



## CHILDREN BELOW THE AGE OF CRIMINAL RESPONSIBILITY IN MAURITIUS: MEASURES, RIGHTS, PROCEDURE, PARTICIPATION

### **National Report for AIMJF's Comparative and Collaborative Research.**

Niños por debajo de la edad de responsabilidad penal en Mauricio: medidas, derechos, procedimiento, participación

*Informe nacional para la investigación comparativa y colaborativa de la AIMJF*

Enfants n'ayant pas atteint l'âge de la responsabilité pénale à Maurice: mesures, droits, procédure, participation

*Rapport national pour la recherche comparative et collaborative de l'AIMJF*

### **Judiciary of Mauritius**

**Abstract:** The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on children below the age of criminal responsibility. The article explains the applicable measures and the procedure adopted, the child's rights and his or her participation in the Protective and Justice System in Mauritius.

**Resumen:** El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre niños por debajo de la edad de responsabilidad penal. El artículo explica las medidas aplicables, el procedimiento adoptado, los derechos del niño y su participación en el sistema de protección y 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 les enfants n'ayant pas atteint l'âge de la responsabilité pénale. L'article explique les mesures passibles d'application et la procédure adoptée, les droits des enfants et leur participation dans le système de protection et de justice à Maurice.

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## 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 measures, procedure, rights and participation of children below the minimum age of criminal responsibility.

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

## Questionnaire

### 1. General Information

*1.1. What is the minimum age of criminal responsibility in your country (the **age of criminal responsibility** is the age below which a child is deemed incapable of having committed a criminal offense, it can also be referred as age of accountability, age of responsibility, and age of liability for children and it is different of the age when a person becomes an adult)?*

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The Children's Act 2020 was enacted in Mauritius to make better provision for the care, protection and assistance to children, including in matters of criminal responsibility and prosecution.

Section 49 of The Children's Act 2020 provides that:

“No child under the age of 14 shall be prosecuted for any criminal offence.”

*1.2. Is there more than one minimum age of criminal responsibility? Which one? Is it possible to apply the ‘doli incapax rule’ in your country (possibility of demonstration that the child is sufficiently mature and capable to understand that the behavior was an offense and therefore could be criminally responsible)?*

No. The legal position is as set out in the provision of the law above. There is no possibility of applying the "doli incapax" rule in view of the clear cut off age of 14 as provided by law.

## 2. Age Assessment

## 3. Police Intervention

*3.1. In case a child under the minimum age of criminal responsibility commits an act considered as a crime, is he/she brought to a police station? Is it mandatory to do so? If not, in which situations is it necessary to be brought to the police station?*

Police intervention in such situations is covered by Section 50 of the Children's Act 2020, dealing with the procedure to be adopted regarding a child under 14 suspected of having committed an offence:

"50. Procedure regarding child under 14 suspected of having committed an offence \_

(1) Where a police officer has reasonable grounds to suspect that a child under the age of 14 has committed an offence, he shall, notwithstanding any other enactment, not detain the child but shall conduct an enquiry and shall immediately inform the Ministry responsible for the subject of probation and aftercare services which shall-

(a) if required, place the child in a place of safety under the care of the Mauritius Probation and Aftercare Service; and

(b) arrange for an assessment by a probation officer and a psychologist of that Ministry for necessary support to the child and his parent.

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(2) Where a child is referred to a probation officer under subsection (1)(b), the probation officer shall, not later than 7 days after the child has been referred to him, conduct an assessment in accordance with section 51(4) to establish the circumstances which led to the commission of the offence'

After assessing the child, the probation officer may -

(3)

- a) refer the child for counselling or therapy;
- b) arrange for the child to access support services designed specifically to suit the needs of children under the age of 14, other than psychological services; or
- c) arrange a meeting, which shall be attended by the child and his parent, and which may be attended by any others likely to provide information for the purpose of the meeting.

The purpose of the meeting referred to in subsection (3)(c) shall be

(4)

- to a) assist the probation officer in establishing more comprehensively the circumstances which led to the commission of the offence;
- b) develop and adopt a written plan of intervention which shall meet the specific needs of the child concerned given the circumstances established under Paragraph <sup>(a)</sup>.

