



INFORMATION NOTE

Consolidated third to fifth periodic reports of Mauritius (CRC/C/MUS/3-5)

68th session of the United Nations Committee on The Rights of the Child

Summary of Juvenile Justice related issues

Ratification of the Convention on the Rights of the Child by Mauritius: 26th July 1990

Previous report presented in: July 2005 for the 41st Session of the CRC(09 Jan 2006 - 27 Jan 2006)

Country Profile

Mauritius is an island of 720 square miles in the South West of the Indian coast with a population of 1.2 million. How Fok Cheung, Permanent Secretary at the Ministry of Gender Equality, Child Development and Family Welfare and Head of the Delegation of Mauritius, presenting the report, said that Mauritius had very recently had a change of government, and affirmed its commitment to promoting and protecting the rights enshrined in the Convention on the Rights of the Child. Children constituted one third of the population of Mauritius. Mauritius had ratified the Convention and its first two Optional Protocols. The third Optional Protocol on a communications procedure had been signed in 2012 but not ratified yet. In December 2008, the Child Protection Act had been amended to address the situation of children vulnerable to violence. A monitoring committee had been established to follow the situation of children in difficulty.

The Children's Bill was being finalized, bringing all legislation regarding children under the same text, and taking into account the dispositions of the Convention. Corporal punishment was addressed in this draft bill. Juvenile justice was addressed in a separate bill. In October 2012, the National Human Rights Action Plan was launched and it embodied all of Mauritius' commitments to bring the protection of human rights, including the rights of children, in line with international standards.

1.1 JUVENILE JUSTICE - KEY ISSUES

I) Legislation:

Current situation: Child related issues have been included in the recently amended Child Protection Act in 2008. It was also established an Office for the Ombudsperson for Children in order to protect their rights, needs and interests giving full consideration to the best interest of the child.

The Children's Bills is being finalised but it is still under consultation by the new government. There have been also improvements to facilitate care, recovery and reintegration measures by



the Child Development Unit.

Regarding Juvenile Justice, there is a Draft under preparation which deals with the article 37 and 40 of the Convention on the Rights of the Child, with probation and after care services in order to rehabilitate offenders not in closed institutions, included in the points 126,127 and 128 of the State's Report.

Mauritius counts nowadays with the Juvenile Offenders Act in order to deal with cases of children and juveniles in conflict with the law. Ms. Goordyal-Chittoo said that there was a juvenile justice system and a Juvenile Offenders Act. Nevertheless, the Government was reviewing the system, and a juvenile justice bill was being drafted to improve it.

II) Minimum age of criminal responsibility:

During the Session Ms Renate Winter raised the question on Juvenile Justice and she showed her concern that there seemed to be no minimum age for criminal responsibility, noting that no youth courts existed.

One member of the Delegation Mrs P.D.R Goordyal-Chittoo stated that there was currently no minimum age for criminal responsibility; the Director of Public Prosecutions decided whether to prosecute based on the evidence and facts on a case-by-case basis. Under section 44 of the Criminal Code, a defendant under the age of 14 years found to have acted without discernment should be acquitted; if found to have acted with discernment, the defendant could be placed in a correctional institution for a specified period. Convicted minors could also be given community sentences or placed on probation. The children's bill, which was still being debated, contained a provision that no child under the age of 12 years should be charged with an offence.

The Committee considered the age of 12 still too low. Mr Kotrane declared that he was concerned that maximum sentences for minors had not been established, as the absence of such provisions was at odds with international law. While the Committee welcomed the inclusion of a minimum age for criminal responsibility in the children's bill, it encouraged the State party to rise the age to 13 or even 14 years. It also favoured the use of alternative sentencing; custodial sentences, where necessary, should not be excessive.

Other main concern for the Committee was the consideration by the Government of Mauritius of those children under the age of 16 who got emancipated by marriage, as adults when it comes to talk about justice. In the views of the Committee, those emancipated minors who committed a crime should still be dealt with as children under the Juvenile Justice system. Emancipation by virtue of marriage should not deprive a child of the protection to which they are entitled under law.

