

A Critical Analysis of the Treatment of Juvenile Offenders in the Mauritian Criminal Justice System

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Abstract

Within society members evolve and interact with each other according to some established rules and conditions which are common and agreeable to all the members forming the society, including the youths. A breach of those governing rules would constitute an anti-social behaviour and according to the severity of the violation the punishment would be determined. Juvenile delinquency is a social phenomenon faced by societies around the world. Since the Universal Declaration of Human Rights many international instruments have been drafted and some have the status of international law and others are merely guiding principles. The same applies to the administration of juvenile justice. Almost all democratic states have included certain human rights as part of their constitution. Based on the fact that a constitution holds the place of supreme law, their inclusion generally means that they have some degree of priority over the laws enacted by the legislature and administrative actions. As such the constitution of Mauritius is also the supreme law of the Republic. The Republic of Mauritius is a parliamentary democracy modelled on the British system. The separation of powers among the three branches of the Government, namely the Legislative, the Executive and the Judiciary, is embedded in the constitution. The Mauritian legal system is an amalgam of French and British legal traditions. This paper deals with the treatment of juveniles in the Mauritian criminal justice system. An analysis of the situation reveals that the Mauritian authorities need to take more appropriate actions such as adoption of a minimum age of criminal responsibility, implementation of a youth justice system dealing specifically with young delinquents and the introduction of a consolidated children's bill whereby all legal instruments in relations to children, including those in conflict with the law, are included under the same legal framework.

1. Introduction

Within sociology, a society is typically presumed to be a sovereign social entity surrounding a state which organises the rights and duties of each member. The interactions between all members of society are regulated by established rules and conditions which are common and agreeable to all the members forming the society, including the youths. When the governing rules are broken, it constitutes anti-social behaviour which leads to punishment by courts of law. Societies around the world have witnessed significant changes and transformations since the inception of the concept of society. The advent of industrialisation and technology and subsequently the importance that materialism has taken within the norms of today's society have led to the development of new serious social phenomena.

These changes or transitions, from one societal make-up to another, are perceived differently by members of society. The rapid transitions have been the cradle of many tensions and crisis which not only affects the adult members of a society, but the young people and teenagers too. For many young people today, traditional patterns guiding the relationships and transitions between family, school and work are being challenged. Social relations that ensure a smooth process of socialization are collapsing; lifestyle trajectories are becoming more varied and less predictable. Simina Balint, stated that *“An important source of this crisis is represented by a certain valorical confusion regarding the ways of social promotion in the new society and of the integration in the mature life or of preparing for such a life. As a result, the delinquency has risen very much, giving teenagers a frame with strong negative influences. Because of this, a special place in the area of deviance is reserved by the research regarding juvenile delinquency, a phenomenon with negative implications both for society and for the fate of young people.”*¹

This paper aims to analyse the treatment of the young delinquents in the Mauritian criminal justice system. The objectives include examining the laws, both international and national, protecting the juvenile. Second, the age of criminal responsibility will be discussed followed by an analysis of the juvenile in the Mauritian criminal justice system.

2. The Juvenile in International Law

According to the International Juvenile Justice Observatory, there are as many definitions of Juvenile Delinquency as there are countries. *“...each country has its own definition of juvenile delinquency, based on different factors. Furthermore, there are significant differences between juvenile justice systems, in that some countries have drawn up laws on sanctions for young offenders that include a specific penal system, and others apply the same*

¹ JUVENILE DELINQUENCY: CONCEPT; ABOUT JUVENILE DELINQUENCY IN THE EUROPEAN COMMUNITY, S. Balint, University of Oradea, Romania, unknown date of publication.

sanctions to minors as adults while providing for certain limited and reduced measures. In addition to this, there are differences between the ages of juvenile criminal responsibility²". Juvenile delinquency is the broad-based term given to juveniles who commit crimes. Juveniles are defined as persons aged below 18 years³.