The plan of intervention referred to in subsection (4)(b) shall - (5)

- (a) specify the objectives to be achieved for the child and the period within which they shall be achieved;
  - (b) contain details of the services to be provided to the child and specify the person or organisation that shall provide those services; and
  - (c) state the responsibilities of the child and the parent of the child, or such other responsible adult as may be specified in the plan'
- (6) The probation officer shall record, with reasons, the outcome of the assessment and the decision made in accordance with this section."

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3.2. *In case the child is brought to the police station, what is expected from the police to do? What are the legal guarantees for the child in this context? Is it possible, in any circumstance, that the child be imprisoned, even for a very short time? In this case, how long is it possible for the child to be deprived of liberty?*

There is an elaborate process set out under Section 51 of the Children's Act 2020 for an assessment by a probation officer in such a situation.

"57. Assessment by probation officer

(1) Every child who is alleged to have committed an offence shall be assessed by a probation officer in accordance with subsection (3) and (4).

(2) Where a probation officer is notified by the Police that a child, other than a child under the age of 14, has been arrested, the probation officer shall assess the child before the child appears before the Criminal Division of the Children's Court.

(3) Where a child under the age of 14 has been referred to a probation officer under section 50(1)(b), the probation officer shall, not later than 7 days after the child has been referred to him, conduct an assessment of the child.

(4) The purpose of assessing a child shall be to

(a) establish whether the child is in need of care and protection in order to refer the child to the Protection Division of the Children's Court;

b) assess the age of the child if the age is uncertain;

c) formulate recommendations regarding the release or detention and placement of the child;

d) where appropriate, establish the prospects of the child to be enrolled into a diversion programme;

e) in the case of a child under the age of 14, establish the circumstances which led to the commission of the offence so as to be able to make a decision under section 50(3);

f) determine whether the child has been used by an adult to commit the offence; and

g) provide any other relevant information regarding the child which the probation officer may consider to be in the best interests of the child or which may further any objective which this Act intends to achieve.

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The probation officer shall keep a proper record of all matters relating to an assessment carried out by him under this section, including the outcome of the assessment and the decision made in accordance with section 50."

As may be seen above, the purpose of assessing a child shall be to -

- (a) establish whether the child needs care and protection in order to refer the child to the Protection Division of the Children's Court;
- (b) assess the age of the child if the age is uncertain;
- (c) formulate recommendations regarding the release or detention and placement of the child;
- (d) where appropriate, establish the prospects of the child to be enrolled into a diversion programme;
- (e) in the case of a child under the age of 14, establish the circumstances which led to the commission of the offence so as to be able to make a decision under section 50(3);
- (f) determine whether the child has been used by an adult to commit the offence; and
- (g) provide any other relevant information regarding the child which the probation officer may consider to be in the best interests of the child or which may further any objective which this Act intends to achieve. <sup>11</sup>

It is set out in section 53 that such an assessment may be conducted at a room at a police station, at the Children's Court or at a hospital. The place identified is to respect the child's privacy.

Such an assessment to be attended by the child's parents, unless exempted. A probation officer may co-opt any person who may assist in such assessment. If there is a risk that a child may escape, a police officer may be present during the assessment. The information obtained during such an assessment is to remain confidential.

## 4. Measures

*4.1. In case a child below the minimum age of criminal responsibility has committed an act considered as a crime, is it possible to impose any kind of measure? Which one?*

In case a child below the minimum age of criminal responsibility has committed a possible criminal offence, the probation officer may, under Section 50 of the Children's Act 2020, after assessing the child-

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- (a) refer the child for counselling or therapy;
- (b) arrange for the child to access support services designed specifically to suit the needs of children under the age of 14, other than psychological services; or
- (c) arrange a meeting, which shall be attended by the child and his parent, and which may be attended by any other person likely to provide information for the purpose of the meeting.
- (d) development and adopt a written plan of intervention which shall meet the specific needs of the child.
- (e) decide on release, detention or placement of the child, as appropriate.

4.2. *Is it possible to impose an out-of-home placement (such as alternative care, in institution or foster family; in health facilities, for instance)? in which circumstances? For how long?*

The law (Children's Act 2020) does not provide for any other measures to be imposed on a child below the minimum age of criminal responsibility.