To these statements, Ms Chittoo clarified that the Juvenile Offender Act define the juvenile person as under 18 and these provisions are still applied to those children who became emancipated by virtue of marriage.

Although the Committee insisted in possible amendments of the Civil Code in this concern, the delegation has no plans to provide amendments but they will consider it in the future.

III) Number of children and length of detention:

a) Access to data:

Only in the State's Report it is mentioned that: The Correctional Youth Centre is a detention centre for boys that has an authorized accommodation of 43 and as at 31 December 2008 it housed 14 inmates (1 convicted and 13 on remand).



Only information about the foster care, not the exact data of children on detention or the length of it.

Documents of NGO's : in 2011 there were 165 children in residential care and 18 children placed in foster care (see statistics table below). However, based on the numbers presented in the 2011-2012 report of the Ombudsperson for Children (Chapter 7 – residential care institutions), as at 19 June 2012, there were 485 children who had been placed in 16 shelters by the Child Development Unit (CDU).

IV) Trial conditions:

Ms. Winter declared that the State party's assertions that there were no street children in Mauritius were therefore slightly puzzling. Children who were illiterate or conversant only in Creole were made to sign arrest reports drawn up in English. They were rarely informed of their rights. Legal aid was often unavailable, and it was not unusual for proceedings to take place without a parent, guardian or lawyer being present, in direct contradiction to the Convention. She was concerned on police brutality in the act of arrest and commented that it would be helpful if the Committee included the need to establish a unit to monitor police brutality in its recommendations

Ms Chittoo referring to a question from Ms. Winter, she said that while police brutality might have occurred in the past, such incidents were exceptional. Police officers received regular training on human rights and ensured that children were informed of their rights in the presence of their legal guardians. Statements were taken in the language in which the child felt most at ease and, in the future, might be videotaped to ensure that force had been not used. Moreover, minors were placed in special detention centres and were not usually handcuffed when escorted to court by police.

The Delegation also mentioned the Legal Aid Act which was amended in 2012 in order to ensure that free legal aid was available to all, including children. Ms Chittoo stated that legal assistance in the form of free legal advice, counselling and representation was available to minors, with a view to safeguarding their rights. The protection of child victims' rights would be improved under the National Human Rights Action Plan, although further details were not yet available.

Another huge concern was about the cases in which children and juveniles are institutionalised only because they are reported by their parents or their guardians as "children beyond control", Ms. Winter was very concern for the point that parents could simply go to the police to get rid of an out-of-control child, when the real issue was often the parents. Ms Chittoo clarified that requests for orders to place children in rehabilitation centres were subject to a screening process, involving social inquiry and police reports; so therefore, those placement orders were not issued automatically.

V) Detention conditions

a) In general (access to health, education, etc.):

The Committee asked the Delegation to make improvements ensuring the prohibition of all forms of corporal punishment, something that has , included in the Draft of the Children's Bill even though the definition in the draft bill was broad and was still subjected to negotiations. Corporal punishment occurring in other settings could nonetheless be prosecuted under the Child Protection Act.

On the Access to health and education systems with inclusive and social integration, the

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Delegation in its dialogue only mention them in general, not in particular in the detention system. But in the report, there are established basic social services for those in conflict with the law, giving Educational programmes in the academic fields and education responsibility and guidance of the Mauritius Prison Service with the help of the Ministry of Education and Human Resources.