The management of the child accused in the criminal justice system is found in a broad spectrum of International Instruments and Treaties. For the purpose of this research, these International Instruments will be defined in 3 categories, namely:

1. Those that are incorporated into domestic law under which the Universal Declaration of Human Rights will briefly be reviewed;
2. Those that are binding treaties whereby the United Nations' Convention on the Rights of the Child (UNCRC) (1989) will be addressed,
3. Non binding treaties under which the following treaties will be considered:
 - a) The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).⁴
 - b) The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).⁵
 - c) The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the "JDL Rules").⁶

3. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly on the 10th of December 1948 in Paris. The declaration is testimony of the international community to give effect, after the Second World War, to the United Nations Charter thereof specifying the rights of every individual. It consists of 30 articles. The significance of the UDHR is that though it is not legally binding, the Declaration has been adopted in or has influenced most national constitutions since 1948. It has also served as the foundation for a growing number of national laws, international laws, and treaties, as well as regional, national, and sub-national institutions protecting and promoting human rights. One instrument that has its roots in the UDHR is the European Convention on

² Opinion of the International Juvenile Justice Observatory, Freedom, Security and Justice: What will be the future? Consultation on priorities of the European Union for the next five years (2010-2014)"

³ Central Statistics Office Mauritius, Crime, Justice and Security Statistics, 2011

⁴ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (referred to as the Beijing Rules). Adopted by the General Assembly Resolution 40/33 of 29 November 1985.

⁵ United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), G.A. res. 45/112, annex, 45 U.N. GAOR Supp. (No. 49A) at 201, U.N. Doc. A/45/49 (1990).

⁶ United Nations Rules for the Protection of Juveniles Deprived of their Liberty Adopted by General Assembly resolution 45/113 of 14 December 1990.

Human Rights (ECHR), formally known as the Convention for the Protection of Human Rights and Fundamental Freedoms.

The ECHR, in article 6, makes provision for the right to a fair trial. As outlined in the Convention, *“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice...”*⁷ Juvenile offenders also benefit from the same rights as any person regardless of their age. Furthermore, these rights are only the overarching guidelines in regards to the fundamental rights of the individual, including children, young people and teenagers.

The influence of these international instruments is such that many constitutions have been inspired from them. It seems obvious that in order to belong to the global village concept, a country should, where it deems appropriate, adhere to instruments such as the UDHR.

3.1 United Nations Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (UNCRC) is the most significant point of reference for youth justice. Its preamble acknowledges the significance of the Beijing Rules, and later documents from the UN embrace the Riyadh Guidelines and the Havana Rules which post-date the Convention. The UNCRC is a comprehensive, internationally binding agreement on the rights of children, adopted by the UN General Assembly in 1989. It incorporates children's rights, i.e. their treatment under the law and the rules that govern it. Thereof, some of the contents of that Convention may be fruitfully reproduced in many legislations worldwide, in order to illustrate the modern trends in dealing with matters concerning the children of the world. In regards to juveniles in conflict with the law, the UNCRC provides in Article 40 of the Convention *“States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society”*⁸. Through the Article

⁷ Council of Europe, Treaty Series, No. 5, European Convention on Human Rights, as amended by Protocols Nos 11 and 14, May 2002

⁸ <http://www2.ohchr.org/english/law/pdf/crc.pdf>

40 of the present Convention, children in conflict with the law are guaranteed certain assurances that their rights are respected at all times, even during judicial proceedings.

It is important to underline that under the Article 40, all states are required to operate separate juvenile justice systems for children in conflict with the law with a non-punitive, child-friendly approach. This obligation, for countries which have adhered to the Convention, gives the latter the full extent of its status of International Law. Furthermore, the Child Rights International Network (CRIN) believes it is never acceptable to try a child in adult criminal courts, no matter what that child's age, alleged actions, or other circumstances.

3.2 The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)

Under the third category of the international instruments, the “Beijing Rules” provides guidance to the signatories for the protection of children’s rights and respect for the development of a separate and specialised system of juvenile justice. It also details the rules and norms for an agreed administration of juvenile justice with particular focus on children rights and their best interest and a developmental oriented approach. Under the Beijing Rules, a juvenile is defined as *“a child or a young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult under Rule 2.2 (a) of the Beijing rules.”*⁹

The gist of the rules is summarised below:

- (1) “Emphasize the well-being” of young people and ensure that any reactions should always be in proportion to the circumstances of both the offenders and the offence;
- (2) Encourage the use of diversion programs which remove young people from the criminal justice process and implement supportive or community services;
- (3) ensure the right to privacy and procedural safeguards including presumption of innocence;
- (4) Ensure that proceedings are conducive to the best interests of the child and that young people have the opportunity to participate and express themselves freely;
- (5) Use inquiry reports on social, family, and educational background to identify and provide appropriate social services;
- (6) avoid institutionalization as much as possible by using other measures such as counselling, probation or community service;
- (7) Use institutionalization only as a last resort; and

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http://web.archive.org/web/20070315193133/http://www.unhchr.ch/html/menu3/b/h_comp48.htm.

