

ACCESS TO JUSTICE FOR CHILDREN: **REPUBLIC OF MAURITIUS**

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

The Republic of Mauritius (Mauritius) ratified the Convention on the Rights of the Child (CRC) on 26 July 1990.¹ Mauritius has also ratified the Optional Protocols to the CRC on the involvement of children in armed conflict and the sale of children, child prostitution and child pornography.² Furthermore, it has signed but not yet ratified the Optional Protocol to the CRC on a communications procedure.

As with other international instruments though, ratified treaties do not automatically have the force of law in Mauritius; rather, they must be incorporated through implementing legislation.³

B. Does the CRC take precedence over national law?

As international instruments require domestic implementation, the CRC does not take precedence over national law.⁴

C. Has the CRC been incorporated into national law?

The State has yet to incorporate the CRC into national law in its entirety.⁵ Likewise, the State has not yet established a consolidated Children's Act,⁶ although some state agencies are currently drafting a Children's Bill.⁷ Instead, the legislature has sought to

¹ Multilateral Conventions and Treaties of Mauritius, available at: <http://www.attorneygeneral.gov.mu/English/DOCUMENTS/CONTREAT.DOC>.

² Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts (signed on 11 November 2001); Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (signed 11 November 2001); see also *Combined Third, Fourth and Fifth Periodic Reports of Mauritius to the UN Committee on the Rights of the Child*, CRC/C/MUS/3-5, 28 October 2013 ("2013 Mauritius CRC Report"), para. 129, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMUS%2f3-5&Lang=en.

³ Child Rights International Network (CRIN), 'Mauritius: National Laws', available at: <http://www.crin.org/resources/infodetail.asp?id=31199>; 2013 Mauritius CRC Report, para. 142; see also *Polytol Paints and Adhesive Manufacturers Co. Ltd. v. The Minister of Finance* 2009 SCJ 106 (Mauritius) (quoted in *Polytol Paints and Adhesives Manufacturers Co. Ltd. v. Republic of Mauritius*, Reference No. 1/2012, Judgment, at 5 (COMESA-CJ, 31 August 2013), available at: <http://www.comesa.int/attachments/article/893/Polytol%20v%20Mauritius%20%20August%20%202013%20%2040%20-%20judgment.pdf>.

⁴ Ibid.

⁵ CRIN, 'Mauritius: National Laws'.

⁶ Ibid.

⁷ 2013 Mauritius CRC Report, para. 7.

give effect to the CRC through various domestic legislation efforts.⁸ While some protections are afforded by the Constitution of Mauritius,⁹ the State has also passed specific codes and acts aimed at outlining the rights of children.¹⁰

D. Can the CRC be directly enforced in the courts?

The CRC cannot be directly enforced in Mauritian courts without also relying on some domestic legislation enacting the rights; however, it may nonetheless be cited to provide strength to an argument in domestic courts.¹¹

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

There do not appear to be any examples of domestic courts using or applying the CRC or any other relevant international instruments in domestic proceedings.

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Children and their duly authorised representatives can lodge complaints in any Mauritian court or tribunal with jurisdiction to hear claims of violations of their rights. This includes applying to the Supreme Court for redress for rights violations or judicial review of administrative acts or decisions (see part III.A below).

Private persons may initiate prosecution of cases of crime or misdemeanour that can be tried before the Supreme Court.¹² An “aggrieved party” may make a complaint to the Director of Public Prosecutions (DPP), which can then institute a prosecution on behalf and at the expense of the State. Where the DPP has declined to institute a prosecution, the “aggrieved party” or his/her representative may institute a private prosecution.¹³

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

⁸ CRIN, ‘Mauritius: National Laws’.

⁹ This includes a number of rights that apply regardless of age and in some cases specifically to children. See Mauritius Constitution, article 5 (allowing restricted personal liberty rights of minors as justified by education or welfare purposes), article 10 (allowing courts to exclude the public from legal proceedings involving minors), article 11 (providing parents with the power of consent for religious instruction in the education of minors), article 14 (guaranteeing parents the right to send children to schools other than those maintained by the government), articles 94-95 (including children’s rights with regards to pension benefits), available at: http://www.africanchildforum.org/ctr/Pages_EN/Mauritius.html.

¹⁰ Some of the relevant legislation includes the Child Protection Act (1994, amended in 2008), the Protection of Human Rights Act (1998), the Criminal Code, the Juvenile Offenders Act (1935), the Protection from Domestic Violence Act (1997, amended in 2004), the Sex Discrimination Act (2002), the Computer Misuse and Cyber Crime Act (2003), the Civil Status Act (1981, amended in 2004), the National Children’s Council Act (2003, amended in 2005), and the Education Act (1957, amended in 2011), available at: <http://attorneygeneral.govmu.org/English/LawsofMauritius/Pages/A-Z-Acts.aspx>.

