



CHILD PARTICIPATION AS VICTIMS OR WITNESSES IN CRIMINAL CASES IN MAURITIUS

National Report for AIMJF's Comparative and Collaborative Research.

*La participación de niños como víctimas o testigos en causas penales en Mauricio
Informe nacional para la investigación comparativa y colaborativa de la AIMJF*

*La participation des enfants en tant que victimes ou témoins dans des affaires pénales à Maurice
Rapport national pour la recherche comparative et collaborative de l'AIMJF*

Mauritian Judiciary

Abstract: The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation as victims or witnesses in criminal cases. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in Mauritius.

Resumen: El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de niños, niñas y adolescentes como víctimas o testigos en causas penales. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en Mauricio

Résumé : Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur la participation des enfants en tant que victimes ou témoins dans des affaires pénales. L'article explique des aspects légaux, institutionnels et procéduraux de la participation des enfants dans le système de justice à Maurice

Introduction

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.

The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of how child participation as victims and witnesses in criminal



cases is organized worldwide.

This national report is based on a questionnaire prepared by AIMJF.

Questionnaire

1. Right to be heard

1.1 Are children presumed to be capable witnesses (or presumed invalid/untrustworthy by reason of their age alone, or similar)?

Yes, depending on the age of the child witness in question and subject to a competency test carried out before being allowed to depose. This is also statutorily provided for under sections **109-111 of the Criminal Procedure Act (as amended by the Children's Act 2020)** which provide as follows:

109. Child victim or child witness under the age of 14

A child victim or child witness under the age of 14 –

- (a) shall not be examined on oath or solemn affirmation; and
- (b) shall be admissible as a witness where the Judge or Magistrate is satisfied that the child is able to understand questions put to him as a witness and give answers which can be understood.

[S. 109 repealed and replaced by s. 73 of Act 13 of 2020 w.e.f. 24 January 2022.]

110. Child victim or child witness aged 14 or above

A child victim or child witness aged 14 or above shall be presumed to understand the nature and implication of taking the oath or making a solemn affirmation.

[S. 110 repealed and replaced by s. 73 of Act 13 of 2020 w.e.f. 24 January 2022.]

111. Evidence of child under the age of 14



The evidence given by a child under the age of 14 pursuant to section 109 shall be regarded in all respects as that of a witness lawfully admitted in the cause, and it is for the Judge, Magistrate, or jury, as the case may be, by whom the truth of the charge is to be decided to determine what credit, if any, should be given to that evidence.

It is apposite to refer to the following extract of the Judgments in **Jeetah A.K v The State [2014 SCJ 337]** and **Basenoo v The Queen [1983 MR 89]**, which provides for the essentials of a proper competency test:

“The sole criterion, in the case of a child deponing on oath or on a promise to speak the truth... is the understanding of the nature of an oath in the former case and the possession of enough intelligence to make a correct statement on the subject matter of the trial in the latter case. It is for the trial Magistrate or Judge to examine the witness as to his competency in either case and the record of the proceedings must show that he has carried out the investigation(vide Jugarsingh v R [1952 MR 13]. The test is one which has to be made by the Court in either case and such test cannot be substituted by a statement from the child that she knows the meaning of an oath or knows that she must tell the truth.”

For a proper application of the said competency test, based on the different age groups of the child witness, see **Goolamally A.A v The State of Mauritius [2021 SCJ 327]** (Albeit the relevant sections of the Criminal Procedure Act, which applied were prior to the amendment). See also **Ramjaun v The State [2022 SCJ 316]**

1.2 Are there any restrictions to the right to be heard (minimum age, or other criteria)?

There are no restrictions to the right to be heard as such, however, any child under the age of 14 should be subjected to a competency test before being allowed to depose. (See Answer to Q 1.1 above)

It is also worth highlighting that section 4(2)(c) of the Children’s Act 2020, which falls under **PART II – IMPLEMENTATION OF THE UNITED NATIONS CONVENTION ON THE**



RIGHTS OF THE CHILD AND THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD, provides for an opportunity for the child to be heard.

4. Best interests principles

(1) The best interests of a child shall, in respect of any matter concerning the child, be paramount and be the primary consideration by any person, Court, institution or other body.

(2) Subject to this Act and any other enactment applicable to children, every person, every Court, every institution or any other body shall, in relation to any matter concerning a child –

- (a) respect, protect, promote and fulfil the rights and the best interests of the child;
- (b) respect the inherent dignity of the child;
- (c) treat the child fairly and equitably and give the child an opportunity to be heard;

1.3 Are children allowed to refuse to make a statement? If So, in which cases?

While Section 65 of the Children’s Act 2020 provides for the recording of statements from child witness or child victim, the issue where the child in question wishes to refuse to make a statement is not specifically addressed. However, Section 5 provides for “Child participation” by giving due consideration to any views expressed by the child.

65. Recording of statements from child witness or child victim

(1) Every statement recorded from a child witness or child victim during a criminal investigation shall be recorded by the police, in presence of the parent of the child.

(2) Where the enquiring officer has reasonable grounds to believe that the best interests of a child witness or child victim so require, a statement shall, in the absence of the parent of the child, be recorded in the presence of a probation officer.



(3) The responsibility for the recording of a statement shall lie with the Police in the locality where the child is found, even though the child is ordinarily resident in another locality.

5. Child participation

Every child who is of such age, maturity and stage of development as to be able to participate in any matter concerning the child shall have the right to participate in the matter and any views expressed by the child shall be given due consideration.

2. Broad perspective of the legal framework and procedure

2.1 Is there a specific legal framework that defines how to treat child victims/witnesses of crime (e.g. special norms in the criminal procedural code, special child code, special victims code, etc)?

Yes, in fact, **PART V, Sub-Part III of the Children’s Act 2020**, which became effective as from 24 January 2022, provides for a specific legal framework in relation to child victims and witnesses.

2.2 Is there any coordination between different role players (such as the police, education, social services, health system) to initiate legal proceedings and coordinate response (evidence collection and intervention), including avoiding multiple interviews of the child? Is there any flowchart in your country to coordinate these interventions? If so, could you please share it?

The law is silent on the principle of avoiding multiple interviews of the child. However, there are protocols in place for coordination and cooperation among the stake holders.

2.3 Can you briefly explain what are the major steps of the legal procedure in criminal cases (felonies) with child victims or witnesses involved?

Once police enquiry has been completed, the file is sent to the Office of the Director of Public Prosecutions (ODPP) for advice and for lodging the criminal case in question. Where child victims or witnesses are involved in criminal cases, the Criminal Division of the Children’s



Court, established under **section 8 of the Children’s Court Act**, has the jurisdiction to hear the said matter.

8. Jurisdiction of, and proceedings before, Criminal Division

(1) The Criminal Division shall, notwithstanding any other enactment, have jurisdiction to hear and determine –

- (a) in the case of a child victim, any criminal offence specified in Part I of the Schedule which is committed on the child;
- (b) in the case of a child witness, any criminal offence specified in Part II of the Schedule where the child is a witness;
- (c) in the case of a juvenile offender, any criminal offence committed by the child, other than an offence specified in Part III of the Schedule;
- (d) such other matter as the Director of Public Prosecutions may, depending on the seriousness of the case and where he considers it to be in the best interests of a child victim, child witness or juvenile offender, lodge before it; and
- (e) such other matter as may be prescribed.

(2) Subsection (1)(c) shall apply where the offender, at the time of being formally charged before the Criminal Division, is still a juvenile.

(3) A Magistrate of the Criminal Division shall, where a child is involved, have jurisdiction to hold a preliminary inquiry in relation to offences specified in section 116(2) of the Courts Act.

(4) Subject to this Act, and to any specific procedural provisions in any other enactment, all proceedings before the Criminal Division of the Children’s Court shall be instituted and conducted in the same manner as proceedings in a criminal matter before a Magistrate of the Intermediate Court.



(5) Every order or judgment of the Criminal Division shall be enforced as if it is an order or judgment of a Magistrate of the Criminal Division of the Intermediate Court.

2.4 In which moment(s) can a child be heard in this procedure?

The child will be heard once the case has been lodged and is in shape.

2.5 Does the child have the power to initiate, suspend or terminate the criminal procedure (such as giving consent for the complaint or the possibility to refuse consent or revoke consent)? If so in which cases?

The power to initiate, suspend or terminate a criminal procedure is vested in the Director of Public Prosecutions by virtue of **section 72 of the Constitution**.

As for giving or revoking consent for the complaint, it would usually be for the parents or the guardian ad litem (appointed by the Protection Division of the Children's Court in certain cases) who would advocate for the child's best interests. Be that as it may, **section 72(3) and (5) of the Constitution** provides that –

(3) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do –

(a) to institute and undertake criminal proceedings before any court of law (not being a court established by a disciplinary law);

(b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(5) The powers conferred upon the Director of Public Prosecutions by subsection (3)(b) and (c) shall be vested in him to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing



in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

Also, see the answer to Question 1.3 in relation to Child Participation.