(8) Focus the goal of institutionalization on assisting young people in becoming productive members of society.

The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the “JDL Rules”)

The United Nations Guidelines for the Prevention of Juvenile Justice Delinquency¹⁰ were first elaborated at an International experts' meeting on the draft texts held in the Saudi Arabian capital (1988), and is thus referred to as the Riyadh Guidelines or Riyadh rules. Interesting on many fronts, the Rules also focus on early preventive and protective intervention modalities and aim at promoting positive efforts on the part of various social agencies and stakeholders, including the family, educational system, the mass media and the community as well as young people. The Riyadh Rules cover the pre-conflict stage, in other words, before juveniles become in conflict with the law. These rules find their importance in setting a coordinated, multidisciplinary as well as comprehensive measure and framework in prevention strategies defined to help children live a life free from crime, victimisation and conflict with the law.

Furthermore, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the “JDL Rules”)¹¹ sets out specific guidelines which apply to all juveniles held in any form of detention facilities. It covers various aspects of institutional life, such as the physical environment, accommodation, education, recreation, religion, inspection, complaints and return to the community. The JDL Rules advocates for the least possible use of deprivation of liberty such as incarceration in prison or any other institutionalised settings which is in line with the Beijing rules, where the latter stresses on the fact that deprivation of liberty is to be considered as the last resort disposition. These Rules also set forth the aspect that child detention should be separated from adult detention and with a classification of juveniles according to their sex, age, personality and offence with a view to ensuring their protection from harmful influences and risky situations.

The above rules or guidelines provided in the General Assembly Resolutions of this kind are not legally binding but are rather a moral commitment and call for governments to provide practical guidance for the fulfilment of human rights and children rights in the various stages of juvenile justice management and by extension criminal justice management.

4. Age of Criminal Responsibility

It is important to define the responsibility of a child when it comes to offending and criminality, on the basis of the child's knowledge of his or her acts and its repercussions. To

¹⁰ Cited in <http://www.uncjin.org/Standards/Compendium/pt1e.pdf>

¹¹ Cited in <http://www.uncjin.org/Standards/Compendium/pt1e.pdf>

precisely define the age of criminal responsibility is a difficult task as it differs in different countries and legislatures. Most countries have fixed an age below which a child cannot be held criminally responsible for his/her actions. Commonly this is set at ten years, although the age of criminal responsibility can vary between six and twelve years.

The UN Committee on the Rights of the Child has repeatedly expressed the view that the minimum age of criminal responsibility should be twelve years. In 2007, it issued a General Comment on children's rights in juvenile justice, which included comments on the age of criminal responsibility, recommending that the minimum age of criminal responsibility (MACR) should not be fixed at a too low age level¹². It concluded that a minimum age of criminal responsibility below the age of twelve years could not be considered as internationally acceptable and therefore recommended state parties to the Convention on the Rights of the Child to increase their lower age line for criminal responsibility.

The Committee goes even further in recommending that state parties, which have a higher minimum age of criminal responsibility, not to lower it to twelve years old as previously mentioned. This is an important aspect of age of criminal responsibility as the Committee to the Convention itself is indirectly admitting to the fact that defining such age limit to being deemed responsible of a criminal act is inscribed in a dynamic phenomenon.

4.1 Child Development

To further explore the above statement and further advance in this analysis, it is important to understand the dynamics in the psychological development of a child. It seems obvious enough that children and young people are not yet grown up and fully developed either physically, emotionally or cognitively. Nevertheless, there are few widely accepted, integrated models of child development which incorporate all aspects of the child's development over time and into the lifespan. Much thinking about children's development in the past have relied on models now seen to be outdated, not empirically based and reliant upon pre-fixed 'stages' through which it is supposed that all children will go through, at roughly the same age. Indeed one of the biggest weaknesses of big theories is the fact that in an effort to generalise, the individual has been forgotten¹³. As true as two rocks do not resemble each other, the individuality of a person is what makes him different from another person. The psychological makeup and the developmental path taken by each individual

¹² UN Committee on the Rights of the Child, *General Comment No. 10 (2007) - Children's rights in juvenile justice*, CRC/C/GC/10, 25 April 2007; "32. Rule 4 of the [Beijing Rules](#) recommends that the beginning of MACR [*minimum age of criminal responsibility*] shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity. In line with this rule the Committee has recommended States parties not to set a MACR at a too low level and to increase the existing low MACR to an internationally acceptable level..."

