child, in link with the Equal Opportunity Commission. This committee could have representatives from various sectors: NGOs, mental health professionals, legal advice experts and former magistrates.

3. Definition of the child

According to the Child Protection Act, the child is defined as any unmarried person under the age of 18. There are several cases where children under 18 are married and thus not considered as a child. We recommend a change in the legislation where the definition of a child reads as follows: “Any married or unmarried **PERSON** under the age of 18 is considered as a child.”

While the article 144 of the Civil Code mentions that the age of marriage is set at 18 years old, exceptions to the minimum age of marriage are possible and extensively granted in the country. Many teenagers aged between 14 and 17 are married every year, some because they want too but many are forced by their families. This creates too many loop holes in the protection of the child. We recommend that the legislation be harmonised to prevent such discrepancies

The Geneva committee recommends that: “**that the State party carry out comprehensive awareness-raising programmes on the negative consequences of child marriage targeting in particular parents, teachers and community leaders.**” (Committee on the

Rights of the Child: Concluding observations on the combined third to fifth periodic reports of Mauritius – 4th February 2015)

4. Sexual maturity

As the DPP mentioned in an article published on the 4th July 2015, there is a need to harmonise the Children’s Bill and the Criminal code of Mauritius where the sexual maturity of the child is mentioned.

Right now any under 18 boy who has a sexual relationship with a minor is arrested and put in the RYC or CYC even if he didn’t rape the girl. Equal rights for both gender in this type of case is recommended.

Teenagers found guilty of rape or relation with a person under the age of 16 should be judged within 6 months. Too many cases related to under 16 sexual intercourse are being judged when the perpetrator turns 18 when the cases have been reported several months or even years before.

5. Administration of a Juvenile Court

Remove the section 18 of the Juvenile offender’s acts – Child beyond control. Mauritius is the **ONLY COUNTRY IN THE WORLD** to use the term Child beyond control. This section of the law allows for persons who are responsible for their child and/or shelters who cannot/does not want to take care of a child.

This section in the law allows rgar offenders and non-offenders receive the same kind of treatment. Provide ongoing, professional and regular psychosocial and counselling services to parents/families experiencing significant parenting difficulties with their children is essential.

KDZM is very concerned with the absence of a clear legal provision for the minimum age of criminal responsibility, the absence of a juvenile court with judges specialised in juvenile justice. Many children and parents have complained that they receive no legal aid when a child is in conflict with the law. The bill should provide a section where any child suspected of an offence whose parents/ responsible party do not have adequate financial means should receive immediate and accessible legal aid from the state. Information about this service and the beneficiaries should be communicated to the persons responsible for the child.

No child should be sentenced in the absence of their legal representatives and/or guardians. The law should incorporate that a report from a specialist in the mental health field should be submitted to the Court before the court renders its judgement.

The minimum criminal responsibility should be established in accordance to an acceptable international standard. The bill should mention that a minor offender should not be judged and sentenced as an adult.

Any offence committed before the age of 18 should be erased at maturity and not used by the police and the court if the person re offends. A child arrested by the police should not be put in the same cell as an adult before going to court (even overnight)

There seems to be a lack of alternative measures to detention in the law. The bill should encourage magistrates to give provide alternatives to detention such as diversion, probation, bail, mediation, counselling or community service. Detention should be used as a last resort and be as short as possible. NGOs could be consulted to provide alternative solutions to detention such as rehabilitation programmes, counselling services to child and family and mediation for child and parents.

6. Rehabilitation and Correctional Youth Center (RYC and CYC)

The RYC and CYC should help the juvenile offenders rehabilitate. Therefore, it should be included in the new bill that the children in the RYC and CYC should receive appropriate support for reintegration, regular counselling, regular family visits.

Children in detention should have readily access to quality educational activities and be provided with regular academic lessons provided by educators. NGO's can play an important role in the centres and bring their expertise to rehabilitation and reintegration.

A minimum age to detain a child should also be established, age linked to the age of legal responsibility of the child. corporal punishments, isolations or any other types of violence and/or punitive sanctions (e.g. physical, verbal, sexual, psychological violence) should be prohibited by the law in detention centers. Severe sanctions applied to those who do not respect the dignity of the incarcerated child.