Additionally, Section 12(2) (b) of the Children's Court Act provides as follows:

Every Court shall ensure that no person shall, in the course of Court proceedings –

(a) ...

(b) require a child to give evidence against his will or without the knowledge of any of his parents.

3. Preparation for the child participation

3.1. Is there in your country specific child-friendly information material for children as victims or witnesses (e.g. brochure, video etc)? If so can you please share them?

No. Country specific child-friendly material for children as victims or witnesses are not publicly available.

3.2. How do children have access to these materials? (e.g. brochure available at police station/court; brochure sent to the child together with summon; witness preparation conducted in court with support of a video, or with support of a special professional; investigator/judge orally explaining in child-friendly language before interview/hearing, Or any other?) How long before the interview/hearing does this happen?

Section 12 of the **Children's Court Act** provides for a Child Friendly Environment.

- I. arrangements have been made for the Children to testify through video link or television link (section 13 of the Children's Court Act)
- II. the services of a full-time psychologist attached to the Children's Court is available for counselling and preparation of Children with a view to familiarise them with the Court surrounding and procedures.
- III. there is also a separate access for Children in order to minimise contact with adults.



IV. there is a play area earmarked for Children to wait while attending Court.

3.3. Is there any assessment of the child conducted before a child is interviewed/heard? If so, what is assessed / for what purpose (e.g. background and circumstances of child; whether the child would be able to speak likely; capacity of child to express him/herself; capacity to participate, if uncertain; capacity to handle interview and possible effects; potential vulnerabilities and special needs, etc)? If so, what is the legal background of their professional conducting this assessment? To which Institution does this professional belong? Is there any kind of report produced?

No such assessment is conducted.

However, with regards to child witnesses, a child will need to be subjected to a 'competency test' where the child 'shall be admissible as a witness where the Judge or Magistrate is satisfied that the child is able to understand questions put to him as a witness and give answers that can be understood' (vide **section 109** of the **Criminal Procedure Act**).

However, this competency test is for the purposes of hearing when a child is to be heard as a witness and not for the purposes of any pre interview/hearing assessment.

See also answer to Answer to Q 3.2

Also, **Section 12(3)** of the **Children's Court Act** further provides for the child to be treated in a caring and sensitive manner which is respectful of his dignity throughout the proceedings, taking into account his personal situation and immediate and special needs, age, gender, disability, if any, and level of maturity.

3.4. Is there any kind of contact or evaluation with the parents or legal guardians?

There are no prescribed provisions for the purposes of child preparation prior to interview or hearing.

For the purposes of court proceedings, the child will be accompanied by a parent. As laid out in section 12 (1)(b) the child will only be accompanied by an individual other than a parent in very specific circumstances. An evaluation will need to be carried out in determining whether the



child needs to be accompanied by an individual other than the parent.

Section 12 (1) (b) of the Children's Court Act prescribes as follows –

“12. Child-friendly environment

(1) Any Court proceedings involving a child shall be conducted in the following manner –

(b) the Court shall ensure that appropriate arrangements are made –

(i) in the courtroom to hear the child's evidence;

(ii) for the child to be accompanied by his parent, unless the Court designates another person to accompany the child where –

(A) the parent is the alleged perpetrator of the offence committed on the child;

(B) the child expresses a concern about being accompanied by his parent; or

(C) the Court considers that it is not in the best interests of the child to be accompanied by his parent.”

With regards to the recording of statements from a child or child witness, section 65 of the Children's Act is of relevance –

“65. Recording of statements from child witness or child victim

(1) Every statement recorded from a child witness or child victim during a criminal investigation shall be recorded by the police, in presence of the parent of the child.

(2) Where the enquiring officer has reasonable grounds to believe that the best interests of a child witness or child victim so require, a statement shall, in the absence of the parent of the child, be recorded in the presence of a probation officer.

(3) The responsibility for the recording of a statement shall lie with the Police in the locality where the child is found, even though the child is ordinarily”

3.5. Is the child allowed/invited to visit the facilities where he or she will be heard prior to the interview/hearing?



There is a full-time psychologist attached to familiarise the Children with the facilities.

3.6. Does the child receive any kind of support prior to the interview/hearing (psychological, social, medical, legal)?

Yes, see above. A full-time psychologist.

4. Protection and Support

4.1. Is there any risk assessment conducted for the child victim/witness after a crime has been reported? If so, who conducts it? Is there any specific tool? If so, can you share it please?

No risk assessment is prescribed specifically for child victim/witness under our law. However, Part IV of the Children's Act sets our provisions with regards to 'Children in need of assistance and care and protection' and would encompass a child victim/witness as well.

Under s 33 of the Children's Act, an assessment shall be carried out to determine whether a child is in need of care and protection as follows –

“33. Assessment of child in need of care and protection

(1) Where a matter concerning a child in need of care and protection is reported to the supervising officer by any person, the supervising officer shall forthwith cause an authorised officer to assess the child's need of care and protection.

(2) Notwithstanding any other enactment, an authorised officer may, for the purpose of subsection (1) –

(a) enter, at any reasonable time and, where the circumstances so require, with the assistance of the Police, any place where the child is or was living, or such other place which the child usually visits;

(b) interview the child without the consent of, or in the absence of, the child's parent;



- (c) *request the parent of the child or any other person who cares for the child to attend an interview;*
- (d) *request any person who provides health, social, educational or other services to the child or to the parent of the child to provide information in relation to those services;*
- (e) *where it is urgent and in the best interests of the child –*
 - (i) *arrange for a medical examination of the child;*
 - (ii) *admit the child to a mental health care centre;*
 - (iii) *remove, subject to section 36, the child to a place of safety for a period not exceeding 72 hours;*
 - (iv) *take such other appropriate action as may be necessary.*

(3) (a) *Where any person refuses a request under subsection (2)(c) or (d), the authorised officer shall refer the matter to the Police for assistance in order to compel the person with the request made.*

(b) *Where, after being compelled under paragraph (a), the person still refuses to comply with the request, the person shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees together with imprisonment for a term not exceeding one year.*

(4) (a) *An authorised officer shall submit a report of his assessment to the supervising officer not later than 15 days after the matter is referred to him.*

(b) *The supervising officer may, pending the report of an authorised officer, take such measures or provide such assistance as he considers, in the circumstances, necessary for the care and protection of the child.*

(5) *On receipt of a report from an authorised officer, the supervising officer shall consider the report and shall –*

(a) *where possible and in the best interests of the child, take such measures, or provide such assistance to the child and his family, as he considers necessary;*

(b) *refer the matter to the Police where he has reasonable grounds to believe that an*



offence has been, or is being, committed.

(6) Where a matter is referred to the Police under subsection (5)(b), a criminal investigation shall be conducted in the matter.

(7) (a) For the purpose of this section, the Police shall interview a child in the presence, and with the consent, of any of its parent or, in the absence of its parent, any other person having parental authority over the child.

(b) Where there are reasonable grounds to believe that consent obtained under paragraph (a) may increase the threat of harm to the child or another person, the Police shall interview the child in presence of an authorised officer.

(c) An interview may take place at an educational institution, a hospital, a police station or such other place as may be, in the circumstances, suitable for the child.

(d) Where a child is present at an educational institution, the person in charge of the educational institution shall, upon request of the Police or the authorised officer, allow the Police or the authorised officer, as the case may be, to meet with, and interview, the child.”

Also, section 34 provides for Mandatory reporting for child in danger.

(1) Any person who performs professional or official duties with respect to children, or any other person, has reasonable grounds to believe that a child with whom he is in contact with has been, is being or is likely to be, exposed to harm, shall report the matter to the supervising officer or to the Police.

4.2. In case of identification of risks, what kind of protective measures are available in your country?

Protective measures are dealt with under Part IV of the Children’s Act Sub Part II which provides for the following orders –



- Emergency Protection Order under section 36 of the Children's Act;
- Placement Order under section 37 of the Children's Act;
- Ancillary Orders under section 38 of the Children's Act;
- Long-term care Order under section 39 of the Children's Act; and
- Contact order under s 40 of the Children's Act.

Sections 36 – 40 are reproduced at the end of this document.

4.3. What kind of support measures are available for child victims / witnesses of crime (psychosocial, medical, legal) before, during, after the judicial process)

The ancillary orders cater for medical examination, professional counselling and assessment. (section 38 below)

4.4 In case of intrafamilial violence, which measures can be / are usually adopted to grant the child's security? Is there any which kind of support offered to the remaining members of the family? Are there any specific measures in case of child abduction or child kidnapping?

In cases of intrafamilial violence, Part IV of the Children's Act would apply as set out in Q 4.2 above. See below section 16 and 17 for child abduction.