¹³ (Rutter & Rutter, 1993: p. 1).

would invariably differ. It is generally agreed that child development can be described across several categories and these include: physical, intellectual, emotional and social development

4.2 Physical development

It is accepted that all children go through certain observable physical developmental stages such as babyhood, infancy, toddler, young child, pre-pubertal, adolescent or teenager and young adult. Such physical developmental stages bring with them less clearly agreed intellectual, emotional and social skills that must be mastered before passing on to the next stage. Changes in the physical make up of a child indicate a maturation of the being. Though it has been argued that psychological maturation is heavily dependent on physical development (Rutter & Rutter, 1993:p.13), there is little reliable connection between externally visible signs of puberty in children and the stages of psychological development¹⁴.

4.3 Intellectual development

In children intellectual development is a changing, dynamic process which is affected by other aspects of the child's development and which can be helped or hampered by environmental and other factors in the child's life. Intellectual development is a lifelong process and is not confined to a particular stage of development. Major developmental changes occur in the intellectual capacities of children between birth and late adolescence. Improved cognitive or thinking capacities are only one aspect of the maturational and learning processes which need to occur to turn the naturally impulsive, self-centred, short-term thinking toddler into a reasonably self-controlled, reflective young adult.

Although it is often said that an individual's intellectual abilities have developed to adult levels by the age of 17 years (Steinberg & Schwartz, 2000), the development of good judgement, emotional and social maturity usually takes much longer to achieve. It is also important not to group all adolescents together since the intellectual functioning of a young adolescent may be very different from that of a late teenager. Furthermore, although adolescents may have the intellectual equipment to attempt adult reasoning, they do not have the experience and range of information on which to base sensible judgements.

When dwelling on the intellectual development of a child, the aspect of mental impairment, learning difficulties and mental retardation cannot be disregarded. As stated in the Occasional Report of the Royal College of Psychiatrists, London, 2006, Dr Eileen Vizard stated that there are definitional problems in regards to terms such as mental impairment, learning disabilities, learning difficulties and mental retardation.

¹⁴ 'A tall, physically mature juvenile with an adult appearance may well have the decision making abilities of a child. An adolescent who carries himself like an adult today may seem like a child tomorrow. Variability between Individuals is still more important; it is difficult to draw generalisations about the psychological capabilities of individuals who share the same chronological age.'(Steinberg & Schwartz, 2000: p. 24).

4.4 Emotional and Social development

Cognitive development and the child's experience of parenting have an influence on the emotional development of a child. Erickson, a developmental psychologist elaborated his theory on the psychosocial development of human beings which consists of eight crises. Each crisis occurs during different age of development. An important part of emotional and social development is the mastering of self-control and the ability to resist impulses. As per Erickson, this ability increases gradually from early age and continues into adulthood. In terms of social development, Dr Eileen Vizard, 2006, cited Rutter, (2002) who stated that the model of children's social development starts with the relationship the children have with their parents. The knowledge of having the support and care of responsible parents comforts the children whereby they are provided with a good role model who protects them from adversity.

5. Juveniles in the Mauritian Criminal Justice System

Almost all democratic states have included certain human rights in their constitutions. Based on the fact that a constitution holds the place of supreme law, its inclusion generally means that it has some degree of priority over the laws enacted by the legislature and administrative actions. As such the constitution of Mauritius is also the supreme law of the Republic¹⁵ which is a parliamentary democracy modelled on the British system. The separation of powers among the three branches of the Government, namely the Legislative, the Executive and the Judiciary, is embedded in the Constitution. The Mauritian legal system is an amalgam of French and British legal traditions. The French ruled over the island from 1715-1810, and the British, from 1810-1968. These two successive colonisations have shaped the legal system of Mauritius in its early days, and the imprints they have left on our laws and on the administration of justice on the island continue to be felt to this date.

In Mauritius, the Ministry of Gender Equality, Child Development and Family Welfare has the overall mandate to provide protective services to children and promote their overall development. The Ministry of Social Security, National Solidarity and Reform Institutions, deals with those children in conflict with the law through the operation of two kinds of centres for juvenile offenders namely; the Rehabilitation Youth Centres (RYC) (for boys and girls) and Probation Centres (one for boys, one for girls). Furthermore, the Mauritian Prisons Services run the only "juvenile prison" called the Correctional Youth Centre (CYC)¹⁶.