¹¹ CRIN, ‘Mauritius: National Laws’.

¹² Criminal Procedure Act, section 4(2), available at:

<http://attorneygeneral.govmu.com/English/Documents/A-Z%20Acts/C/Page%207/CRIMINALPROCEDURE1.pdf>.

¹³ *Ibid.*, section 4.

Under the Civil Code, the “legal administrator” (i.e. parents) represents the child in all civil actions, except in cases in which the law or custom allows minors (under-18s) to act themselves.¹⁴ Where in any proceedings the interests of the child’s legal representatives conflict with those of the child, the judge will appoint a special or ad hoc administrator to represent the child.¹⁵

In any proceedings, a child “capable of discernment” may request to be heard by the judge, and that request cannot be refused except by a specially reasoned decision. The child can be heard alone, with a legal counsel or person of his/her choice, or if this does not appear in the interests of the child, the judge may appoint another person.¹⁶

There does not appear to be an age limit for filing a criminal complaint to the DPP.

C. In the case of infants and young children, how would cases typically be brought?

Such cases would typically be brought by the child’s “legal administrator” (i.e. parents).

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

Under the Legal Aid Act, legal aid is available in civil cases, at the first instance and on appeal provided that certain conditions are met (see part IV.B below). Where a child has been charged with a crime or misdemeanor, the child will automatically be approved for legal aid.¹⁷

The Child Development Unit of the Ministry of Gender Equality, Child Development and Family Welfare, which intervenes in cases of child abuse and neglect as well as other rights violations,¹⁸ provides a 24-hour service through hotlines and assists with free legal assistance.¹⁹ If a victim decides to bring a case, they will also provide the services of barristers.²⁰

Similarly, the Police Family Protection Unit (PFPU) assists with cases involving families and children,²¹ providing advice on court procedures and referring parties to resources to assist them with navigating the judicial process.²²

¹⁴ Civil Code, section 390, available at:

<http://attorneygeneral.govmu.org/English/Documents/A-Z%20Acts/C/Page%201/CODE%20CIVIL%20MAURICIEN.pdf>.

¹⁵ Ibid., sections 388-2, 390.

¹⁶ Ibid., section 388-1.

¹⁷ Legal Aid and Legal Assistance Act, available at:

<http://attorneygeneral.govmu.org/English/Documents/A-Z%20Acts/L/Page%201/LEGAL%20AID%20ACT.pdf>.

¹⁸ Nirmala Gobin-Bheenick, ‘Early Childhood Development in Mauritius’, World Conference on Early Childhood Care and Education, 27-29 September 2010, Plenary III: ECCE Country Best Practices, p. 3, available at:

<http://www.unesco.org/education/WCECE/presentations/NirmalaGobin-Bheenick.pdf>.

¹⁹ Ibid., p. 4; 2013 Mauritius CRC Report, para. 59; Letter from Government of Mauritius to the Office of the United Nations High Commissioner for Human Rights, dated 14 November 2011, No. 351/2011 MMG/HR/28/1, p. 1, available at: <http://www.ohchr.org/Documents/Issues/Children/Study/Consultation/Mauritius.pdf>.

²⁰ Mid-term Progress Report on Universal Periodic Review Recommendations of the Human Rights Council, February 2011, available at: <http://www.crin.org/resources/infodetail.asp?ID=25717>.

²¹ 2013 Mauritius CRC Report, para. 22; Letter to the Office of the United Nations High Commissioner for Human Rights, p. 2.

²² Mauritius Police Force, ‘Police Family Protection Unit (PFPU)’, available at:

- E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

Mauritius places an emphasis on the general public assisting in the process of identifying and reporting violations involving children. The public and government agencies are largely held out to have a duty to report even when parents do not.²³ As such, there appears to be no requirement that parents consent to cases being brought. Nor do any other conditions or limitations exist.

III. How can children's rights violations be challenged before national courts?

- A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Chapter II of the Mauritian Constitution provides for wide protection of fundamental rights and freedoms of individuals, including children.²⁴ Where any person alleges that any of their rights under Chapter II is being or is likely to be violated in relation to him/her, that person may apply to the Supreme Court for redress.²⁵

Where an act or decision of a public body violates a child's rights, anyone with "sufficient interest" in the matter can apply to the Supreme Court for judicial review of the act or decision. The Supreme Court will review the legality of the act or decision.²⁶

A child (or any other person on the child's behalf) may lodge a complaint with the Ombudsperson for Children alleging that his/her fundamental rights were violated. The Ombudsperson for Children is charged with investigating complaints about potential violations of a child's rights, and can also open investigations on his/her own motion.²⁷ Following an investigation, the Ombudsperson will act as a mediator to resolve the dispute, report to any appropriate authorities or make proposals of a general nature to the Minister of Gender Equality, Child Development and Family Welfare. The Ombudsperson does not appear to have powers to bring court proceedings on behalf of the child.