7. Respect of the views of the child and parental custody

The views and opinions of the child are not always taken in consideration by the law enforcers and magistrate. The child does not always have a say about his custody to a shelter or to one parent. The new bill should include a section on the compulsory/systematic views of the child when taking important decisions in his regards

In case of parental separation and when there is no police case against one parent for ill-treatment, children should have equal access to both parents. Custody should not be granted to only one parent.

The state and courts should be the last recourse to solve conflicts between spouse concerning children. Long delays in courts and exhaustive legal procedure should be revisited as this is not optimal for the children's emotional mental health.

8. Birth registration and tardy declaration of birth

Many children do not have a birth certificate due to abandonment or emergency removal from parents at birth. The new bill should include a provision where the state, when in this situation, should provide a birth certificate within a month of his birth.

9. Right to privacy to victims of abuse

The media does not always respect the privacy of the child who has been abused and of the person who reports the case to the authorities. By giving the identity of a parent, address, school of the child and identity of the perpetrator, the identity of the child can be easily identified by the association of information. The new bill should include a provision on how articles are written and what information to provide, (code of ethics to be respected: avoiding details of child sexual abuse and any possible identification of the child victim) and the type of sanctions the journalists or newspaper receive if they do not respect abide.

The law should clearly state that the identity of the victim and the person reporting the case should be kept strictly confidential. No information should be given to the press or members of the public which could allow to identify the victim and/or persons who report the case. the law should state clear consequences for not respecting the identity of the victim and person reporting the incident.

10. Corporal punishment

Even though campaigns have been done in schools about the prohibition of corporal punishment, many children are still victims of such form of violence. The Geneva committee recommends the State Party “to ensure that its legislation including the Children’s Act explicitly prohibit corporal punishment in all settings.” (Committee on the Rights of the Child: Concluding observations on the combined third to fifth periodic reports of Mauritius – 4th February 2015). The new bill should therefore include the prohibition of corporal punishment at home and in all settings: alternative care (shelter, foster care family, Rehabilitation Youth Centres, CYC).

A clear reporting system of incidents of corporal punishment in school and alternative care should be implemented by an independent body. Members of the public should be encouraged to report any incidents of corporal punishments and have the guarantee that their identity will be preserved.

In line with *Article 28.2* of the Convention of the Rights of the Child, which stipulates that “States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention”, the bill should take into consideration the following recommendation of the Committee which: “urges the State party to promote positive, non-violent and participatory forms of child-rearing and discipline.” (Committee on the Rights of the Child: Concluding observations on the combined third to fifth periodic reports of Mauritius – 4th February 2015)

11. Child abuse, violence and neglect

We ask to include the term ‘psychologist’ and the jobs in the field of psychology: counsellors, psychotherapists, social workers, etc. in the law. The bill should also mention that psychologists/ counsellors/ social workers, etc. are allowed to report any suspected abuse, as the ‘medical or paramedical or member of a staff of a school’ in the section 11 of the Child Protection Act.

The bill should provide a more precise description of rape (oral, vaginal and anal) with or without an object. The bill should include severe prison sentences to any perpetrators of sexual abuse aged 18 and above. Parents and/or members of the public are aware of the rape, attempt to chastity and other types of sexual abuse of a child should report immediately to the authorities. It is recommended that the Section 300 of the criminal code mentions the non-assistance to person in danger be re-enforced and applied by the authorities including parents who expose/know their children are sexually abused.

It is important to ensure that the laws in regards to children's rights (prohibiting any form of violence on children) are respected in all settings. We ask that the child's words about any form of sexual abuse weighs. Sometimes the child victim of abuse speaks months or years after the abuse and there are no physical evidence of any masturbation, oral sex and other types of sexual abuse.

The KDZM also asks that a fast tracking system is put in place in order to detect the abuse if there is penetration (oral, anal and vaginal), within 3 days. The case should be judged within two-three years. Sexual predators should be followed in and outside of prison by a psychologist.

A creation of a sexual perpetrator database to be created and used only for jobs related to children such as teacher, social worker, etc... The child who has been abused should be automatically assigned a psychologist within 3 days. A camera should be used to film the deposition of the victims (to be include in the law) and be interrogated by professionals especially trained in interviewing children victims.