¹⁵ <http://www.gov.mu/portal/site/AssemblySite/menuitem.ee3d58b2c32c60451251701065c521ca/>

¹⁶ Economic and Social Indicator (ESI) on crime, justice and security (CJS) statistics, Crime, Justice and Security Statistics, (Police, Judiciary, Prisons and Probation)2011. Statistics Mauritius, Government of Mauritius.

5.1 Juvenile Delinquency in Mauritius

According to the published Economic and Social Indicator on Crime, Justice and Security (CJS) statistics 2011¹⁷, around 700 juvenile offenders were involved in crime and misdemeanours, of whom 300 in assaults and 130 in thefts. About 800 juveniles were contravened for road traffic offences.

According to statistics available, the rate of juvenile delinquency (excluding contraventions) was 5.8 per 1,000 juvenile population in 2011 compared to 5.2 in 2010. The rate for boys (10.6) was much higher than that for girls (0.9) in 2011. In fact, the rate of juvenile delinquency has been rising for the past years: from 1.0 per 1000 in 2000 to 5.8 per 1000 juvenile populations in 2011. According to experts in Criminology, this rising trend has a direct link with the rise in the number of family issues (e.g. divorce, domestic violence, etc)¹⁸.

5.2 The Judiciary

The judiciary in Mauritius is one of the three organs of a sovereign democratic state and is, by virtue of the constitution, vested with the power and responsibility to administer justice in the Republic of Mauritius. The constitution provides for the institution of an independent judiciary which is based on the concept of separation of powers. This is a vital element for the functioning of the democratic system of government in order to uphold the rule of law and afford the necessary protection for the safeguard of the fundamental rights of the citizens of Mauritius. The Chief Justice is the head of the judiciary.

5.3 Juvenile Courts

There are no juvenile courts as a separate institution in Mauritius. This mandate is fulfilled by the district courts in Mauritius and its powers and administration procedures are dictated by the Juvenile Offenders Act of 1935. There are 12 district courts in Mauritius¹⁹ and at all district courts (except the district court of Port Louis, 1st Division) the district magistrates also exercise jurisdiction as magistrate of the juvenile court. The juvenile court tries criminal offences committed by young persons (above 14 years old and below 18 years of age). The juvenile court also deals with children who are beyond parental control and/or who need care and protection.

¹⁷ <http://www.gov.mu/portal/goc/cso/ei984/ESI%20CJS%202011.pdf>

¹⁸ Economic and Social Indicator (ESI) on crime, justice and security (CJS) statistics, Crime, Justice and Security Statistics, (Police, Judiciary, Prisons and Probation)2011. Statistics Mauritius, Government of Mauritius.

¹⁹ Annual Report of the Judiciary 2006, Government of Mauritius.

5.4 Mauritian Law and Juvenile Justice

Beside the fact that the supreme law remains the constitution, the Juvenile Offenders Act of 1935 may be considered as the law that governs the administration of juvenile justice. As it reads, the Juvenile Offenders Act (1935) provides for a definition of “juvenile” as “.. a person under the age of 18...” and “ young person” as “... a young person who has attained the age of 14 and is under the age of 18...”²⁰. The present act makes provision under its sections for an array of provisions in regards to administration of juvenile justice.

5.5 Juvenile Offenders Act 1935

The Act states that a district court that is sitting to hear any charge held against a juvenile or that is carrying out any other actions or jurisdictions as conferred on juvenile courts by the present Act or any other enactment will be considered and known as a juvenile court²¹. Furthermore, the Act also provides that the President may;

- a) “... by Proclamation specify the places in which juvenile courts are to sit.
- b) “... Notwithstanding the Courts Act, the President may specify places other than District Courts”²²

The Act also makes a certain distinction of which offences committed by a juvenile should be heard in a juvenile court. As such, any offence other than an offence under sections 50 to 76, 216 to 223, 228 (3) and 229 of the Criminal Code, will give a district magistrate the power of jurisdiction to hear, try and determine the charges arising in a case and to determining the conviction to impose any arising penalties to the juvenile. Such regulations to the proper setting up of a juvenile court is important as a juvenile or child in conflict with the law is given the appropriate institutional framework and set up to appear before the law.