Any person, including a child, may lodge a written complaint with the National Human Rights Commission alleging their rights have been, is being or is likely to be violated.²⁸ Under the Protection of Human Rights Act, the Commission can investigate claims of violations of rights by the acts of public bodies or officers, including members of the

<http://police.govmu.org/English/Organisation/Units/Pages/Police-Family-Protection-Unit-.aspx>.

²³ See Ministry of Gender Equality, Child Development and Family Welfare, 'Child Development Unit' (stating that "the State has the obligation to ensure parental role wherever parents fail to do so and this role is ensured by the CDU"), available at: <http://gender.govmu.org/English/Pages/Units/Child-Development-Unit.aspx>.

²⁴ Mauritius Constitution, chapter II.

²⁵ Ibid., article 17.

²⁶ See Law Reform Commission of Mauritius, 'Discussion paper: judicial review', November 2009, available at: <http://lrc.govmu.org/English/Documents/Reports%20and%20Papers/38%20dis-pap-jud.pdf>.

²⁷ Ombudsperson for Children Act (2003), sections 6 and 7, available at: <http://attorneygeneral.govmu.org/English/Documents/A-Z%20Acts/O/OMBUDSPERSON%20FOR%20CHILDREN%20ACT.pdf>.

²⁸ 2013 Mauritius CRC Report, para. 241;

police force.²⁹ It can also enquire of its own motion into such acts.³⁰ Investigations must occur within two years of the violation in question.³¹ The Commission first attempts to resolve complaints through conciliation. Where this is unsuccessful and a violation has been found to have occurred, the Commission refers the matter to the DPP where it appears that an offence may have been committed, or any other relevant public body for enforcement.³²

Complaints about discrimination on various grounds under the Equal Opportunities Act, such as in education, may be lodged with the Equal Opportunities Commission.³³ If a complaint cannot be resolved through conciliation or conciliation is not successful, the Commission shall after conducting the investigation make a report which it forwards to the parties. If the complaint is still unresolved, it shall with the consent of the complainant refer the matter to the Equal Opportunities Tribunal.³⁴ However, the Tribunal only has the power to issue orders directing parties to comply with the law or to fine respondents in an amount not exceeding 500,000 Rupees.³⁵

Individuals, including child victims, their parents or legal representatives, groups, or NGOs recognised by the African Union may submit complaints (known as “communications”) to the African Committee of Experts on the Rights and Welfare of the Child (“African Committee”) about violations of the African Charter on the Rights and Welfare of the Child (“African Children’s Charter”).³⁶ All available domestic remedies must have been exhausted before bringing a case to the African Committee.³⁷ The complaint must include, amongst other things, the name of the person filing it or, in the case of an NGO, the name of the legal representative, and whether or not the complainant wishes to remain anonymous and the reasons for this.³⁸ The African Committee will investigate the complaint and decide on the merits of the case, and make recommendations to the State, which may include compensation to the victim(s) and measures to prevent recurrence of the violation.³⁹

Furthermore, individuals, groups or NGOs may also submit complaints (known as “communications”) to the African Commission on Human and Peoples’ Rights (“African Commission”) about violations of the African Charter on Human and Peoples’ Rights (“African Charter”).⁴⁰ All available domestic remedies must have been exhausted

²⁹ Protection of Human Rights Act, section 4(1).

³⁰ 2013 Mauritius CRC Report, para. 241.

³¹ Protection of Human Rights Act, section 4(2).

³² *Ibid.*, section 4(4).

³³ Equal Opportunities Act, (2008), Part VI, available at:

<http://attorneygeneral.govmu.org/English/Documents/A-Z/%20Acts/E/Page%201/EQUAL%20OPPORTUNITIES%20ACT.pdf>

³⁴ *Ibid.*, section 33.

³⁵ *Ibid.*, section 35.

³⁶ African Charter on the Rights and Welfare of the Child (“African Children’s Charter”), Article 44, available at:

<http://acerwc.org/the-african-charter-on-the-rights-and-welfare-of-the-child-acerwc/acerwc-charter-full-text/>. For more information about communications, see: <http://acerwc.org/the-committees-work/communications/>.

³⁷ African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at:

<http://acerwc.org/the-committees-work/communications/>.

³⁸ War Resisters' International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, ‘African Committee of Experts on the Rights and Welfare of the Child: communication procedure’, 2012, available at:

<http://co-guide.org/mechanism/african-committee-experts-rights-and-welfare-child-communication-procedure>.