An emergency order under s 36 would be the most appropriate to remove the child from the household in cases of intrafamilial violence or any situations where there are reasonable grounds to believe that the child needs better care and protection.

With regards to any support offered to the remaining members of the family, the Protection from Domestic Violence Act 1997 provides for protective measures in the form of protection order, occupation order or tenancy order. The relevant provisions are reproduced as follows

–

“3. Protection order

(1) Any person who has been the victim of an act of domestic violence and who reasonably believes that his spouse is likely to commit any further act of domestic violence against him, may apply to the Court, in Form A of the Schedule, for a protection order restraining the respondent spouse from engaging in any conduct



which may constitute an act of domestic violence and ordering him to be of good behaviour towards the applicant.

(2) On an application being made for a protection order, the Court shall cause notice of the application to be served on the respondent spouse requiring him to appear before the Court on such day as may be specified in the notice (not later than 14 days of the date of the application) to show cause why the order applied for should not be made.

(3) Subject to such Rules as may be made by the Chief Justice, an application for a protection order shall be heard in such manner as the Court thinks fit.

(4) In determining an application for a protection order, the Court shall have regard to the following—

- (a) the need to ensure that the aggrieved spouse is protected from domestic violence;
- (b) the welfare of any child affected, or likely to be affected, by the respondent spouse's conduct;
- (c) the accommodation needs of the aggrieved spouse, his children as well as those of the respondent spouse and his children;
- (d) any hardship that may be caused to the respondent spouse or to any of his children as a result of the making of the order; and
- (e) any other matter which the Court may consider relevant.

(5) Where a protection order is made, the Court may further—

- (a) prohibit the respondent spouse from—
 - (i) being on premises on which the aggrieved spouse resides or works;
 - (ii) being on premises specified in the order, being premises frequented by the aggrieved spouse;



- (iii) approaching within a specified distance of the aggrieved spouse;
 - (iv) contacting, harassing, threatening or intimidating the aggrieved spouse;
 - (v) damaging property of the aggrieved spouse; or
 - (vi) causing or attempting to cause another person to engage in conduct referred to in paragraphs (d) and (e);
 - (b) specify the conditions on which the respondent spouse may—
 - (i) be on premises on which the aggrieved spouse resides or works or which he frequents; or
 - (ii) approach or contact the aggrieved spouse or his child;
 - (c) *proprio motu*, make an interim occupation or tenancy order for such time as it thinks fit, where it is satisfied that such an order, although not applied for, is essential for the effective protection of the aggrieved spouse.
- (6) (a) A protection order shall be in Form C of the Schedule and shall remain in force for such period, not exceeding 24 months, as the Court may specify.
- (b) Where a protection order contains a prohibition or condition of the kind specified in subsection (5), the Court may specify different periods, being periods none of which exceeds 24 months, as the period for which each prohibition or condition is to remain in force.
- (7) Where the Court is satisfied that there is a serious risk of harm being caused to the aggrieved spouse before the application may be heard and that the circumstances revealed in the application are such as to warrant the intervention of the Court even before the respondent spouse is heard, the Court may—
- (a) issue an interim protection order in Form B of the Schedule, restraining the respondent spouse from engaging in any conduct which may constitute an act of domestic violence and ordering him to be of good behaviour towards his spouse; and
 - (b) order the Commissioner of Police to provide police protection to the aggrieved spouse until such time as the interim order is served on the respondent spouse



or for such time as the particular circumstances of the case may justify.

(8) Where an interim protection order is issued, the District Clerk shall immediately take steps to have a copy of the order served on the respondent spouse requiring him to appear before the Court on such day as may be specified in the order to show cause why it should not be confirmed, varied or discharged.

(9) An interim protection order shall, unless the Court directs otherwise, remain in force until such time as the Court makes a final pronouncement on the application for the protection order.

(10) (a) Where a protection order is in force, either party may apply to the Court for a variation or revocation of the order.

(b) The spouse applying for the variation or revocation shall cause a copy of the application to be served on the other spouse.

(c) In determining whether to vary or revoke a protection order, the Court shall have regard to the matters specified in subsection (4).

[S. 3 amended by s. 4 of Act 11 of 2004 w.e.f. 19 June 2004; s. 3 of Act 23 of 2007 w.,e.f. 26 September 2011.]

3A. Protection order against a person living under same roof

(1) Any person who has been the victim of an act of domestic violence by a person, other than his spouse, living under the same roof, and who reasonably believes that that person is likely to commit any further act of domestic violence against him, may apply to the Court, in Form AA of the Schedule, for a protection order restraining that person from engaging in any conduct which may constitute an act of domestic violence and ordering him to be of good behaviour towards the applicant.

(2) Where an application for a protection order is made under subsection (1), the Court shall cause a notice of the application to be served on the respondent ordering him to appear before the Court on such day as may be specified in the notice, which shall not be later than 14 days from the date of the application, to show cause why the order applied for should not



be made.

(3) Subject to such Rules as may be made by the Chief Justice, an application for a protection order shall be heard in such manner as the Court thinks fit.

(4) In determining an application for a protection order, the Court shall have regard to the following—

- (a) the need to ensure that the applicant is protected from domestic violence;
- (b) the welfare of any child affected, or likely to be affected, by the respondent's conduct;
- (c) the accommodation needs of the applicant, his children, as well as those of the respondent and his children;
- (d) any hardship that may be caused to the respondent or to any of his children as a result of the making of the order; and
- (e) any other matter which the Court may consider relevant.

(5) Where a protection order is made, the Court may further—

- (a) prohibit the respondent from—
 - (i) contacting, harassing, threatening or intimidating the applicant;
 - (ii) damaging property of the applicant; or
 - (iii) causing or attempting to cause another person to engage in any conduct referred to in paragraphs (i) and (ii);
- (b) specify the conditions on which the respondent may—
 - (i) be on the premises on which the applicant resides or works or which he frequents; or
 - (ii) approach or contact the applicant or his child.

(6) (a) A protection order made under this section shall be in Form CA of the Schedule and shall remain in force for such period, not exceeding 24 months, as the Court may specify.

(b) Where a protection order contains a prohibition or condition of the kind specified in subsection (5), the Court may specify different periods, being periods none of which shall exceed 24 months, as the periods for which each prohibition or condition is to remain in force.



(7) Where the Court is satisfied that there is a serious risk of harm being caused to the applicant before the application may be heard and that the circumstances revealed in the application are such as to warrant the protection of the Court even before the respondent is heard, the Court may—

- (a) issue an interim protection order in Form BA of the Schedule, restraining the respondent from engaging in any conduct which may constitute an act of domestic violence and ordering him to be of good behaviour towards the applicant; and
- (b) order the Commissioner of Police to provide police protection to the applicant until such time as the interim order is served on the respondent or for such time as the particular circumstances of the case may justify.

(8) Where an interim protection order is issued, the District Clerk shall immediately take steps to have a copy of the order served on the respondent requiring him to appear before the Court on such day as may be specified in the order to show cause why it should not be confirmed, varied or discharged.

(9) An interim protection order shall, unless the Court directs otherwise, remain in force until such time as the Court makes a final pronouncement on the application for the protection order.

(10) (a) Where a protection order is in force, either party may apply to the Court for a variation or revocation of the order.

(b) The person applying for the variation or revocation of a protection order shall cause a copy of the application to be served on the other person concerned.

(c) In determining whether to vary or revoke a protection order, the Court shall have regard to the matters specified in subsection (4).

[S. 3A inserted by s. 5 of Act 11 of 2004 w.e.f. 19 June 2004; ; amended by s. 4 of Act 23 of 2007 w.,.e.f. 26 September 2011.]



4. Occupation order

(1) Any person who has been the victim of an act of domestic violence and who reasonably believes that his spouse is likely to commit any further act of domestic violence against him, may apply to the Court in Form D of the Schedule, for an occupation order granting him the exclusive right to live in the residence belonging to him, the respondent spouse or both of them.

(2) On an application being made for an occupation order, the Court shall cause notice of the application to be served on the respondent spouse requiring him to appear before Court on such day as may be fixed by the Court (not later than 14 days of the date of the application) to show cause why the order applied for should not be made.

(3) Subject to such Rules as may be made by the Chief Justice, an application for an occupation order shall be heard in such manner as the Court thinks fit.

[Repealed and replaced 23/11 (cio 26/9/11).]

(4) The Court shall, on being satisfied that it is necessary for the protection of the aggrieved spouse or of his child and that it is in the best interest of the family, make an occupation order in Form F of the Schedule, for a period not exceeding 24 months.

(5) Where the Court is satisfied that there is a serious risk of harm being caused to the applicant before the application may be heard and that the circumstances revealed in the application are such as to warrant the protection of the Court even before the respondent spouse is heard, the Court may issue an interim occupation order in Form E of the Schedule granting the applicant the exclusive right to live in and occupy the residence.

(6) An interim occupation order shall, unless the Court directs otherwise, remain in force until such time as the Court makes a final pronouncement on the application for the protection order.