An external and independent body which includes, psychologist, prison welfare officer, social workers and educators, who form the Board of Visitors, is in place for basic social and psychological support to incarcerated juveniles.

b) Pre-trial detention: Not mentioned

c) Separation from adults:

Mr. Cardona said he would like to know whether there was a juvenile justice system in the State party, or whether the national courts simply applied the same laws to adults as to children, taking into account their age. Also Ms Winter was concerned that when children had committed a crime together with an adult, minors were usually tried and sentenced together with the adult. She therefore asked whether there were any plans to strengthen the Ministry of Gender Equality, Child Development and Family Welfare's overworked Child Development Unit and to upgrade the system for dealing with children in conflict with the law or with child victims and witnesses. Lastly, she wished to know whether the Government was taking steps to improve supervision of the situation prevailing in institutions to which minors could be confined.

Ms. Chittoo clarified that there were no specialized courts for children, although district courts sat as juvenile courts when a child was being tried, and such hearings were closed. However, a child tried with an adult on the same charge would be tried with that adult in an ordinary court of law. That matter would be reviewed in the juvenile justice bill. A family court bill was also being drafted and would include provisions relating to children.

VI) Preventive measures:

Just mentioned some educational programmes, trainings and seminars that will be after considered.

VII) Alternative measures:

In response to questions from several Committee members, Ms Chittoo said that alternative sentencing did exist and consisted of community service or probation.

In the Article 40 of the State Report, it is established that in 2009 the Community Service Order (Amendment) Act was adopted and provides for the suspension of a sentence of imprisonment on a minor aged 16 years and above, and makes him the subject of a Community Service Order.

VIII) Re-adaptation / reinsertion of children:

Steps are taken in order to deinstitutionalise children and provide a more familiar environment, providing young children and female prisoners in foster care. Also Emergency Protection Orders have been launched in order to give provisions to follow-up services to victims through a programme of home-visits and support and assistance to parents for rehabilitation and reinsertion purposes.

Children that are placed in rehabilitation institutions are given the opportunity to access



quality education as part of their reintegration.

IX) Training of professionals:

The Delegation mentioned that judges, prosecutors and other law enforcement personnel received broad legal training from the Institute of Judicial and Legal Studies, including on international and regional human rights standards and protection mechanisms. But there was no specific training on the Convention of the Rights of the Child as the Government was aware that more training was needed. Importance of the Office of the Ombudsperson for Children

X) Role of the media:

Interactive trainings and promotion of Human Right awareness through the mass media (TV programmes, hr portal, etc..) included in the report.

XI) Child participation and sensibilization:

Programmes on sensitizing children about their rights, with schools, NGO's, Crime Prevention and anti-drug support Unit.

On the topic of Child participation Ms Oviedo was very concern on the importance of encouraging children to create their own participative forums. She said that children should be taught how to claim their rights, rather than simply being the passive recipients of services. She also noticed the necessity of the training of judges to understand children and hear their views to estimate what their best interest is and that children have to be heard in all other aspects of their lives and not only when behavioural or discipline problems arose. Judges also need to have into account the best interest of the child not only when they hear the children in courts but also, when they hear them confidentially or through video conference.

Ms Chittoo answered to Ms Oviedo assuring her that two of the three Supreme Courts in Mauritius have been properly trained in order to hear children when they express their views (National Children's Forums and School Child Protection Clubs) and numerous clubs has been incorporated as the ones included in the points 307 and 311 of the State Report (Children are encouraged to enrol in clubs. There are around 2,300 children aged between 3 years and 18 years, in Mauritius and Rodrigues in the Children's Clubs run by the National Children's Council)

1.2. GENERAL OBSTACLES:

- New Governmental Decisions on the Children's Bill
- Lack of financial resources for the implementation of measures that had already been adopted.
- Necessity to adopt the Children's Bill as soon as possible and allocate the necessary resources to the implementation of the National Human Rights Plan of Action.
- Need of additional social workers together with further improvement of the alternative care system.
- The Committee is concerned at the absence of a clear legal provision for the minimum age of criminal responsibility, the absence of juvenile justice tribunals with specialized 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 considered as being “beyond control” being placed in closed institutions on the 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

1.3. INTERAGENCY PANEL ON JUVENILE JUSTICE: Did the Committee ask any questions in relation to technical advice and assistance in juvenile justice or if they mention the Panel in any way?