³⁹ *Ibid.*

⁴⁰ African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at:

before bringing a case to the African Commission.⁴¹ The complaint must include, amongst other things: the name of the person filing it or, in the case of an NGO, the name of the legal representative; whether or not the complainant wishes to remain anonymous and the reasons for this; and the name of the victim, in a case where he/she is not the complainant.⁴² The African Commission will investigate the complaint and decide on the merits of the case, and make recommendations to the State, which may include compensation to the victim(s) and measures to prevent recurrence of the violation.⁴³ If the case relates to serious or massive human rights violations or if the Commission considers that the State is unwilling to comply with its recommendations in the case, the Commission may refer the complaint to the African Court on Human and Peoples' Rights.⁴⁴

B. What powers would courts have to review these violations, and what remedies could they offer?

The Supreme Court has original jurisdiction to hear and determine any application made by any person for the enforcement of their fundamental rights under Chapter II of the Constitution. The Supreme Court has general powers as it deems necessary to enforce the law,⁴⁵ and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of persons' fundamental rights under Chapter II.

In judicial review proceedings, courts may grant the following remedies: *certiorari* (quashes illegal decisions of public authorities); prohibition (prevents an illegal decision from being made); *mandamus* (compels the performance of a public duty); declaration (formal statement of what the legal rights of the parties to the action are); injunction (requests a body to refrain from doing a certain act or to perform something); and damages in exceptional cases.⁴⁶

Civil courts have the power to award money damages, issue injunctions, or to assess fines and costs of the proceedings to either party as may be necessary to enforce the rights violated.⁴⁷

In criminal proceedings, the courts may issue penalties, forfeitures, penal servitude, or

<http://www.achpr.org/instruments/achpr>.

⁴¹ Ibid., Article 56(5).

⁴² Rules of Procedure of the African Commission on Human and Peoples' Rights of 2010, Rule 93, available at: <http://www.achpr.org/instruments/rules-of-procedure-2010/>.

⁴³ War Resisters' International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, 'African Commission on Human and Peoples' Rights: communication procedure', 2012, available at: <http://co-guide.org/mechanism/african-commission-human-and-peoples-rights-communication-procedure>.

⁴⁴ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, Article 5, available at: <http://www.achpr.org/instruments/court-establishment>; Rules of Procedure of the African Commission on Human and Peoples' Rights of 2010, Rules 84(2) and 118, available at: <http://www.achpr.org/instruments/rules-of-procedure-2010>.

⁴⁵ Courts Act (1945), section 15, available at: <http://attorneygeneral.govmu.org/English/Documents/A-Z%20Acts/C/Page%202/COURTS%20ACT.pdf>. See also section 76 of the Constitution.

⁴⁶ See Law Reform Commission of Mauritius, 'Discussion paper: judicial review'.

⁴⁷ Courts Act, section 73; see also District and Intermediate Courts (Civil Jurisdiction) Act (1888), section 21(M), available at:

<http://attorneygeneral.govmu.org/English/Documents/A-Z%20Acts/D/Page%201/DISTRICT%20AND%20INTERMEDIATE%20COURTS%20%28CIVIL%20JURISDICTION%29%20ACT.pdf>.

imprisonment as provided for by law.⁴⁸ However, the Intermediate Courts cannot issue penal servitude for more than 15 years or imprisonment for more than 10 years unless the law empowers it to do so, for instance in matters involving a persistent offender,⁴⁹ or when the offence is a rape.⁵⁰ In District Courts, sentences cannot exceed five years of imprisonment (with or without hard labour), a fine of 100,000 Rupees.⁵¹

- C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

Although bringing a claim would typically require identifying a victim or claimant, the Constitution allows hearings to be held in private when necessary to protect the interests of any child.⁵² Furthermore, the publication of information in proceedings relating to the care or maintenance of a minor may be punishable as contempt of court.⁵³

- D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Mauritian laws do not appear to allow group litigation and no such Supreme Court cases exist.

- E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

Non-governmental organisations (NGOs) may be able to bring judicial review proceedings if they have a sufficient interest in the matter and are affected by it. In order for a party to seek judicial review of any decision, the party must show “sufficient interest” and that it is somehow affected by the decision which is challenged.⁵⁴ If the party cannot show that its interest is direct or personal, but rather shows that it is general or public, then the court must consider the “legal and factual context of the claim” before determining whether sufficient interest exists to justify judicial review.⁵⁵

IV. Practical considerations. Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

- A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

Applications concerning violations of fundamental rights under Chapter II of the Constitution may be made directly to the Supreme Court (“constitutional relief”). Such

⁴⁸ Courts Act, section 113-114.

⁴⁹ *Ibid.*, section 113(2).

⁵⁰ Section 249(1A) of the Criminal Code allows Intermediate Court to impose on conviction a sentence to penal servitude not exceeding 20 years.

⁵¹ Courts Act, section 114.

⁵² Mauritius Constitution, article 10 (allowing courts to exclude the public from legal proceedings involving minors).

⁵³ Courts Act, section 18(B).