(7) Where an interim occupation order is issued, the District Clerk shall immediately take steps to have a copy of the order served on the respondent spouse requiring him to appear before the Court on such day as may be fixed by the Court to show cause why the said order



should not be confirmed, varied or discharged.

(8) (a) Where an occupation order is in force, either party may apply to the Court for its variation or revocation.

(b) The spouse applying for such variation or revocation shall cause a copy of his application to be served on the other spouse.

(c) In determining whether to vary or revoke an occupation order, the Court shall have regard to the matters specified in subsection (4).

[S. 4 amended by s. 6 of Act 11 of 2004 w.e.f. 19 June 2004; amended by s. 4A of Act 23 of 2007 w.,e.f. 26 September 2011.]

5. Tenancy order

(1) Any spouse who has been the victim of an act of domestic violence and who reasonably believes that his spouse is likely to commit any further act of domestic violence against him may apply to the Court, in Form G of the Schedule, for a tenancy order so that the tenancy of the residence occupied by him should vest in him.

(2) On an application being made for a tenancy order, the Court shall cause notice thereof to be served on the respondent spouse requiring him to appear before the Court on such day as may be fixed by the Court (not later than 14 days of the date of the application) to show cause why the order applied for should not be made.

(3) Subject to such Rules as may be made by the Chief Justice, an application for a tenancy order shall be heard in such manner as the Court thinks fit.

[Repealed and replaced 23/11 (cio 26/9/11).]

(4) The Court shall not make a tenancy order in Form I of the Schedule unless it is satisfied that such an order is necessary for the protection of the aggrieved spouse, of his child or of both of them and that it is in the best interest of the family.

(5) Where the Court is satisfied that there is a serious risk of harm being caused to the



applicant before the application may be heard and that the circumstances revealed in the application are such as to warrant the protection of the Court even before the respondent spouse is heard, the Court may issue an interim tenancy order in Form H of the Schedule granting the applicant the exclusive right to live in the residence.

(6) An interim tenancy order shall, unless the Court directs otherwise, remain in force until such time as the Court makes a final pronouncement on the application for the tenancy order.

(7) Where an interim tenancy order is issued, the District Clerk shall immediately take steps to have a copy of the order served on the respondent spouse who shall be summoned to appear before Court on such day as may be fixed by the Court to show cause why the said order should not be confirmed, varied or discharged.

(8) (a) Where a tenancy order is in force, either party may apply to the Court for a variation or revocation of same.

(b) The spouse moving for such variation or revocation shall cause a copy of the application to be served on the other spouse.

(c) In determining whether to vary or revoke a tenancy order, the Court shall have regard to the matters specified in subsection (4).”

Child abducting is an offence under the Children’s Act as follows –

“16. Abduction of child by parent

(1) *No parent of a child or person with whom a child is to be domiciled pursuant to an order of the Court shall, without the written consent of the other parent of the child*

–

(a) *take away or remove the child from Mauritius;*

(b) *decoy or entice the child to leave Mauritius;*

(c) *cause the child to be taken away or removed from Mauritius; or*

(d) *retain the child in Mauritius.*

(2) *No person shall fail to deliver or present a child in breach of an order of a Court.*



(1) Any person who contravenes subsection (1) or (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

17. Abduction of child by other person

(1) No person shall, by force, fraud or without the written consent of the parent of a child

–

(a) take away the child or causes the child to be taken away; or

(b) decoy, entice or cause the child to be decoyed or enticed out of the keeping of its parent or from any place where the child is or has been placed.

(2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 20 years.

(3) Where a person abducts a child in the manner specified in subsection (1) without force or fraud, but without the written consent of the parent of the child, that person shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 10 years.”

CHILDREN’S ACT 2020

Sub-Part II – Care and Protection Orders

Section A – Emergency Protection Order

36. Emergency protection order

(1) Where, during an assessment or further to an assessment made under section 33, an authorised officer has reasonable grounds to believe that a child needs better care and protection, he may, in such form and manner as may be prescribed, apply to the Protection



Division of the Children's Court for an emergency protection order.

(2) Where the Magistrate is satisfied, pursuant to subsection (1), that it is in the best interests of the child to do so, he shall issue an emergency protection order in such form as may be prescribed.

(3) An emergency protection order may provide for –

(a) the Police or an authorised officer to –

- (i) summon any person to provide information for the purpose of verifying whether the child has suffered, is suffering or is likely to suffer, harm;
- (ii) enter any premises specified in the order, where necessary by force, and search for the child, provided that the order or a copy thereof is, on request, produced to the owner, occupier or person in charge of the premises;
- (iii) remove the child from any place where the child has suffered, is suffering or is likely to suffer, harm;
- (iv) remove the child from, or return the child to, or prevent the child's removal from, a residential care institution;
- (v) cause, where necessary for the welfare of the child, the child to be submitted to medical examination or urgent treatment;
- (vi) direct that adequate Police or medical assistance be provided for the exercise of any power under the order; and
- (vii) take such other appropriate action as the Police or authorised officer considers to be in the best interests of the child;

(b) directing the parent of the child, or the unmarried partner of the child's father or mother, to undergo an examination of his physical, mental or emotional condition or any other assessment related to parenting and care of the child;



- (c) directing the parent of the child, or the unmarried partner of the child's father or mother, not to have any direct or indirect contact with the child on his own, unless a specified person or a person of a specified category is present;
 - (d) the authorised officer to submit details to the Magistrate on the place of safety;
 - (e) the child to be placed with a family member who is willing and able to care for the child;
 - (f) the child to be placed in a foster family;
 - (g) such other direction, or the imposition of such other condition, as the Magistrate considers to be in the best interests of the child.
- (4) Where the parent of a child, or the unmarried partner of the child's father or mother, rejects, ignores or resists a lawful request by an authorised officer made under the emergency protection order, the authorised officer shall refer the matter to the Police for assistance in order to compel the parent to comply with the request made under the emergency protection order.
- (5) Where an authorised officer enters any premises pursuant to an emergency protection order, the owner, occupier or person in charge of the premises shall provide all reasonable facilities and assistance to the authorised officer for the discharge of his functions and exercise of his powers under the emergency protection order.
- (6) An emergency protection order shall be valid for a period of 21 days but may, on an application made by an authorised officer, be renewed for a further period of 21 days where the Magistrate considers that it is in the best interests of the child to do so.
- (7) Notwithstanding any other enactment, no appeal shall lie against the issue of an emergency protection order.
- (8) (a) The parent of a child may, not earlier than 72 hours after the issue of an emergency protection order under this section, apply for the discharge of the order.



- (b) The Magistrate may discharge the emergency protection order where he is satisfied that it is in the best interests of the child to do so.

Section B – Placement Order

37. Placement order

(1) Where the need for protection is reasonably likely to continue beyond the expiry of an emergency protection order, the authorised officer may, in such form and manner as may be prescribed, apply to the Protection Division of the Children’s Court for a placement order.

(2) On an application under subsection (1), the Magistrate –

- (a) may make an interim placement order for the child to be placed in a place of safety for a period not exceeding 14 days and he may extend the interim placement until the final determination of the application;
- (b) shall order for a social enquiry report by a probation officer regarding the child’s family background, general conduct and home surroundings, to enable him to determine the application in the best interests of the child; and
- (c) may order the child to be medically examined.

(3) The Magistrate shall, when considering an application for a placement order –

- (a) consider the social enquiry report;
- (b) consider any arrangement which the authorised officer has made, or proposes to make, for allowing any person to have contact with the child; and
- (c) invite any party to the proceedings to comment on those arrangements.

(4) Where, after hearing evidence, the Magistrate is satisfied that it is in the best interests of the child to do so, he may make a placement order, in such form as may be prescribed, for the child to be placed in a place of safety for an initial period not exceeding one year.



(5) A Magistrate may, on the application of the authorised officer, the child concerned or the parent of the child, as the case may be, vary or discharge a placement order made under this section where he is satisfied that it is in the best interests of the child to do so.

(6) Subject to section 39, a placement order –

(a) may be renewed, provided the total placement period does not exceed 3 years;

(b) shall not be made more than 3 months after the date of lodging of the application, except where it is in the best interests of the child to do so.

Section C – Ancillary Orders

38. Ancillary orders

A Magistrate of the Protection Division of the Children's Court may, further to, an emergency protection order or a placement order, make any of the following ancillary orders –

(a) a parenting aide order, providing such parenting aide as the authorised officer may determine;

(b) a supervision order of such duration as the Magistrate may determine, placing the child, or the parent of the child, or both, under the supervision of an authorised officer;

(c) an order –

(i) for the child to be medically examined and be provided such treatment as is deemed necessary and urgent by the examining doctor;

(ii) instructing the child or the parent of the child to undergo professional counselling, or to participate in mediation, a family group conference or any other appropriate problem solving forum;



- (iii) instructing the child or the parent of the child, or any other person involved in the matter concerning the child, to undergo a professional assessment;
- (iv) limiting access of a person to the child or prohibiting a person from contacting the child;
- (v) prohibiting any person to access or contact the child, including the parent of child in case the parent has caused harm to the child.