The bill should provide a section on the loss of parental authority (déchéance de l'autorité parentale - PAS) in case of various forms of abuse (ex: gross neglect, severe physical - sexual violence, severe parental pathology etc...) abuse and the application of this law in its totality. This will thus allow for a possibility of adopting the child who in turn will not be committed to a shelter until maturity. The law should also be reviewed for the CDU and the judiciary. The CDU should be allowed to lodge such cases in court, being the authority for children in the country. The French civil code provides information on this type of law:

Article 378 du Code Civil français :

Peuvent se voir retirer totalement l'autorité parentale par une disposition expresse du jugement pénal les père et mère qui sont condamnés, soit comme auteurs, coauteurs ou complice d'un crime ou délit commis sur la personne de leur enfant, soit comme coauteurs ou complices d'un crime ou délit commis par leur enfant.

Article 378-1 du Code Civil français :

Peuvent se voir retirer totalement l'autorité parentale en dehors de toute condamnation pénale les père et mère, qui soit par de mauvais traitement, soit par une consommation habituelle et excessive de boissons alcooliques ou un usage de stupéfiants, soit par une inconduite notoire ou des comportements délictueux, soit par un défaut de soins ou un manque de direction, mettent manifestement en danger la sécurité, la santé ou la moralité de l'enfant.*

Peuvent pareillement (loi n° 96.604, art 19) se voir retirer totalement l'autorité parentale, quand une mesure d'assistance éducative avait été prise à l'égard de l'enfant, les père et mère, qui pendant plus de deux ans, se sont volontairement abstenus d'exercer les droits et de remplir les devoirs que leur laissait l'article 375-7.

L'action en retrait total de l'autorité parentale est portée devant le tribunal de Grande instance, soit par le Ministère public, soit par un membre de la famille ou le tuteur de l'enfant.

The law should also provide for abusive parents and provide psychological/medical services to assist such parents and allow them to develop positive parenting skills. Before taking the child out of parental custody, it would be important to provide such facilities. This section should also include the importance of calling for psychologist who work in NGOs and private sector.

12. Parental alienation syndrome (PAS) is not recognized in our laws.

The Parental Alienation Syndrome (PAS) is the systematic denigration by one parent by the other with the intent of alienating the child against the other parent. The purpose of the alienation is usually to gain or retain custody without the involvement of the father. The alienation usually extends to the father's family and friends as well. The Bill should be cautious of such behaviours and should make provision that in some divorce cases, children can be alienated by one their parents. The report of an expert in the mental health field would allow to reduce such alienation and give equal access to both parents in regards to custody.

13. Child Friendly environment

Every police station and child protection services office should have a child friendly place for children who are interrogated and/or waiting (ex: special room where a child and adults responsible for the child can be interviewed in privacy, some toys/books/activities that the child can play with while he/she is interviewed etc...)

14. Children of incarcerated parents

The state should make provisions in the bill where parents who are incarcerated are not totally separated from their children. The CDU and shelters should allow regular visits of children to their incarcerated parents where applicable. If they have not lost the custody of their children, parents incarcerated should be systematically consulted before sending their children in adoption or in a shelter.

15. Trafficking of children

Children should not be adopted or put in foster care without the consent of the parents (when available and if not in conflict with point 11 mentioned above) and the acknowledgement of a magistrate. The hospitals should take the NIC of every mother and make sure that no trafficking is being made right after the delivery of the child.

16. Child labor and economic exploitation and street children

We recommend that the application of the law in regards to child labor.

17. Children with disabilities

The state to validate, after evaluation, services and support provided to disabled children by existing service providers like NGOs. Where the State does not provide such services,

necessary human resource and financial support should be given to these service providers, and to **ALL** families to bear the cost of raising a child with disabilities.

Children with disabilities often suffer from various forms of discrimination in educational settings and/or other settings. General awareness and sensitization campaigns should be held on the disabilities, and it should be ensured that all children receive equal treatment by all authorities.

The bill should make provision for special foster families for children suffering from various forms of disability who have been taken from the custody of their biological parents.

18. Alternative care - shelters

Before any placement of the child in an alternative care setting, it is crucial to assess how a relationship can be established with the biological parents, and provide family counselling sessions to promote the relationship between a child and his biological parents (parentality, positive discipline, child development, etc.).

The lack of reinsertion program and family counselling services in shelters and other alternative care programs makes it difficult for a child to maintain a link with his family and biological parents. This is the cause of significant suffering for the child. Every child who have been put in an alternative care program should have a regular and professional therapy with one professional in psychology, and social worker in order to work together on reintegration with his family, family relationships and other members of the community.