⁵⁴ See Law Reform Commission of Mauritius, ‘Discussion paper: judicial review’ (quoting *Berenger & ors v. Goburdhun & ors* (1985) MR 209, at 212 (Mauritius) as stating that a party may be denied a request for leave “if it is manifest that he is, for example, a crank or a mere busybody”).

⁵⁵ See *Ibid.* (summarising *R v. Inland Revenue Commissioner, ex parte National Federation of Self-Employed & Small Businesses Ltd* [1981] 2 All ER 93 (HL) (Mauritius)).

applications must state “the provision of the Constitution which has been, is or is likely to be contravened and the nature of the relief sought”. A copy of the plaint shall be served to the defendant and any other party to the suit, and to the Attorney-General where he or the Government is not a party to the suit.⁵⁶

Alternatively, complaints about such violations can be made to the National Human Rights Commission or the Equal Opportunities Division before referral to a court (see part III.A above).

An application for judicial review is carried out in two stages: First, there must be a motion for leave to apply to the Supreme Court for one or more of the prerogative orders (i.e. *certiorari*, prohibition, or *mandamus*) (see part III.B above). Only if and to the extent that such leave is granted will the Court proceed to hear the substantive application for judicial review.

Civil cases may be brought in the District or the Intermediate Courts, depending on the amount in dispute and the nature of the action. The District Courts maintain jurisdiction in any civil action where the matter in dispute does not exceed 50,000 rupees and the case is brought under Part IIA of the District and Intermediate (Civil Jurisdiction) Act.⁵⁷ The Intermediate Courts have jurisdiction in all civil cases where the dispute does not exceed 500,000 Rupees.⁵⁸

Criminal cases are tried before either the District or the Intermediate Courts depending on the specific offences charged and their related potential penalties. The District Court has jurisdiction over cases involving criminal offences, except for those involving: homicide, infanticide, aggravated assault of a minor, castration, abortion, illegal sexual intercourse, the debauching of youth, any other offence punishable by death or life imprisonment⁵⁹, rape and illegal sexual intercourse with a minor under 16 or with a mentally handicapped person.⁶⁰ The Intermediate Courts have jurisdiction over any criminal matters referred by the DPP that involve offences under the jurisdiction of District Magistrates, matters triable on any island other than Mauritius, or offences involving involuntary homicide, abortion, illegal sexual intercourse, the debauching of youth, rape and illegal sexual intercourse with a minor under 16 or with a mentally handicapped person.⁶¹ In some serious cases, only the Supreme Court may try a criminal matter.

To initiate a private prosecution in the Supreme Court, the “aggrieved party” must produce before a judge “an information” and certificate signed by the DPP indicating that the DPP declines to prosecute at the expense of the State the party charged for the offence named in the information.⁶²

Under the Juvenile Offenders Act, a child is tried before a Juvenile Court. Usually it is

⁵⁶ Supreme Court (Constitutional relief) rules, GN 105 of 2000 – Section 17 (4) – 30 June 2000, available at : <http://attorneygeneral.govmu.org/English/Documents/Constitution/9%20SUPREMECOURTCONSTITUTIONALRELI EFRULES.pdf>.

⁵⁷ Courts Act, section 104(A); see also Supreme Court of Mauritius, ‘District Court’, available at: http://www1.govmu.org/scourt/pubabout/sc_districtcourt.jsp.

⁵⁸ Courts Act, section 104; see also Supreme Court of Mauritius, ‘Intermediate Court’, available at: <http://www1.govmu.org/scourt/pubabout/intermediateCourt.jsp>.

⁵⁹ Courts Act, section 114, 116. See also section 161A of the Courts Act.

⁶⁰ Criminal code, section 249(1) and (4)

⁶¹ Courts Act, section 112; Criminal code, section 249(1) and (4).

⁶² Criminal Procedure Act, section 5.

the District Court which sits as the Juvenile Court. Generally, District Courts have jurisdiction to hear any charge against a child as a Juvenile Court.⁶³ However, the Law Reform Commission of Mauritius has recently put forward proposed legislation that would require all children under the age of 16 who are charged with a misdemeanor to be tried by a Family Court.⁶⁴

Any judge may order a case to be transferred to another District Court if the interests of justice so require and after an application is made by the DPP, a District Magistrate, or any private party to the matter.⁶⁵ However, if the trial has begun on the merits, then change of venue is not possible.⁶⁶ Intermediate Courts may also transfer proceedings to an appropriate District Court so long as the trial has not yet begun in the Intermediate Court and the matter in dispute does not exceed the jurisdiction of District Courts.⁶⁷ In actions brought before the Supreme Court, the Court may at any time, after application by a party to the proceeding, transfer to a court with proper jurisdiction to hear the matter.⁶⁸