Section D – Long-term Care Order

39. Long-term care order

- (1) Where the authorised officer considers that it is in the best interests of a child to stay in alternative care placement for a period exceeding 3 years, the authorised officer shall, in such form as may be prescribed, apply to the Protection Division of the Children’s Court for a long-term care order for the child to be placed in long-term care.
- (2) On an application under subsection (1), the Magistrate –
 - (a) shall order for a social enquiry report by a probation officer regarding the child’s family background, general conduct and home surroundings, to enable him to determine the application in the best interests of the child;
 - (b) may order the child to be medically examined.
- (3) The Magistrate shall, when considering an application for a long-term care order –
 - (a) consider the social enquiry report;



- (b) consider any arrangement which the authorised officer has made, or proposes to make, for allowing any person to contact the child; and
- (c) invite any party to the proceedings to comment on those arrangements.

(4) Where, after hearing evidence, the Magistrate is satisfied that it is in the best interests of the child to do so, he may make a long-term care order, in such form as may be prescribed, for the child to be placed in a place of safety for a period exceeding 3 years.

(5) A Magistrate may, on the application of the authorised officer or the parent of the child, vary or discharge a long-term care order made under this section where he is satisfied that it is in the best interests of the child to do so.

Section E – Contact Order

40. Contact order

- (1) Any –
 - (a) parent, unless that parent can no longer exercise his parental rights;
 - (b) person having parental responsibility in respect of a child;
 - (c) person who, by order of a Court, had a child’s custody or care immediately before a placement order or a long-term care order was made;
 - (a) other person,

who wishes to have contact with the child who has been placed in a place of safety pursuant to a placement order or long-term care order, may apply to the Protection Division of the Children’s Court for a contact order authorising him to have contact with the child.



(2) The authorised officer may, where he considers that it is in the best interests of a child who has been placed in a place of safety pursuant to a placement order or long-term care order, apply to the Protection Division of the Children’s Court for –

- (a) such order as he considers appropriate with respect to the contact which is to be allowed between the child and any person;
- (b) an order authorising him to refuse contact between a child and any person referred to in subsection (1).

(3) On an application under this section, a Magistrate may, where he is satisfied that it is in the best interests of the child to do so, make –

- (a) such order as he considers appropriate with respect to the contact which is to be allowed between the child and any person, specifying the conditions of such contact, where appropriate; or
- (b) an order authorising an authorised officer to refuse to allow contact between the child and any person referred to in subsection (1).

(4) A determination to allow contact under this section shall not be made against the will of the child depending on the age, maturity and mental capacity of the child to understand the benefits, risks, social and other implications, as assessed by a psychologist of the Ministry.

(5) Where a contact order is made by the Magistrate and at the time of executing the order, such an order is no longer considered to be in the best interests of the child, the authorised officer may refuse to allow contact with the child and seek a variation or discharge of the order.

(6) A Magistrate may, on the application of the authorised officer or a person named in the order, vary or discharge a contact order made under this section where he is satisfied that it is in the best interests of the child to do so.

(7) A contact order under this section may be made at the same time or after a placement order or a long-term care order is made.



(8) A Magistrate making a contact order under this section may impose such conditions as he may determine.

5. Environment

5.1 In which institution/what kind of environment is the child interviewed/heard in pre-trial/trial phase?

At pre-trial stage, a statement is usually recorded by the police from the child in the presence of his parent.

Where the officer in charge of the police station has reasonable grounds to believe that the best interests of a **juvenile offender** so require, a statement may be recorded from him in the absence, or without the consent, of his parent, but in presence of a probation officer (section 60 of Children's Act).

Where the enquiring officer has reasonable grounds to believe that the best interests **of a child witness or child victim** so require, a statement shall, in the absence of the parent of the child, be recorded in the presence of a probation officer. The responsibility for the recording of a statement shall lie with the Police in the locality where the child is found, even though the child is ordinarily resident in another locality (section 65 of Children's Act).

At trial stage, the child is heard before the Children's Court which is a specialized Court, through live video or television link.

5.2 Is there any specificity in this environment to adapt it for children? (e.g. separate 'building' specifically for children; non child- specific building, but separate entrance for children; separate interview/hearing room for children)

The Children's Court is a specialised Court and is located in a separate building from the Intermediate Court. Section 12 of the Children's Court Act makes provision for a child-friendly environment where:

- (a) proceedings shall be conducted in a language which is simple and comprehensible to the child, having due regard to the age and level of maturity of the child;



(b) the Court shall, *inter alia*, ensure that appropriate arrangements are made in the courtroom to hear the child's evidence;

(c) the Court shall ensure that a child is treated in a caring and sensitive manner which is respectful of his dignity throughout the proceedings, taking into account his personal situation and immediate and special needs, age, gender, disability, if any, and level of maturity.

(see also the separate access , waiting area and play room)

5.3. Are there guidelines for the environment where the child is interviewed/heard? (architecture, setting)? If so can you please share it? Can you share a photo of this space?

No guidelines. However, section 33(7) (a) provides for the interview to be carried out in presence of the Child's parents or any other person exercising parental authority. Also, the answer to Q 4.1 is reiterated.

5.4. Is there a specific waiting area for the child?

Section 58 of the Children's Act provides that the Commissioner of Police shall make arrangements to prevent a juvenile offender while waiting before or after attendance in any Court from associating with any adult.

Also, there is one play area inside and one playground outside the Children's Court where Children can wait.

5.5. Are there protection measures to avoid direct contact (including visual) between the child and the alleged offender? if so what kind? (e.g. separate entrance, separate waiting area, separate interview/hearing rooms, use of video link, voice or image distortion etc)

Section 13 of the Children's Court Act provides that the Court may, in its discretion and on motion made by the prosecution, allow a child victim or child witness in relation to any offence specified in the Schedule to appear before it, and depose, through such live video or live



television link system as the Chief Justice may approve in writing.
(plus separate entrance/exit and waiting area)

5.6. In case identification of the offender is needed, how is this conducted, and where?

In court directly.

5.7. If the child lives in a different city in relation to the city where the proceeding is tried, what are the specificities at stake?

None, as the jurisdiction is small.

Section 3(3) of the Children's Court Act provides that "*Notwithstanding any other enactment, the Chief Justice may, for the proper administration of justice, direct that any case before any division of the Children's Court be transferred to, and heard by, another Court.*"

5.8. is it possible in your country that the interview is conducted virtually (the child and the interviewer are in different places)? In which circumstances? Are any / which special security measures (are) adopted?

This is a measure not in force yet.

5.9. Must a child appear in court to be interviewed or are recorded investigative interviews admitted as evidence in court? If the child has to appear in court, which circumstances are determinant?

Answer 1.1 is reiterated. The recorded investigative interviews may be admitted as evidence in court subject to no objection being raised by the other party and without compromising the other party's right to a fair trial as enshrined in section 10 of the Constitution. Plus facilities to testify through live video or television link.

6. Specific legal guarantees for the child

6.1. Does the child have the right to legal assistance? for free? Is this assistance



specialized?

At what moment does this assistance come in (e.g. already advising whether or not to report a case / during the first interview / only in court / other)

Sections 7A and 7C of the Legal Aid and Legal Assistance Act provide for grant of legal aid to juvenile charged with a crime or misdemeanour and legal assistance to juveniles being suspected of having committed an offence specified in the First Schedule. The police officer in charge of the police station shall inform the parent or legal guardian of the juvenile that an application for legal assistance during police enquiry and for bail applications, in respect of the child, may be made.

6.1.1 What is the role of the legal assistant (representing views of child or best interests of child; advising the child; talking on behalf of the child; . . .)?

The legal assistant shall take into account the best interests of a child which shall, in respect of any matter concerning the child, be paramount and be the primary consideration (section 4 of Children's Act).

6.2 Does the child have the right to be accompanied by a support person? If so, what is the role of this person? What is this person entitled to do in support of the child?

Section 59 of the Children's Act provides that "Where a juvenile is charged with an offence or is for any other reason brought before a Court, his parent shall be required to attend the Court before which the case is to be heard during all stages of the proceedings."

6.3. What is the role of parents/legal representative?

The role of the parents/legal representative includes ensuring that the fundamental rights (including the constitutional rights) of the child are respected.

The parental responsibilities and rights are set out at section 7 of the Children's Act and include the responsibility and the right to:

- (a) have custody of the child, provide for the child's basic needs, including



the responsibility to take decisions relating to the child's day-to-day upbringing;

- (b) maintain contact with the child;
- (c) act as guardian of the child; and
- (d) contribute to the maintenance of the child as co-holders of parental responsibilities and rights.