However, Section 50 of the Children's Act 2020 above provides that where a child under the age of 14 is suspected to commit an offence, the probation officer shall conduct an enquiry and immediately inform the Ministry responsible for the subject of probation and aftercare services which shall-

- (a) if required, place the child in a place of safety under the care of the Mauritius Probation and Aftercare Service; and
- (b) arrange for an assessment by a probation officer and a psychologist of that Ministry for necessary support to the child and his parent.
- (c) devise a plan of intervention to meet the child's needs.

## 5.Procedure

5.1. *Who imposes such measures?*

5.1 N/A as no measure is imposed.

5.2. *Is there a legal procedure for the determination of these measures? What is the nature of these procedures? Can you describe it succinctly?*

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5.2 No.

5.3. *Is it possible to adopt alternative resolution mechanisms in these situations, such as mediation or restorative justice?*

5.3 The Children's Act 2020 emphasizes only counseling and psychological support.

## 6. Assessment

6.1. *Is there any kind of assessment of the child for the imposition of such measures (on vulnerabilities, risk, rights violations)? Who assesses the child? Is there a protocol or guideline on how to assess the child? Can you please share it?*

Please refer to the answers above.

Assessment of a child under the age of 14 years is provided by Section 51 of the Children's Act 2020 (discussed in question 3.2 above)

## 7. Legal and procedural guarantees

7.1. *What are the rights of the child in this procedure (legal and procedural guarantees)?*

7.2. *Does the child have the right to refuse any of these measures? Or to challenge in court any of these measures?*

7.1 The law is silent on whether a child has the right to refuse any of these measures.

7.2 The whole process happens under the umbrella of the government authorities (Ministry responsible for child welfare, probation and aftercare service, government psychologists) and with the participation of the child's parents.

7.3. *What happens if the child does not fulfill the obligations inherent to these measures?*

7.3 The law is also silent on what happens if the child does not fulfil the obligations inherent to these measures. . -

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## 8. The role of the justice system

8.1. *Is it possible in your country that the justice system gets involved in these situations? In which situation (vg. to impose the measure or to review it, in case of resistance by the child or his/her family, or to impose some child protection order)? For what purpose? Which branch of the justice system is involved (youth court, family court, child protection court, criminal court...)?*

8.1 The Child Development Unit ("CDU") which operates under the aegis of the Ministry of Gender Equality, Child Development and Family Welfare keeps track of developments in many spheres relating to children. A 24-hour service is offered through hotline 113, although the emphasis so far has been on child victims.

8.2.. *In case of involvement of the justice system, can you briefly describe the procedure?*

8.3.. *What are the rights of the child in this procedure? Does the child have the right to legal assistance? The right to appeal against any kind of decision?*

8'2 and 8'3 To date Mauritius has not seen involvement of the justice system with children below the legal threshold of criminal responsibility being dealt with where they have committed criminal offences.

## 9. Assistance or support

9.1. *Besides the measures imposed to children, are there other kind of assistance available on a voluntary basis (social, psychological, medical)?*

Sections 50 and 51 above give an indication of the legal system in place on this issue.

## 10. Child participation

10.1. *Is the child heard in this procedure? By whom? At which stage of the procedure?*

10.2. *Is the child heard more than once in this procedure? How many times?*

10.3. *Is there a protocol or guideline on how to hear the child in this situation? Can you please share it?*

N/A as there is no such procedure.

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## 11. Legal implications

*11.1. Is there any record of legal infringement committed by children below the age of criminal responsibility? When the child reaches the age of criminal responsibility, are these records taken into consideration?*

11.1 These legal implications, if any, are neither documented nor common to date.

*11.2. In case of damages, what kind of rights and remedies does the victim have regarding the child and the family? Besides financial reparation, does the victim have the possibility to have a say on the measures applied to the child?*

There is no known record either of damages being sought by a victim against a child below the age of 14 and his family.

The legal landscape, moreover, does not yet accommodate the possibility of having a say on the measures applied to the child.<sup>1</sup>

## 12. Reforms in progress

*12.1. Are there ongoing reforms on this subject?*

12.1 The Children's Act 2020 appears to have been in its drafting stage for almost a decade. It was proclaimed in January 2022 and replaced the previous Children's Act 1994. It will be put to the test over time and at now there are, to the best of our knowledge, no plans or talks regarding further legislative reform.

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