Besides the fact that juveniles benefit from same rights as any accused, procedures for criminal hearings may occur ‘in camera’, that is, the case is heard with only the people concerned with the case, lawyers, witnesses, police prosecutors and court officers. Furthermore, the Juvenile Offenders Act makes provision for securing the identity of the juvenile accused and any recordings made during the hearing of the case.

5.6 Assignment of matters to juvenile court

In this section of the law²³, it is interesting to note that it is stated in subsection 2 (b), and (c), that even if a charge has been made jointly against a juvenile and a person aged above 18

²⁰ The Juvenile Offenders Act 1935, Act 11/1935.

²¹ Section 3 of the Juvenile Offenders Act 1935, Republic of Mauritius,
www.gov.mu/portal/goc/ssns/file/juvenileoffendersact.pdf

²² Section 3, subsection 2 (a) and (b), of the Juvenile Offenders Act 1935, Republic of Mauritius,
www.gov.mu/portal/goc/ssns/file/juvenileoffendersact.pdf

²³ Section 4 of the Juvenile Offenders Act 1935, Republic of Mauritius,
www.gov.mu/portal/goc/ssns/file/juvenileoffendersact.pdf

years old, the hearing should take place in an adult court²⁴. Subsection 2(c) of Section 4 of the Juvenile Offenders Act also states that in the occurrence of the fact that a juvenile is charged with an offence, the charge may be held in a court other than that of a juvenile court if the charge or charges involves another person aged 18 or above and is charged at the same time with aiding, abetting, causing, procuring or permitting that same offence. Therefore, it may allow a juvenile to be tried as an adult in an adult court.

5.7 Consideration to gender and separation of juveniles from adults

Another interesting section of the present Act lies in the section 8 entitled “*Separation of Juveniles from adults*”²⁵ whereby it is the responsibility of the Commissioner of Police to make sure that arrangements are made for preventing a juvenile while being detained in a police station, or while being transported to and from any criminal court, or while waiting before or after attendance in any criminal court, from associating and interacting with any adult apart from a relative or guardian. Such provision also makes note that the above shall prevail if the defendant is a juvenile and that no other person of 18 years or above is associated with the charges as well. Also, if a juvenile is of female gender, the Commissioner of Police should ensure that the female juvenile is under the care of a woman while she is detained, conveyed or waiting.

5.8 Section 15 and 16 of the Juvenile Offenders Act

Punishment under the law for an offence and any restrictions thereof are considered under these sections. The present Act, under section 15 specifically states that no juvenile under the age of 14 years shall be sentenced to penal servitude for any offence. In case of non payment of fine, damages and costs, as far as possible, the young person should be dealt with in any other way.

Section 16 of the present Act deals with punishment of certain serious crimes and makes provision that no juvenile shall be sentenced to death where the offence occurred at such a time where the defendant was aged under 18 years. Where a juvenile is convicted of an attempt at or of complicity in murder; manslaughter, or wounds and blows causing death under sections 228 (3) and 229 of the Criminal Code, and where the appropriate court is of the opinion that no other methods to deal with the juvenile offender may be suitable, the young person may be detained or imprisoned for a period of time. That period of time is referred to in Section 22 (2) (a) and (b)²⁶.

²⁴ Interpretation made if Section 4 (2) (b) and (c)

²⁵ Section 8 of the Juvenile Offenders Act 1935, Republic of Mauritius,
www.gov.mu/portal/goc/ssns/file/juvenileoffendersact.pdf

²⁶ Section 22 of the Juvenile Offenders Act 1935, Republic of Mauritius,
www.gov.mu/portal/goc/ssns/file/juvenileoffendersact.pdf

5.9 Critical analysis of the Juvenile Offenders Act

One of the recommendations of the UN Committee on the Rights of the Child, in regards to the Second Periodic Report (2005) on the implementation of the commitments taken while ratifying the CRC, was that there is no defined age of criminal responsibility set by and in law in Mauritius²⁷. Indeed, in Mauritius, there is no legal instrument defining the age where a child can be prosecuted for a criminal offence, but the power to prosecute lies solely in the hands of the Director of Public Prosecutions. It is important to understand that the Director of Public Prosecutions is the only instance which can decide whether a child in conflict with the law should be prosecuted or not. There are many aspects of the Juvenile Offenders Act that may cause concern or may raise issues in legalities and academic questions in regards to administration of juvenile justice. For instance, in section 28 of the Juvenile Offenders Act as amended entitled “Presumption and determination of age”, it is stated that;

