



15th September 2019

We commend the Children Bill at long last presented and circulated.

We note with satisfaction :

- Introduction of the notion of the child, as all persons below the age of 18, irrespective of marital situation.
- A Children's Court
- Prohibition of corporal punishment in institutions and in families. Mauritius being taken to task several times by the United Nations to prohibit all forms of corporal punishment in view of the dramatic consequences on the development of children who went through punishment.
- The possibility of reporting any abuse 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.

But we insist on two points and hope they will be looked into and taken into consideration.

1. **That the legal age authorizing a child to get married is 18 years old AND Section 145 of the Civil Code authorizing child marriage as from the age of 16 with the consent of parents be repealed.**

Being given that Section 9 of the Children Bill highlights: "Forcing *child to be married (1) No person shall force a child to be married civilly or religiously*", it is very difficult for some children to object to the decision of their parents.

Thus, this section authorizes child marriage in view of Section 145 of the Civil Code.

The Bill must mention the abolition of Section 145 of the Civil Code.

The Republic of Mauritius is signatory to International Conventions protecting children and the girl child. We ask that all Conventions signed must be respected and applied and ask for the urgent signature of Conventions not signed yet.

The Conventions are:

- **CEDAW**: *Convention on the Elimination of All forms of Discrimination Against Women*: 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** ratified by Mauritius in July 1990 whereby Article 24 highlights the right to a better health for children
<https://www.ohchr.org/fr/professionalinterest/pages/crc.aspx>
- **Millennium Development Goals** : Objective 5.4 of the MDG of the United Nations in which Mauritius participated highlights *Improve Maternal Health*
- **Maputo Protocol**; unreserved on legal age of child marriage
<http://www.achpr.org/fr/instruments/women-protocol/ratification/>.
- **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/>.

2. Criminal responsible age be at 16 years old

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 untimely.

According to Dr Pillay (July 2018) 16 years old is a better age.

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

- Putting children to a criminal justice system categorise children and construct their identities at an age which is fundamental to their identity/development of their personalities and this can have a significant impact on their social and psychological development.
- The consequences of being judged guilty will lead these young people to be behind bars in an environment where there is no adequate and appropriate therapeutic services that can lead to the risks on the psychological, physical and social development of these young people.
- These young people will be excluded from the educational system and this will have an impact on their education and eventually on their career with the risk of finding themselves unemployed and a risk of relapsing.

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

Signed:

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