Actually, when a child turns 18, he or she does not have the right to remain in a shelter. An alternative care centre should be provided to this person until he or she can have developed necessary skills to be independent and be able to assume adult responsibilities.

Every child taken care by the state should have a medical confidential file before being sent to a shelter and/or foster family. All children should have a complete and integral

medical and/or psychological assessment including blood test, HIV test, diabetes, psychological profile etc...

19. Adoption and foster care – Alternative

The labor law and the Children's Bill should make provisions for parental leave in case of adoption. An independent body should be set up to deal with adoption processes. The Adoption and foster care program should be treated as separate services.

An adoption bill should give priority to Mauritian parents and included in the children's bill. The KDZM is willing to contribute and help in setting up this adoption bill.

20. Substance Abuse among minors

There is actually an increase in the consumption of psychoactive substances among the Mauritian youth (boys and girls), mainly linked to the arrival of more synthetic cannabinoids. This situation is very serious and requires urgent attention and measures to be taken by the state. There is no physical conducive environment for providing counselling, rehabilitation and to have psychological and therapeutic support to children who suffer from substance abuse. It should be included in the bill that such structures must be implemented as one means which will allow this problematic to be better dealt with.

The bill should make provisions for minors to have access to rehabilitation centres where the children and their families could benefit from therapies in regards to their addictions. This could be provided with minimal disruption in regards to their academic and/or social lives, and thus allow some children to take a break from the academic responsibilities if and when required.

A crucial point is to set an adolescent specialist centre for all addiction problems. To date there is no such centre and children are in the same settings as adults.

With regards to harm reduction, it is critical to understand that currently minors do not have access to methadone substitution therapy (MST) and to needle exchange programmes, simply by the fact that authorities do not acknowledge that there are minors who inject drugs. This should be rectified, and the example of Seychelles with regards to MST where minors are allowed on the programme under a very strict protocol should be looked into.

The bill should include a section to allow NGOs to gain access to public primary and secondary to carry out regular prevention and awareness programs on n various forms of addictions.

21. Health and health services

In Brown Sequard there is an adolescent ward, there is no children's ward. The bill should provide a section where only children suffering from psychiatric problems be admitted to the mental hospital, and this should be after a psychiatric assessment has been issued by an expert. Actually children said to be beyond control are admitted in the psychiatric ward of Brown Sequard Hospital and put under medication.

The bill should also provide for an adequate structure in schools for children having diabetes. A nurse office where injections can be made. NGOs can be very helpful here.

The bill should also provide for a computerized information system in hospitals and private clinics for easy health track recovery of children in order to give the best care and treatment possible to children with specific health conditions such as T1 diabetes, HIV, cancer, psychiatric disorders, handicaps, lupus, haemophilia and epilepsy.

In order to respect the child's rights to normal life conditions in case of life saving treatment, teacher responsibility and security according to drug administration at school, Health carers should be appointed and duly trained.

The bill should also provide a section where children who have the above mentioned health problems be put in a special ward away from the adults.

22. Education

Ensure that children without a birth certificate are given the right to education. (See point 8). Education should encourage integral development of the child where various activities are proposed in parallel with the academic school curriculum ex: civic education, mental health programmes, sexual education programs, theatre class, art classes, reading book clubs etc.

The child's mother tongue should be a priority in regards to the educational curriculum both when interacting with the child at a verbal level (ex: giving him instructions, explaining concepts, initiating him to reading writing, counting) and in regards to the academic manuals (who are written in English). A child in his first six primary years of schooling should be encouraged to make a smooth transition from his mother tongue (Kreol) to English and French.

The law should state that educators should follow ongoing professional development programme of 18 hours every year. This ongoing training should be delivered by professionals in the field of child and adolescent psychology, pedagogy, educational psychology and include themes like: positive discipline, child and adolescent psychological and psycho-sexual development, resilience building in children and adolescents, awareness sessions on all forms of violence, listening and communication skills, self-awareness sessions etc..

The state should make provisions for the training of special needs teachers, identification of support teams, and enrolment of paramedical staff at the Ministry of Education (MOE) to be posted in all schools for assessment, personal programmes and

specialized inclusive support and re-education. Remedial classes should be available to all pupils regardless of their age.

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