Section 66 of the Children's Act provides for the appointment of a guardian ad litem. Where a child is a victim of, or witness in, a serious offence, including physical or sexual abuse, or where a child is an offender, the Police, a probation officer or an authorised officer may, where:

- (a) there is a conflict of interest between the child and the parent;
- (b) there is a dispute of custody or visiting rights in relation to the child; or
- (c) where no parent is available or the parent is unwilling or unable to act in the best interest of the child,

apply to the Protection Division of the Children's Court for the appointment of a guardian ad litem for the victim, witness or offender.

The Protection Division of the Children's Court may, on its own motion, appoint a guardian ad litem for the child where it is of the opinion that there are special circumstances which necessitate such an appointment and which will benefit the child.

The guardian ad litem shall –

- (a) advocate for the child's best interests before a Court;
- (b) monitor the child's best interests, including any impact caused by the involvement in the justice process, throughout the investigation and the judicial proceedings on the child; and



- (c) make recommendations related to the child's best interests to the Director of Public Prosecutions, the Police and any other person or body in relation to any Court proceedings involving the child.

6.3.1 When are parents/legal representative excluded (.g. perpetrator, exploitative, intimidating/influencing, non-supportive, conflict of interests. . .)?

The attendance of the parent of a juvenile charged with an offence shall not be required where the juvenile was, before the institution of the proceedings, removed from the custody or charge of his parent by an order of a Court (section 59(4) of the Children's Act).

Section 12(1)(b)(ii) of the Children's Court Act further provides that the Court shall ensure that appropriate arrangements are made for the child to be accompanied by his parent, unless the Court designates another person to accompany the child where –

- (i) the parent is the alleged perpetrator of the offence committed on the child;
- (ii) the child expresses a concern about being accompanied by his parent; or
- (iii) the Court considers that it is not in the best interests of the child to be accompanied by his parent.

6.3.2. If excluded, is there another legal representative appointed/ if so by whom?

Answer 6.3 is reiterated whereby the Protection Division of the Children's Court may, on its own motion, appoint a guardian ad litem for the child where it is of the opinion that there are special circumstances which necessitate such an appointment and which will benefit the child.

Section 30 of the Children's Act provides for interdiction from guardianship.

6.4. What kind of measures are adopted to grant the right to privacy / confidentiality (public excluded / in all cases / in which cases? press statements so that child can not be identified?)



Section 27 of the Children’s Act provides the right to privacy of a child.

A Court may, in order to protect the privacy of a child, order that the child be referred to by his initials or a pseudonym in any part of any legal proceedings which is made public.

No person shall, in relation to a child witness, child victim or child offender, publish or broadcast in the media any information in any form, including a photograph, a picture, a video recording or an audio recording, which identifies or tends to identify, the child.

Section 52 further provides that any information obtained during an assessment shall remain confidential.

Section 68 provides for a general confidentiality provision whereby “no officer of the Ministry or of any other Ministry, or member of the Panel or the Child Mentoring Committee shall disclose to any unauthorised person any matter which comes to his knowledge in the discharge of his functions.”

Proceedings may also be held in camera pursuant to section 161A of the Courts Act which reads as follows:

Any Judge, Magistrate or other person having by law authority to hear, receive or examine evidence may, where he considers it necessary or expedient—

- (a) in circumstances where publicity would prejudice the interests of justice or of public morality;*
- (b) in order to safeguard the welfare of persons under the age of 18;*
- (c) in order to protect the privacy of persons concerned in the proceedings;*
- (d) in the interests of defence, public safety or public order,*

exclude from the proceedings (except the announcement of the decision) any person other than the parties to the trial and their legal representatives.

6.5. Is the child allowed to plea for cautionary measures?



Section 55 and 56 of the Children's Act provides for diversion program in lieu of prosecution.

6.6. Does the child have the right to appeal any decision?

Yes, the Children's Court Act provides for a right of appeal against a decision of the Protection Division of the Children's Court and against a decision of the Criminal Division of the Children's Court.

7. Interviewing structure and procedure

7.1 Who hears the child victim/witness in the pre-trial phase / who in the trial phase? How often is a child usually heard in total (pre-trial and trial)? Does the law limit the total number of interviews/hearings conducted?

- Who hears the child victim/witness in the pre-trial phase?

THE CHILDREN'S ACT 2020

PART V – CHILD OFFENDERS, CHILD VICTIMS AND CHILD WITNESSES Sub-Part I – Child Offenders Section A – Criminal Responsibility of Children Sub-Part III – Child Witness and Child Victim

65. Recording of statements from child witness or child victim

(1) Every statement recorded from a child witness or child victim during a criminal investigation shall be recorded by the police, in presence of the parent of the child.

(2) Where the enquiring officer has reasonable grounds to believe that the best interests of a child witness or child victim so require, a statement shall, in the absence of the parent of the child, be recorded in the presence of a probation officer.

(3) The responsibility for the recording of a statement shall lie with the Police in the locality where the child is found, even though the child is ordinarily resident in another locality



- Who hears the child victim/witness in the trial phase?

52. Confidentiality of information obtained during assessment

- (1) Any information obtained during an assessment shall –
- (a) remain confidential; and
 - (b) not be admissible as evidence during any bail application, plea, trial or sentencing proceedings in which a child aged 14 or above is charged as an offender or a child **appears as an alleged victim or witness**.

By virtue of Section 52, it is therefore a Magistrate or a Judge who hears the child victim/witness in the trial phase

- How often is a child usually heard in total (pre-trial and trial)?

No indication in the Act, it depends on a case-to-case basis

- Does the law limit the total number of interviews/hearings conducted?

No indication in the Act. The law cannot limit the total number of interviews/hearings conducted as the offender has also a right to protect under our Constitution.

7.2. Is it mandatory that this professional has specific training for child interviews?

Not mandatory

7.3. Is any kind of interview protocol adopted in your country (pre-trial and/or trial stage)? If so, which one? If so, could you please share it?

- Is any kind of interview protocol adopted in your country (pre-trial and/or trial stage)?

The protocol is set out in the Children's Act passed by the National Assembly of Mauritius on the fifteenth day of December two thousand and twenty. Proclaimed by [Proclamation No. 6 of 2022] w.e.f. 24 January 2022



THE CHILDREN'S ACT 2020

PART V – CHILD OFFENDERS, CHILD VICTIMS AND CHILD WITNESSES Sub-Part I – Child Offenders Section A – Criminal Responsibility of Children

Sub-Part III – Child Witness and Child Victim

65. Recording of statements from child witness or child victim

(1) Every statement recorded from a child witness or child victim during a criminal investigation shall be recorded by the police, in presence of the parent of the child.

(2) Where the enquiring officer has reasonable grounds to believe that the best interests of a child witness or child victim so require, a statement shall, in the absence of the parent of the child, be recorded in the presence of a probation officer.

(3) The responsibility for the recording of a statement shall lie with the Police in the locality where the child is found, even though the child is ordinarily resident in another locality.

- If so, which one?

Same as above

- If so, could you please share it?

52. Confidentiality of information obtained during assessment

(1) Any information obtained during an assessment shall –

- (a) remain confidential; and



- (b) not be admissible as evidence during any bail application, plea, trial or sentencing proceedings in which a child aged 14 or above is charged as an offender or a child appears as an alleged victim or witness.

7.4. Who is allowed to participate in the interview/hearing? Who is sitting in the same room as the child / who is sitting in another room, if any?

- Who is allowed to participate in the interview/hearing?

THE CHILDREN'S ACT 2020

PART V – CHILD OFFENDERS, CHILD VICTIMS AND CHILD WITNESSES Sub-Part I – Child Offenders Section A – Criminal Responsibility of Children

Sub-Part III – Child Witness and Child Victim

65. Recording of statements from child witness or child victim

(1) Every statement recorded from a child witness or child victim during a criminal investigation shall be recorded by the police, in presence of the parent of the child.

(2) Where the enquiring officer has reasonable grounds to believe that the best interests of a child witness or child victim so require, a statement shall, in the absence of the parent of the child, be recorded in the presence of a probation officer.

- Who is sitting in the same room as the child?

THE CHILDREN'S ACT 2020

PART V – CHILD OFFENDERS, CHILD VICTIMS AND CHILD WITNESSES Sub-Part I – Child Offenders Section A – Criminal Responsibility of Children



Sub-Part III – Child Witness and Child Victim

65. Recording of statements from child witness or child victim

(1) Every statement recorded from a child witness or child victim during a criminal investigation shall be recorded by the police, in presence of the parent of the child.

(2) Where the enquiring officer has reasonable grounds to believe that the best interests of a child witness or child victim so require, a statement shall, in the absence of the parent of the child, be recorded in the presence of a probation officer.

- who is sitting in another room, if any?

No indication in the law

However, psychologist or CDU officer may be present.

