



20th September 2019

We, Kolektif Drwa Imin (KDI), as a consortium of organizations advocating for the respect of human rights in the Republic of Mauritius, commend the Children's Bill at long last presented and circulated.

The KDI is composed of PILS, Gender Links, YQA, Collectif Arc-en-Ciel and Kolektif Drwa Zanfan Morisien (KDZM) which comprises of NGO (ANFEN, Autisme Maurice, Caritas Ile Maurice, Chrysalide, CUT, Equipe de Discipline en Psychologie de l'ICJM, Kinouété, T1 Diams, TIPa) and individual members: Isabelle David-Philippe, Marie-Laure Ziss-Phokeer, Martine Lassémillante and Mélanie Vigier de Latour-Bérenger

We note with satisfaction:

- The definition of the child, as all persons below the age of 18, irrespective of marital status
- A Children's Court
- Prohibition of corporal punishment in institutions and in families. Particularly, in light of the numerous occasions in which Mauritius has received recommendations by the United Nations to prohibit all forms of corporal punishment in light of the serious and grave consequences upon the development of children who received such punishment.
- The possibility of reporting any abuse inflicted on children by professionals in contact with children.

We are satisfied that several recommendations of NGO and civil society have been taken into consideration.

We encourage the adoption of the Bill with amendments.

We recommend the following two points to be considered as amendments to the current bill.

1. Repeal of Section 145 of the Civil Code, which allows children from the age of 16 years to be married with parental consent

Whilst the legal age of marriage is 18 years old (s. 144 of the civil code) and Section 9 of the Children's Bill on Forcing a child to be married states: s. 9(1) "No person shall force a child to be married civilly or religiously.", s. 145 of the civil code allows children under the age of 18 years to be married with parental consent.

The Committee of the Rights of the Child (CRC) "...urges the State party to ensure that the minimum age of marriage, set at 18 years, is strictly enforced..." (CRC Concluding Observations CRC/C/MUS/CO/3-5). We believe that, first and foremost, s. 145 must be repealed in order to strictly enforce the legal age of marriage at 18 years.

Child marriage has significant consequences for all children. Girl children, in particular, are vulnerable to child marriage. Maternal mortality, inability to fully negotiate sexual consent and use of contraception may lead to increased vulnerability to STIs, including HIV and HPV (linked to cervical cancer) with strong correlation between young mothers and maternal and child mortality. There is strong evidence to suggest that those girl children and young women married early are at more risk to domestic/intimate partner violence, which will affect mental and physical well-being in turn affecting the ability to work.

2. Minimum age of criminal responsibility (MACR) be increased from 12 years to 16 years and the upper limit be placed at 18 years

According to Section 43 of the Bill, "*Child under 12 not criminally responsible. A child under the age of 12 shall not be held criminally responsible for any act or omission.*" This age is not in line with new evidence and international good practice and recommendations.

General Comment No. 10 (2007) Children's rights in juvenile justice of the CRC (CRC/C/MUS/CO/3-5) states: "*States parties are encouraged to increase their lower MACR to the age of 12 years as the **absolute minimum age and to continue to increase it to a higher age level!***" Furthermore, the CRC states: "*...the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in accordance with the provisions of article 40 of CRC. **This means that every person under the age of 18 years at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice.***"

The risks of putting an age too low on criminal responsibility are multiple (Pillay & Willows, 2015):

- Children continue to construct their identities from early childhood through to adolescence and post adolescence, which is fundamental to the development of their identity/development and personality. Putting children through the criminal justice system can have significant impact on their social and psychological development.
- The consequences of being found guilty may lead to children and young people put behind bars in an environment where there is no adequate and appropriate therapeutic services, which can lead to the additional risks on the mental/psychological, physical and social development of children and young people.
- Children and young people charged and/or found guilty of crimes will face stigma and discrimination throughout their lives and will be excluded from the educational system, which in turn will impact on their education and eventually on their career, which will significantly increase their risk of reoffending and hamper their ability to contribute to society.

The brain of a child and young person is developing and does not attain maturity before an adult age (around 25 years old (Sowell et al, 1999) especially the pre-frontal cortex which helps decision-making, the capacity to analyse, to plan and be self-conscious before responding, control impulses, evaluation of risks and moral judgement. These parts of the brain are connected with criminal responsibility are developed at a later stage and fully developed around 25 years old.

The Republic of Mauritius is signatory to a number of International Conventions protecting children and the girl child. **We strongly ask that all international and regional Conventions signed and ratified must be respected, applied and enforced into national law and ask for the above amendments to be urgently considered.**

The Conventions are:

- African Charter on the Rights and Welfare of the Child: ratified by Mauritius in 1992. Article 21(2) prohibits child marriage for any persons below the age of 18 years.
[https://au.int/sites/default/files/treaties/36804-treaty-0014 -_african charter on the rights and welfare of the child e.pdf](https://au.int/sites/default/files/treaties/36804-treaty-0014_-_african_charter_on_the_rights_and_welfare_of_the_child_e.pdf)
- African Charter on Human and People's Rights on the Rights of Women in Africa: signed by Mauritius in 2005 (**Maputo Protocol**). Article 6 of prohibits the marriage of any persons below the age of 18 years.
<http://www.achpr.org/fr/instruments/women-protocol/ratification/>.
- *Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)*: ratified by Mauritius in July 1984. recommending minimum legal age of marriage at 18 years old.
<http://www.un.org/womenwatch/daw/cedaw/text/fconvention.htm>
- Convention of the Rights of Children (**CRC**): ratified by Mauritius in July 1990. Article 24 highlights the right to a better health for children; Article 40 recognising the treatment of children accused of crimes to be treated in consistent with the promotion of the child's sense of worth and dignity.
<https://www.ohchr.org/fr/professionalinterest/pages/crc.aspx>
- SADC Protocol on Gender and Development, member since 1995, has refused to sign prohibiting child marriage below the age of 18. Mauritius is the only member state that has not signed.
<https://www.sadc.int/about-sadc/>
- United Nations Sustainable Development Goals (**SDGs**) Target 5.3: Mauritius has committed to eliminate child, early and forced marriages by 2030.
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (**The Beijing Rules**). Adopted by the General Assembly (of which Mauritius is a member) in 1985. Article 4 states that members states should not fix this at "too low a level".
<https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>

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