- B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

Mauritius grants legal aid to any party who qualifies for assistance under the Legal Aid Act. Legal aid will be granted to applicants in civil cases provided that: (1) the applicant's monthly income is less than 10,000 Rupees and his/her assets are worth less than 500,000 Rupees; and (2) the application for legal aid is "well-founded".⁶⁹ A child who wishes to obtain legal aid in civil proceedings must: (1) make a written application to the relevant court⁷⁰ stating his/her cause of action or ground of appeal, or the nature of the extrajudicial matter in respect of which the application is made; and (2) make a sworn statement that his/her financial circumstances meets the criteria abovementioned.⁷¹

Children charged with a crime or misdemeanour automatically qualify for legal aid in criminal proceedings.⁷²

Once granted, the recipient of legal aid is not required to pay any amount relating to

⁶³ Juvenile Offenders Act, section 3.

⁶⁴ See Law Reform Commission of Mauritius, 'Issue Paper: establishment of a Family Court and the conduct of family proceedings', November 2011, Annex, Proposed Family Court Bill, section 12, available at: <http://lrc.govmu.org/English/Documents/Reports%20and%20Papers/18%20familycourt.pdf>.

⁶⁵ Courts Act, section 102.

⁶⁶ Ibid., section 102(1)(b).

⁶⁷ Ibid., section 136.

⁶⁸ Ibid., section 136.

⁶⁹ Legal Aid and Legal Assistance Act, sections 4-7.

⁷⁰ In respect of proceedings before the Supreme Court or a Court of Appeal, the Chief Justice or a Judge designated by him; in respect of proceedings before any other Court, a Magistrate of that Court: See Legal Aid Act. The application form for legal aid to be submitted to the Supreme Court is available at:

<http://www1.govmu.org/scourt/pubCourtProcedures/legalAid.jsp>.

⁷¹ Legal Aid Act, section 4.

⁷² Ibid., section 7A.

registration dues, witness fees, or any other court fees.⁷³ Where the court makes an order for costs to be granted against a party receiving legal aid, the amount is paid from a Consolidated Fund.⁷⁴

Where a person is tried before the Supreme Court at the instance of a private prosecutor and is acquitted, the Court may, if the private prosecution appears to be frivolous or malicious, require the private prosecutor to pay the whole costs and expenses of the person prosecuted.⁷⁵

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

At present, Mauritians depend heavily upon the services provided by the State pursuant to the Legal Aid and Legal Assistance Act.⁷⁶ Other than state-provided services, the pro bono sector remains fairly underdeveloped. As a result, the Mauritian government is currently exploring proposals to enhance legal assistance efforts.⁷⁷

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

In personal civil actions, Mauritius bars claims from being brought after 10 years.⁷⁸ For the purposes of calculating the time restriction, the courts consider the time period to begin when the action giving rise to the claim occurred.⁷⁹ However, there is no time limitation on an action concerning a person's status.⁸⁰

In criminal proceedings, no time limit exists.⁸¹

In applications to the Supreme court pertaining to fundamental rights violations ("constitutional relief"), "no application shall be lodged more than 3 months after the right of action arises"⁸² (see above at III.A for details on this procedure in two stages).

⁷³ Ibid., sections 8, 10.

⁷⁴ Ibid., section 12(2).

⁷⁵ Criminal Procedure Act, section 6.

⁷⁶ V. Prakash Torul, 'http://lrc.gov.mu/English/Documents/Reports%20and%20Green Paper on Equal Access to Justice Reform on Legal Aid in Mauritius', July 2008, available at: <http://attorneygeneral.govmu.org/English/DOCUMENTS/LEGAL%20AID.PDF>.

⁷⁷ See Law Reform Commission of Mauritius, 'Opinion Paper: Legal Aid Reform', February 2011, available at: <http://lrc.govmu.org/English/Documents/Reports%20and%20Papers/23%20op-pap-legal.pdf>.

⁷⁸ Civil Code Mauricien (1808), section 2270, available at:

<http://attorneygeneral.govmu.org/English/Documents/A-Z%20Acts/C/Page%201/CODE%20CIVIL%20MAURICIEN.pdf>.

⁷⁹ Ibid., section 2271. <http://attorneygeneral.gov.mu/English/DOCUMENTS/LEGAL%20AID.PDF>

⁸⁰ Ibid., section 2272.

⁸¹ Law Reform Commission of Mauritius, 'Review Paper: Criminal Justice System and the Constitutional Rights of an Accused Person', September 2008, section 14 (quoting *Duval v. District Magistrate of Flacq & anor* (1989) MR 166 (Mauritius) that the "general rule against prescription in criminal matters sets well with [the Mauritian] system of criminal law where an inquiry is put in motion only when a complaint is made to the Police"), available at: <http://lrc.govmu.org/English/Documents/Reports%20and%20Papers/48%20rev-pap-071009.pdf>.

⁸² Supreme Court (Constitutional relief) rules, GN 105 of 2000 – Section 17 (4) – 30 June 2000.