7.5. Who is addressing the child victim/witness: only the interviewer? cross examination allowed? if only the interviewer, how can other participants ask questions? How is the communication between those who follow the interview and the interviewer? What kind of communication tool is used?

¹Video Conferencing system of the Children’s Court Following the introduction of the Children Court’s Act 2020 and technical assistance from the European Union for the setting up of the Children’s Court, the judiciary is implementing a Video Conferencing system for the new Children’s Court. The system will link the courtrooms and witness rooms located within the premises of the Children’s Court Building. The Video-link between the courtrooms and the witness rooms will allow witnesses to give evidence without the need to be physically present in the Courtroom. A witness can thus be shielded from direct confrontation with the accused party. Thereby assisting him/her to overcome or minimise the psychological trauma associated with being physically present.

7.6. Is the interviewer allowed not to ask the questions raised by others? Is the interviewer allowed to rephrase the questions raised by others?

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- Is the interviewer allowed not to ask the questions raised by others?

Yes

- Is the interviewer allowed to rephrase the questions raised by others?

Section 65(1) of the Children’s Act, (1) Every statement recorded from a child witness or child victim during a criminal investigation shall be recorded by the police, in presence of the parent of the child. It is up to “the Police Officer” to decide what he will record. Since the “parent” or a “Probation Officer” is present there, it is up to “Police Officer” to decide if he has to take on board any question asked by the “parent” or “Probation Officer” and whether to rephrase same in the recording.

7.7. Is the interviews audio and video recorded, if so for what purpose (accuracy of statement, use as evidence in court, use in other courts, other)?

By operation of the law, audio and video recordings are acceptable evidence before any Court if there is no objection for the production of same. However, any “recording” from a child victim/witness should be in writing as same will be put to the offender to rebut what the child victim/witness has been “recorded” from the latter. See Section 65 of the Children’s Act.

65. Recording of statements from child witness or child victim

(1) Every statement recorded from a child witness or child victim during a criminal investigation shall be recorded by the police, in presence of the parent of the child.

(2) Where the enquiring officer has reasonable grounds to believe that the best interests of a child witness or child victim so require, a statement shall, in the absence of the parent of the child, be recorded in the presence of a probation officer.

7.7.1. In case the recording is admitted as evidence in court: what protection measures can be applied (e.g. image and voice distortion, child heard in a separate room etc)?

Images of children are not published in any media.



Yes, can be heard in a separate room. See answer to Q 5.

7.8. How is the quality of the recording? In case of failure in the recording, what are the measures adopted?

- Recordings are normally in statement form and in writing so that the offender may be confronted with same so as the latter's version is recorded. See Section 65(2) of the Children's Act

65. Recording of statements from child witness or child victim

(1) Every statement recorded from a child witness or child victim during a criminal investigation shall be recorded by the police, in presence of the parent of the child.

(2) Where the enquiring officer has reasonable grounds to believe that the best interests of a child witness or child victim so require, a statement shall, in the absence of the parent of the child, be recorded in the presence of a probation officer.

7.9. If no audio/video recording: is the child allowed to review his or her statements and to correct them? Is the child/legal representative allowed to get a copy of written statement / recording?

- If no audio/video recording: is the child allowed to review his or her statements and to correct them?

Statements may normally be reviewed but not corrected. Further statement may be recorded to say what is wrong in the initial statement.

- Is the child/legal representative allowed to get a copy of written statement / recording?

Not at the enquiry stage. However, if the matter has been fixed for trial/hearing, the Child's legal representative (not the child as contained in the question "child/legal representative") may apply for a copy from the prosecution.

7.10. If there is a special procedure for hearing child victims and witnesses, is it



mandatory for the child to participate in such a way or has he/she the right to choose to be heard as any other victim or witness? Are there still adaptations in this case?

Section 71 of the Children's Act makes provision for the Minister to make regulations to protect children whether offenders or Victim/witness as follows:

71. Regulations

- (1) The Minister may make such regulations as he thinks fit for the purposes of this Act.
- (2) Any regulations made under subsection (1) may provide for – (a) the payment of fees; (b) the registration, operation, supervision and control of facilities and services for children, including the procedure for placement in places of safety, excluding hospitals and schools; (c) measures to be taken by services, institutions and associations providing services to children to ensure that persons charged with a criminal offence do not come into contact with children; and (d) such other matter as may be prescribed.

8. Offender's right during or after the interview

8.1. Is the alleged offender allowed to participate in the interview of the child witness? Is his/her defence attorney allowed to participate? Is participation of either of the two mandatory?

- Same answer as 7.10 above. It is for the Minister to make such Regulations for the safety of Children whether an offender or a victim/witness

8.2. If the offender is not present during the interview, how can he or she make additional questions to the child? How can he or she contradict the child's statements?

- The statement recorded from the child is put to the Offender so that he gives his version. The offender has to “contradict” the child’s statement in the offender’s statement itself.

9. Parallel proceedings — coordination



9.1. In case of parallel proceedings (such as in family or child protection procedures) based on the same facts, is it clear who has the priority to conduct the interview?

There is no priority. Section 65 of the Children Act provides as follows

65. Recording of statements from child witness or child victim

(1) Every statement recorded from a child witness or child victim during a criminal investigation shall be recorded by the police, in presence of the parent of the child.

9.2. Is there any coordination procedure between different courts/authorities? How is the coordination procedure?

Sub-Part B – Child Services Coordinating Panel

8. Panel

(1) There shall be a Child Services Coordinating Panel which shall be responsible for the coordination of all activities relating to the implementation of this Act, the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

(2) The Panel shall have such functions as are necessary to further its object most effectively and, in particular –

- (a) shall coordinate child-related public services at inter-ministerial level;
- (b) shall monitor, at national level, any administrative arrangement to support coordination of Government's activities in relation to children;
- (c) shall collaborate with relevant stakeholders with a view to giving better protection to children;
- (d) shall consider cases referred to it by the Ministry; (e) shall make recommendations to any Ministry or other child-related organisation; (f) may set up such committees as may be necessary to assist it in the discharge of its functions;



- (d) shall advise the Minister on any matter governed by this Act or any matter connected with, or incidental to, it; and
- (e) shall discharge such other functions as may be prescribed.

(3) Every Ministry or child-related organisation to which a recommendation is made pursuant to subsection (2)(e) shall, within such period as the Panel may determine, report to the Panel on –

- (a) any action taken on the recommendation; and
- (b) the reason for which partial or no action was taken, as the case may be.

9.3. If another court/authority has not participated in the interview and needs additional information, is this court/authority allowed to interview the child again? And/or can interviews be shared (who can share with whom)?

52. Confidentiality of information obtained during assessment

- (1) Any information obtained during an assessment shall –
 - (a) remain confidential; and
 - (b) not be admissible as evidence during any bail application, plea, trial or sentencing proceedings in which a child aged 14 or above is charged as an offender or a child appears as an alleged victim or witness.

10. Training

10.1. Are judges and magistrates trained to deal with child victims?

Training has increased lately with the advent of the Children's Act 2020, and specialised magistrates have been assigned to the specialised Children's Court.

Case 1: Bhuvanee (Manrakhan) S v Bhuvanee G [2022 SCJ 289] Per Kam Sing, J



“Faced with such report the Court felt that it was important that the minors be heard and this in virtue of Article 388-1 CCM which provides as follows:

388-1 Dans toute procédure le concernant, le mineur capable de discernement peut, sans préjudice des dispositions prévoyant son intervention ou son consentement, être entendu par le juge.

Lorsque le mineur en fait la demande, son audition ne peut être écartée que par une décision spécialement motivée. Il peut être entendu seul, avec un conseiller légal ou une personne de son choix. Si ce choix n'apparaît pas conforme à l'intérêt du mineur, le juge peut procéder à la désignation d'une autre personne.

L'audition du mineur ne lui confère pas la qualité de partie à la procédure.

However, the fact that the children are heard by the Court does not mean that it is bound by their wishes as pointed out in **Dalloz, Répertoire de droit civil, Autorité parentale, note 521, 522:**

521. Aux termes de l'article 373-2-11, 2°, le juge « prend en considération » les sentiments exprimés par les enfants mineurs. Il s'informe de leurs sentiments mais n'est nullement obligé de s'y conformer. La Cour suprême est ici très claire puisqu'elle affirme que le texte n'impose pas au juge de se conformer aux souhaits des enfants en ce qui concerne les modalités d'exercice de l'autorité parentale...

522. Les décisions concernant les enfants doivent donc être prises exclusivement dans l'intérêt des enfants, indépendamment des souhaits, même légitimes, exprimés par les adultes ; toutefois, les enfants mineurs n'ont pas à dicter leur loi à leurs parents alors qu'ils doivent entretenir dans toute la mesure du possible des relations avec chacun d'eux. S'il doit être tenu compte des sentiments exprimés par l'enfant lors de son audition, les dispositions de l'article 290-3° (anc.) du code civil n'imposent pas au juge de se conformer aux souhaits de celui-ci en ce qui concerne les modalités de l'autorité parentale (CA Paris, 7 avr. 1999, D. 1999, IR 142).