“(1) Where a person, whether charged with an offence or not, is brought before any court, otherwise than for the purpose of giving evidence, and it appears to the court that he is a juvenile, the court shall make due inquiry as to his age, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case.”²⁸

“(2) An order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of the person brought before it shall, for the purposes of this Act, be deemed to be the true age of that person and, where it appears to the court that the person so brought before it has attained the age of 18 that person shall for the purposes of this Act be deemed not to be a juvenile.”²⁹

So, the question arising at this point is how does the juvenile court, for that matter, the state decide on the proper age of the juvenile. The child or young person would have to be declared with an established date of birth. But the fact remains that it is not always the case. The government of Mauritius has put in place such facilities for tardy declaration of birth but there may exist such cases where a child or a young person is not declared. When such a non declared child comes in conflict with the law, and when there is need for establishing the age of the person, the legislation does not seem to provide clear instructions or guidelines. Furthermore, there are no provisions in law for cases of orphans and street children, where there are not direct or indirect family, guardian or person responsible for the child or young person. It may be best practice in such cases to refer the child to instances such as shelters or

²⁷ <http://www.crin.org/resources/infoDetail.asp?ID=13920&flag=legal>

²⁸ Section 28 of the Juvenile Offenders Act as amended, Republic of Mauritius.

²⁹ Section 28 of the Juvenile Offenders Act as amended, Republic of Mauritius.

be under the responsibility of the State and in cases of detention and imprisonment, the RYC or the CYC, but it is unclear that these practices are in the best interest of the child.

But the most pressing and foremost issue of the Juvenile Offenders Act is that it is more than 60 years old and as such may need revision and update. The evolution of society and societal values has been cause for much concern in the prevalence of increasing juvenile crime rate. In that respect, the society is facing new forms of offences such as cybercrime. For these crimes, where the juvenile is not shielded from committing an act against the system and society, the administration of juvenile justice needs to be aligned with such evolution.

In regards to magistrates attending cases of juvenile delinquency, they are not specialised in dealing with juvenile cases specifically, nor are they required to. Magistrates who sit in adult cases may also be brought to sit in a juvenile court.

6. Conclusion

Throughout the paper it has been shown that there are several measures being taken to cater for the rights of children who are in conflict with the law. The enactment of many legislations and provisions made therewith are also testimony of the commitments taken worldwide by states which have ratified United Nations Convention on the Rights of the Child. The different ways in which the binding articles have come into effect in various legislations have also been analysed.

In the case of Mauritius, the fact remains that these articles, though binding, do not seem to affect the legislation and laws. International treaties ratified are not automatically integrated into the domestic laws of Mauritius. Instead, wherever necessary, changes and amendments are made to comply with the international norms and commitments taken. Instead, Mauritius has a Transformation doctrine when it comes to include international norms in domestic legislation. To that effect, many provisions made in the UNCRC for example are found in various pieces of Mauritian legislation such as the Juvenile Offenders Act, the Child Protection Act and the Criminal Code Act. Having so many provisions made to cater for children in conflict with the law and, for that matter, provisions made for the protection of the rights of children in different legislations may make it difficult to refer and apply these legislations consistently.

Following a statement made by the then Minister of Women's, Child Development and Family Welfare when presenting the Second Periodic Report on the Convention of the Rights of the Child³⁰, Mauritius is in the process of drafting a Consolidated Children's Bill which will incorporate under one legislation all provisions made for children. It would be the ideal

³⁰ State Party Examination of Mauritius' Second Periodic Report, Session 41 of the Committee on the Rights of the Child, Geneva, 9 – 27 January 2006, Page 1

moment and an opportunity to address the gaps in the present legislations such as the introduction of a formal age of criminal responsibility.

Although the Attorney General's Office and the Office of Director of Public Prosecutions have stated in the Third, Fourth and Fifth Periodic Report on the Convention of the Rights of the Child for the period 2006-2010³¹, provisions are being made for setting up a Training Institute to provide for the continuous training of judges, magistrates and law officers, such an initiative is still pending.

Furthermore, procedures to be observed by police officers when dealing with minors or juveniles delinquents or youths found in conflict with the law, need to be standardized and made such that they cater for the best interest of the child and safeguard their rights. Special procedures to be observed when dealing with young offenders may be the gateway for an improved administration of the juvenile justice in Mauritius.

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³¹ Third, Fourth and Fifth Periodic Report on the Convention of the Rights of the Child, July 2010, Page 10 paragraph 21

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