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

The Courts Act and the Criminal Procedure Act set out the acceptable forms of evidence that may be admitted in court proceedings. Generally, civil and criminal proceedings allow physical evidence, documents, audio or visual recordings, electronic information, witness statements, and testimony. In addition to party submissions, any party to a civil or criminal case may be required by the courts to produce materials relating to the proceedings.⁸³ Likewise, any witness heard in a proceeding may be examined, cross-examined, and re-examined.⁸⁴

In criminal proceedings, where a child under the age of nine-years-old is the victim, the child may serve as a witness and his/her testimony can be treated as that of a mature witness.⁸⁵ The court must only be satisfied that the child demonstrates sufficient intelligence to make correct statements on the subject of the trial, even if the child may not understand the nature of the oath or affirmation required of witnesses.⁸⁶ As a result, children admitted as witnesses under this exception are required only to provide a promise to speak the truth, rather than an oath.⁸⁷ Where a witness, being a child of early age, may be incompetent to take an oath without instruction, then the trial may be postponed.⁸⁸ Child witnesses over nine-years-old must still provide an oath or solemn affirmation as required by the Courts Act.⁸⁹

Other protections for children include where the court finds attendance of a Ministère Public representative to be important for cases involving guardianship of a child, the Attorney-General or other law officer duly authorised may appear as a party to the matter.⁹⁰ To protect the welfare of children, courts also have the power to exclude any person who is not a party involved in the case from hearing evidence submitted.⁹¹ Similarly, the courts may use video streaming systems to protect witnesses or victims in sexual offence cases.⁹²

Where Mauritian law does not provide for evidentiary procedures or guidance, then English procedures and rules apply.⁹³

- F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

Mauritian laws do not impose an exact time limitation upon trials. The Mauritian Constitution provides limited instruction on cases involving criminal defendants or civil rights, requiring that any court or other authority hearing the matter do so “within a

⁸³ Courts Act, section 128.

⁸⁴ *Ibid.*, section 129; Criminal Procedure Act, section 107.

⁸⁵ Criminal Procedure Act, section 109, 111.

⁸⁶ *Ibid.*, section 109-111.

⁸⁷ *Ibid.*, section 110.

⁸⁸ *Ibid.*, section 94.

⁸⁹ Courts Act, section 129, 190.

⁹⁰ *Ibid.*, section 68.

⁹¹ *Ibid.*, section 161(A).

⁹² *Ibid.*, section 161(B).

⁹³ *Ibid.*, section 162.

reasonable time.”⁹⁴ In addition, there exists little public information available on the average duration of criminal or civil proceedings in the national courts.

In general though, the courts suffer from a backlogged system, resulting in criminal defendants waiting in remand for at least two years before trial.⁹⁵

G. Appeal. What are the possibilities for appealing a decision to a higher court?

All appeals from District or Intermediate Courts are handled directly by the Supreme Court as it serves as the Court of Appeal for both civil and criminal matters.⁹⁶ Notice of appeal must be given within 21 days from the date of the final judgment,⁹⁷ though this may be extended by the Court.⁹⁸ Whether appealed from a Magistrate of the District or Intermediate Courts, or under any other enactment, appeals are handled in the same manner.⁹⁹

Unlike matters brought under the original jurisdiction of the Supreme Court though, appeals must be heard before at least two judges.¹⁰⁰

In civil proceedings, final judgments may be appealed, but orders as to costs, orders made pursuant to consent of the parties, and interlocutory orders are non-appealable.¹⁰¹ Likewise, in criminal proceedings, the Court of Appeal has the power to review and alter any final decisions, including convictions and sentences.¹⁰²

In addition to the Supreme Court, Mauritius maintains the Privy Council of the UK as the highest court of appeal.¹⁰³ The Supreme Court must submit appeals to the Judicial Committee of the Privy Council for review where it involves the interpretation of the Constitution, the matter in dispute is at least 10,000 Rupees, or the appeal involves a question of “great general or public importance.”¹⁰⁴

H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

As the Mauritian legal system is largely modelled after the English system, case law and

⁹⁴ Mauritius Constitution, article 10.

⁹⁵ US Department of State, ‘Mauritius 2012 Human Rights Report’, section 1(d), available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

⁹⁶ Mauritius Constitution, article 80; see also Criminal Appeal Act (1955), available at: <http://attorneygeneral.govmu.org/English/LawsofMauritius/Pages/A-Z-Acts.aspx>; see also Court of Civil Appeal Act (1963), available at: <http://attorneygeneral.govmu.org/English/LawsofMauritius/Pages/A-Z-Acts.aspx>. See also sub-part V of the Courts Act on the Appellate Jurisdiction of the Supreme Court.