The two minor children were examined on 25 March 2022 in the absence of the parties but in the presence of their legal advisers. It was observed that Yanish felt more secure and at



ease when his younger brother is in his company. Both Yanish and Aryan unhesitatingly stated their preference to stay with the applicant and Aryan expressed his clear preference to move to the United Kingdom. More importantly, however, Aryan maintained that he is not willing to see and talk to his paternal grandparents because of the respondent. He went on to level certain accusations against the respondent who had allegedly fiddled with his private parts and nipples. Sadly, he felt that his father does not love him as “*he does things to me*.”

Case 2: M. R. Meneboode v M. G. Barbot [1996 MR 138] [1996 SCJ 283]

“Under *article 375* of our Civil Code, a person may be deprived of the exercise of his parental rights on his conviction in relation to an offence committed on his child or in respect of an offence perpetrated by the child with his participation. A parent may also find his authority taken away under *article 376* for cases falling outside the ambit of a criminal conviction.

Article 376 reads as follows: -

Peuvent être déchés de l’autorité parentale, en dehors de toute condamnation pénale, les père et mère qui, soit par de mauvais traitements, soit par des exemples pernicieux d’ivrognerie habituelle, d’inconduite notoire ou de délinquance, 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.

L’action en déchéance est portée devant la Cour Suprême soit par le Ministère Public, soit par le père, la mère ou un autre membre de la famille ou le tuteur de l’enfant.

The right of parental authority may be lost completely or it can be taken away partially as may be specified by the Court pronouncing the “*déchéance*”.

Although in its terms *article 376* extends over a wide range of situations covering ill-treatment or other reproachable conduct on the part of a parent, the Court will be loath to intervene since “*la déchéance*” remains an ultimate resort that can be envisaged as a measure of protection. However, will be deprived of his parental authority the parent who, by such reprehensible conduct and behaviour falling within *article 376*, seriously places in danger “*la sécurité, la santé ou la moralité*” of the child. Our *article 376 alinéa 1^{er}* is a replica of *article 378-1, alinéa 1^{er}* of the French Civil Code, and according to Dalloz Droit Civil Tome II, under



note 394, “Les termes utilisés à l’article 378-1 sont suffisamment larges pour que le juge puisse tenir compte de tous les comportements répréhensibles des parents.” However, the deprivation of a parent of his right of parental authority is to be viewed not as a punishment inflicted on the defaulting parent but as a means of protection afforded to the child. As pointed out in B Civ [1982] No. 125 which was referred to in *Velleyen v Sungellee and Ministère Public* [1992 MR 28], “la déchéance” of parental authority “ne constitue pas une sanction à l’égard des parents, mais une mesure de protection vis-à-vis de l’enfant.” In *Dalloz Droit Civil (Supra)* I see the following: -

384. b) Nature protectrice de la déchéance.

- La déchéance est prononcée à la suite de graves fautes commises par les parents, qu’il s’agisse d’actes ou de manquements dont l’enfant est la victime directe (mauvais traitements, défaut de soins, etc.), ou de comportements qui constituent indirectement une menace pour l’enfant (crime ou acte de délinquance, par ex.). Mais, dans les deux cas, la déchéance a pour raison d’être de protéger l’enfant et non de sanctionner les parents. Ainsi la déchéance est-elle toujours facultative, qu’elle soit prononcée par le juge civil ou par le juge pénal: peu importe la gravité en soi du comportement qui fonde la demande; tout dépend de la menace que ce comportement fait peser sur l’enfant.

The present application is founded under *article 376* of our Civil Code. Before making an order depriving the respondent of his parental authority, I have to be satisfied that his conducts were such as to put “*manifestement en danger la sécurité, la santé ou la moralité de l’enfant*”. On the evidence placed before me I have no doubt that respondent has so far acted most irresponsibly towards the child. In spite of the fact that on 7 October 1994, after hearing the child the Judge in Chambers varied the order granted to respondent in respect of the right of visit and “*droit d’herbergement*”, limiting it to a right of visit only on Wednesdays from 2.30 p.m. to 5.30 p.m., respondent took away the child on 27 December 1995 and detained him against his will. Respondent prevented applicant from having any access at all to the child, and this, despite the intervention of the Police. Respondent took the child away without informing applicant of his whereabouts. On 29 December 1995 respondent threatened applicant not ever to see the child unless she was prepared to return to live with him. Applicant had to apply for a writ *Habeas Corpus* on 11 January 1996 before her child was finally handed over to her through the intervention of the Judge in Chambers. It is to be pointed out that since the custody of the child was granted to applicant in 1992, respondent has admittedly stopped providing any alimony to the said child showing his lack of interest for the welfare of



the child. It has fully been established to my satisfaction that respondent partakes of drinks and that he is violent. In spite of the fact that respondent is now married, applicant has admittedly tried to convince her to resume cohabitation with him. It is plain therefore that respondent is using the child as hostage to exert pressure on applicant. I am satisfied that the child has been a victim of ill-treatment on account of the dangerously abnormal behaviour of respondent. Under n. 397 of Dalloz Droit Civil (Supra), I read the following:-

397. Hors de toute infraction dont l'enfant aurait été la victime, l'article 378-1 du code civil ouvre largement les voies de la déchéance. Ainsi les "mauvais traitements" visés à l'article 378-1 vont bien au delà de ceux que répriment les articles 312, 319 et 320 du code pénal: ils doivent être entendus non seulement au sens physique, mais aussi au sens moral.

I have seen the child. I accept as true the evidence adduced by applicant that the child lives in constant fear that his father might take him away so that he would not see his mother. I am convinced that the conduct of respondent has had a traumatising effect on the child. I am satisfied that in his interest the child needs to be protected from the danger of his being so taken away by the father whose conduct has put "*manifestement en danger*" the security and the health of the child."

In both cases above, the child/children were child victim/witness.

10.2. Is the content of the training interdisciplinary? Do other professionals also participate in the same training?

- Same answer as 10.1 above –
- Yes content is interdisciplinary.
- Yes Magistrates do attend training organised by the Ministry of Gender Equality and Family Welfare or by the Ombudsperson for Children, together with other professionals

11. Reforms in progress

11.1. Are there reforms in progress in your country regarding child's victim rights, the procedure among others? What is the aim and the main subject of it?



- The Children Act has repealed the following Acts in Mauritius

72. Repeal

The Child Protection Act and the Juvenile Offenders Act are repealed.

The Children's Act has also brought consequential amendments into various Articles of the Code civil Mauricien.

Reforms are indeed in progress in your Mauritius regarding child's victim rights. The Children's Act has prompted the Hon Chief Justice to create a Juvenile Court.

²(e) Juvenile Court District Magistrates also exercise jurisdiction as Magistrates of the Juvenile Court. The Juvenile Court tries young persons suspected of having committed criminal offences. The Juvenile Court also deals with children who are beyond parental control and/or who need care and protection. Following the enactment of the Children's Act 2020, workshops have been organized to familiarize law practitioners and other stakeholders with the new legislation. Full day workshops have also been held on other important topics such as "the Workers' Rights Act", "Gender-based Violence", "Anti Money laundering" and "Cybercrime".

³1.11 REFORM

(i) Following the enactment of the Children's Court Act 2020, the Children's Court has been set up. The building of the ex-Commercial Division of the Supreme Court located at Jules Koenig Street, Port Louis has been used to house the Children's Court.

⁴3. Video Conferencing system of the Children's Court.

Following the introduction of the Children Court's Act 2020 and technical assistance from the European Union for the setting up of the Children's Court, the judiciary is implementing a Video Conferencing system for the new Children's Court. The system will link the courtrooms and witness rooms located within the premises of the Children's Court Building. The Video-link

² Annual Report of the Judiciary 2022

³ ibid

⁴ Ibid



between the courtrooms and the witness rooms will allow witnesses to give evidence without the need to be physically present in the Courtroom. A witness can thus be shielded from direct confrontation with the accused party. Thereby assisting him/her to overcome or minimise the psychological trauma associated with being physically present.

⁵2. Electronic Information Display System- Phase I- New Court House and Children's Court
The project has been completed. It is a Digital Display System for the displaying of information about Court cases held in Court rooms. Information about Court cases will be displaying on Displayed on Digital Boards visible to members of Public and legal practitioners attending Court cases at the New Court House.

⁶3. Case Management System at Children's Court With the imminent setting up of the Children's Court, the Judiciary is making provision to implement a web-based application for filing of cases and end to end case management until disposal of case for the protection and Criminal Division of the Children's Court. A cashier system will also be provisioned at the Children's Court for processing of payment. Public users would be able to perform online payment of fees after being processed.

⁵ ibid

⁶ Annual Report of the Judiciary 2022