

THE CHILD PROTECTION (AMENDMENT) BILL 2005

Bill No. 36 of 2005

Explanatory Memorandum

The object of this Bill is to amend the Child Protection Act to make better provision for the -

- (a) prevention, suppression and punishment of trafficking in children;
- (b) protection of children generally.

I Seebun

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Child Development, Family Welfare
and Consumer Protection

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(No. 36 of 2005)

ARRANGEMENT OF CLAUSES

Clause

1. Short title ,
2. Interpretation
3. New sections 13A to 13C inserted in principal Act
4. Section 18 of principal Act amended
5. Section 21 of principal Act amended
6. Consequential amendment

A BILL

To amend the Child Protection Act

ENACTED by the Parliament of Mauritius, as follows-

1. Short title

This Act may be cited as **Child Protection (Amendment) Act 2005**.

2. Interpretation

In this Act-

"principal Act" means the Child Protection Act.

3. New sections 13A to 13C inserted in principal Act

The principal Act is amended by inserting immediately after section 13, the following new sections-

13A. Child trafficking

(1) Any person who wilfully and unlawfully recruits, transports, transfers, harbours or receives a child for the purpose of exploitation shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 15 years.

(2) Any person who wilfully and unlawfully recruits, transports, transfers, harbours or receives a child -

(a) outside Mauritius for the purpose of exploitation in Mauritius;

(b) in Mauritius for the purpose of exploitation outside Mauritius,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 15 years.

(3) Any person, who, in any place outside Mauritius, does an act preparatory to, or in furtherance of, the commission of an offence under subsection (1), shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 15 years.

(4) (a) Any person who takes part in any transaction the object or one of the objects of which is to transfer or confer, wholly or partly, temporarily or permanently, the possession, custody or control of a child in return for any valuable consideration shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 15 years.

(b) Any person who, without lawful authority or reasonable excuse, harbours or has in his possession, custody or control of any child in respect of whom the temporary or permanent

possession, custody or control has been transferred or conferred for valuable consideration by any other person in or outside Mauritius, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 15 years.

- (5) (a) No press report of any court proceedings relating to an offence under this section shall include any particulars calculated to lead to the identification of any child who is the victim of that offence, nor shall any photograph or picture be published in any newspaper or broadcast as being or including a photograph or picture of that child.
- (b) Any person who contravenes paragraph (a) shall commit an offence and shall, on conviction, be liable in respect of each offence to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding one year.

- (6) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section.

- (7) In this section -

"exploitation" includes the exploitation of the prostitution of children or other forms of sexual exploitation, forced labour or services, slavery or , practices similar to slavery, servitude or the removal of organs.

13B. Abandonment of child

- (1) Any person who, for pecuniary gain or by gifts, promises, threats or abuse of authority, incites the parents of a child to abandon the child or a child to be born shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 8 years.
- (2) Any person who, for pecuniary or other gain, acts as an intermediary between a person wishing to adopt a child and a parent willing to abandon a child or a child to be born, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to penal servitude for a term not exceeding 15 years.
- (3) Any person who exposes and abandons in a secluded spot any child, and any person who orders the child to be exposed, where such order has been executed, shall, for such act alone, be liable, on conviction, to a fine not exceeding 250,000 rupees and to imprisonment for a term not exceeding 5 years.
- (4) Where, in consequence of the exposure and abandonment specified in subsection (3), the child becomes mutilated or lame, the offence shall be deemed to a wound wilfully inflicted on such child by

the person who has so exposed and abandoned the child, and where death has ensued, the offence shall be deemed to be manslaughter, and in the former case, the offender shall suffer the punishment ordained for a wilful wound, and in the latter case, that for manslaughter.

- (5) Any person who exposes and abandons a child in a spot that is not secluded, shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.
- (6) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section.

13C. Abducting child

- (1) Any person who, by force or fraud, without the consent of the legal custodian -
 - (a) takes away or causes to be taken away a child; or
 - (b) leads away, decoys, entices or causes to be led away, decoyed or enticed, a child out of the keeping of the custodian or from any place where the child has been placed or is with the consent of the custodian,

shall commit the offence of abduction, and shall, on conviction, be liable to penal servitude for a term not exceeding 12 years.

- (2) Any person who unduly fails to present a child to the person who has the right to claim the child, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.
- (3) In the case specified in subsection (1), where the abduction is committed without fraud or violence, the offender shall be liable to penal servitude for a term not exceeding 8 years.
- (4) Where an offender who has committed an offence under subsection (1) has civilly married the child whom he has so taken away, he shall not be prosecuted, except upon the complaint of the parties who have the right, under the Code Napoleon, of suing for the nullity of such marriage, and he shall not be convicted until after the nullity of the marriage has been pronounced.
- (5) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section.

4. Section 18 of principal Act amended

Section 18 of the principal Act is amended –

(a) in subsection (5)-

- (i) in paragraph (a), by deleting the words "to a fine not exceeding Rs 75,000.and to imprisonment for a term not exceeding 8 years" and replacing them by the words "to penal servitude for a term not exceeding 15 years";
- (ii) in paragraph (b), by deleting the words "to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 5 years" and replacing them by the words "to penal servitude for a term not exceeding 10 years";

(b) by inserting immediately after subsection (5), the following new subsection -

(5A) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under subsection (5).

5. Section 21 of principal Act amended

Section 21 of the principal Act is amended in subsection (2), by inserting after the words "as the Minister may deem fit", the words " including institutions providing for the physical, psychological and social recovery of victims of harm or trafficking".

6. Consequential amendment

The Criminal Code is amended by repealing sections 262A to 271.