No

Yes : *(specify)*

2. MAIN CONCLUSIONS AND RECOMMENDATIONS BY THE COMMITTEE:

- The Committee urges the State party to take all necessary measures to address those recommendations included in the concluding observations of the second periodic report under the Convention (CRC/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).
- The Committee recommends that the State party provide adequate and systematic training in children’s rights to all professionals working for and/or with children, in particular law enforcement officials, judges, prosecutors, teachers, media, health workers, social workers, personnel working in all forms of alternative care and migration authorities. The State party should also undertake island-wide awareness raising programs including campaigns for dissemination of child rights among the general population, and incorporate child rights in school curricula at all levels and in teacher-training curriculum
- In the light of its general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends that the State party:
 - (a) Take measures to ensure the effective implementation of legislation recognizing the right of the child to be heard in relevant court and administrative proceedings and in particular on custody of children, including by establishing systems and/or procedures for social workers and courts to comply with the principle ;(...)
- In the light of its general comment No. 10 (2007) on children’s rights in juvenile justice, the Committee urges the State party to bring its juvenile justice system fully into line with the Convention and other relevant standards. In particular, the Committee recommends that the State party:
 - (a) Establish by law a minimum age of criminal responsibility in accordance with an internationally acceptable standard and refrain from sentencing minor offenders as adults;
 - (b) Expeditiously 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;

(c) 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 throughout the legal proceedings and ensure that no child is sentenced in the absence of their legal representatives or guardians;

(d) Promote alternative measures to detention, such as diversion, probation, bail, mediation, counselling, or community service, and ensure 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 to withdrawing it;

(e) Refrain from preventive detention of children without release on bail, and remove all children in conflict with the law from adult detention facilities;

(f) Repeal Section 18 of the Juvenile Offenders Act and provide families with difficulties in the upbringing of children with necessary support and counselling services, including through the involvement of NGOs;

(g) 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 provision of adequate psychiatric, psychological and social counselling, and provide adequate training to the rehabilitation personnel.

- Alternative care: Ensure that adequate human, technical and financial resources are allocated in priority to develop foster and community based alternatives to institutionalization and to relevant child protection services, in order to facilitate the quality of rehabilitation and social reintegration of children resident therein to the greatest extent possible, including through adequate psychological, psychiatric and social support.

3. DCI perspective/response *(Only if the country has a DCI-section):*

- info on what DCI sections do on these issues
- recommendations by DCI sections

(to get this information, send the report to the National section and ask them if they have any information for this part).

Sources:

- United Nations Convention on the Rights of the Child
- United Nations Committee on the Rights of the Child. Concluding observations and recommendations to the Initial report of *country name*.
- United Nations Committee on the Rights of the Child. Initial report and 2nd/3rd periodic reports of *country name* (State reports).
- *country name* NGOs' Working Group 'on Protection of Children Rights', (Alternative report)

4. ANNEX:

5.1. CRC members present

- *Ms Aseil AL-SHEHAIL*
- *MR. Jorge CARDONA LLORENS*
- *Ms. Sara DE JESÚS OVIEDO FIERRO*



- *Mr. Peter GURÁN*
- *Mr. Hatem KOTRANE*
- *Mr. Benyam Dawit MEZMUR*
- *Ms. Renate WINTER*

5.2. Composition of country delegation

- *Ms. H.C.L How Fok Cheung , Head of the Delegation of Mauritius and Permanent Secretary at the Ministry of Gender Equality, Child Development and Family Welfare*
- *H.E. Mr. Israhyananda Dhalladoo*
- *Mrs. Prameeta Devi Rasheela Goordyal-Chittoo*
- *Mrs. Karoonawtee Chooramun*
- *Mr. Anandro Hurree*
- *Mrs. Dilshaad Uteem*
- *Mrs Vimla Devi Hurree-Agarwal*