⁹⁷ Criminal Appeal Act, section 9; Court of Civil Appeal Act, section 5; District and Intermediate Court (Civil Jurisdiction) Act, section 36-37; Section 3 and 5 of the Criminal Procedure Act; District and Intermediate Court (Criminal Jurisdiction) Act, section 92-100, available at: <http://attorneygeneral.govmu.org/English/LawsofMauritius/Pages/A-Z-Acts.aspx>; see also Supreme Court of Mauritius, ‘Intermediate Court’.

⁹⁸ Criminal Appeal Act, section 19.

⁹⁹ Courts Act, section 69(2).

¹⁰⁰ Ibid., section 70.

¹⁰¹ Court of Civil Appeal Act, section 3.

¹⁰² Criminal Appeal Act, section 5-6. see also section 81 of the Constitution

¹⁰³ Mauritius Constitution, article 81. See also the District and Intermediate Court (Criminal Jurisdiction) Act, sections 92-100

¹⁰⁴ Courts Act, section 70(A).

precedent plays a significant role; courts are bound by the decisions of higher courts. As a result, negative decisions or decisions restricting the rights of children may have lasting effects on subordinate courts and the judicial system.

- I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

As courts are granted wide powers to enforce decisions, including the power to issue fines and further penal sentences for respondents who are not compliant, there are few legal challenges to enforcing the law.

However, Mauritius faces several practical constraints. The physical geography of the country poses one of the greatest difficulties in ensuring the law is applied. The majority of the population and government resources are centered on the main island of Mauritius. For cases on outlying islands though, the government must attempt to enforce decisions in localities that are as far away as 400 kilometres, where governance is already a challenge for the central government.¹⁰⁵

- V. **Additional factors.** Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

Hybrid legal framework

Due to its colonial history, Mauritius maintains a legal system that continues to be influenced by both common law and civil law traditions. This hybrid system has led to a legal framework in Mauritius that heavily models its court system, procedures, and rules after English courts while at the same time relying on substantive laws still contained in the civil codes, penal codes, and customary law that began while under the French Napoleonic Code. As a result, while the judicial structure looks to case law and procedures of the UK judiciary, Parliament models new laws on the French system as well. As such, Mauritian courts must consider both in their interpretation and application of laws.

In many instances, Mauritian laws do not provide for the rules or procedures to be followed in civil or criminal matters. Where this occurs, the judiciary usually turns to English rules for guidance.¹⁰⁶ In many cases, this will impact the procedures and protections afforded to children during trials.

Language

Although the official language of the courts is English, any person may address the courts in French, as Creole is still a prominent language in some regions.¹⁰⁷ If a person is required to give evidence, but they do not possess competent knowledge of English or French, that person may provide testimony in the language they are most comfortable

¹⁰⁵ Stephanie Rutz, 'Mauritius: honeymoon destination and human rights paradise?', 25 October 2013, available at: <http://theworldoutline.com/2013/10/mauritius-human-rights/>.

¹⁰⁶ Courts Act, section 56 (with jury trials); see also Courts (Civil Procedure) Act (1856), section 8, available at: <http://attorneygeneral.govmu.org/English/LawsofMauritius/Pages/A-Z-Acts.aspx>.

¹⁰⁷ Courts Act, section 131.

with and the statements will be translated at the court's instruction.¹⁰⁸

Other relevant government bodies

Various government bodies exist specifically to investigate and report violations against children. The Child Development Unit of the Ministry of Gender Equality, Child Development and Family Welfare works with other agencies, such as the police, to investigate potential violations.¹⁰⁹ Any suspected act of child abuse or mistreatment must be reported to the Permanent Secretary of the Ministry of Gender Equality, Child Development and Family Welfare.¹¹⁰ The Permanent Secretary, or any public officer authorised to do so, may then apply for emergency protection orders through the courts on behalf of the child.¹¹¹

The Community Child Protection Programme has Child Protection Committees in each district, dedicated to promoting child welfare and encouraging the general public to report incidents involving children.¹¹² It operates as a network at regional level with the collaboration of a pool of volunteers, social workers, NGO's, community leaders and other key stakeholders; and focuses on children who are vulnerable and exposed to risks and violence. 32 Community Child Watch Committees set up in high risk areas allow for proximity service including surveillance and reporting of cases of children exposed to any form of violence inclusive of commercial sexual exploitation of children. Cases detected are referred to various stakeholders on a monthly basis.

This report is provided for educational and informational purposes only and should not be construed as legal advice.

¹⁰⁸ Ibid.

¹⁰⁹ Gobin-Bheenick, p. 4.

¹¹⁰ Ministry of Gender Equality, Child Development and Family Welfare, 'Child Development Unit', (stating that "the State has the obligation to ensure parental role wherever parents fail to do so and this role is ensured by the CDU").

¹¹¹ Ibid.

¹¹² 2013 Mauritius CRC Report, paras 10, 66.