

Safeguards for the protection of the rights of children born from surrogacy arrangements

1.0 Identity, origins and parentage

1.1 Legal framework pertaining to identity rights in the Republic of Mauritius.

1.2 There is no legal framework which allows any form of egg donation, sperm donation or surrogacy in the Republic of Mauritius. However, regarding (a) identity rights, (b) access to origins and (c) available practices in preventing/ remedying violations of human rights the relevant extracts of legislations are as follows:

(a) The Constitution of the Republic of Mauritius

According to Section 22, every person born in Mauritius after 11 March 1968 shall become a citizen of Mauritius at the date of his birth:

Provided that a person shall not become a citizen of Mauritius by virtue of this section if at the time of birth:

- a) Neither of his parents is a citizen of Mauritius; or
- b) Either of his parents is an enemy alien and the birth occurs in a place then under occupation by the enemy.

(b) The Civil Status Act 1981

- Section 3 of the Civil Status Act provides that "*subject to subsections (2) and (3) and sections 15,16 and 17, a declaration of birth shall be made –*

a) before an officer of the district in which the birth took place or in which the parents resided at the time of the birth;

b) within 45 days of the birth,

and shall be registered in the appropriate register"

- Under sections 12 (2) and (3) of the Civil Status Act, where a birth which has not been registered within the time frame as provided under section 12 (1) of the Civil Status Act, then the Applicant may proceed by way of tardy declaration.

- Section 4 of the National Identity Card Act provides for every person who is a citizen of Mauritius to register for an Identity Card within 6 months of attaining the adult age of 18.
- Regarding violation of human rights, an aggrieved person may seek redress before the Supreme Court in respect of any alleged violation of human rights and under section 17 of the Constitution, where the person alleges that any of sections 3 to 16 has been, is being or is likely to be contravened in relation to him.
- Section 14. Responsibility for declaration of birth:
 - 1) (a) Subject to paragraph (b), the father or mother of a child shall declare the birth of the child.

(b) Where a child is born in a prison, asylum, quarantine area or station, orphanage or other institution and the father is unknown or untraceable and the mother has passed away, is insane or otherwise incapable on medical grounds of declaring the birth, the person in charge of that place shall declare the birth.

(c) The Code Civil Mauricien

Toute personne doit posséder un nom servant à la désigner dans la vie sociale et juridique en vue de l'exercice de ses droits et de l'accomplissement de ses devoirs.

[art.24 inserted by s.3 of Act 25 of 1981.]

Le nom patronymique d'une personne est celui de la famille à laquelle elle appartient par la filiation ou à laquelle elle est liée par le mariage

Le nom patronymique doit être précédé d'un ou de plusieurs prénoms.

[Ar.24 inserted by s.3 of Act 25 of 1981]

Le nom patronymique peut aussi s'acquérir par une décision de l'autorité administrative.

1.3 In Mauritius there is no specific law in relation to gamete donors, but the Civil Status Act caters for inter alia registration of births, tardy declaration as referred above.

1.4 The general safeguards protecting the family environment are to be found in various pieces of legislations as listed hereunder-

- a) In relation to custody of children, following a judicial separation and/or divorce of spouses, section 18 of the Divorce and Judicial Proceedings Act provides as follows-

Orders for Custody of Children

"(1) On granting a decree, the Court shall make such order for the custody of any minor child as it thinks fit.

(2) An order made under subsection (1) may be made in favour of either party or of any other person, whether or not related to the child, who consents to the order being made in his favour.

(3) In making an order under subsection (1), the Court shall have regard to the interests of the child concerned as the first and paramount consideration.

(4) In determining the interests of the child under subsection (3), the Court shall inquire into all the circumstances of the case and shall for that purpose hear the child if the child is above the age of 10 and capable of discernment.

(5) The party to whom custody of a child has not been granted shall be granted a right of visit to the child on such conditions as the Court thinks fit."

- b) Under section 15 of the Divorce and Judicial Proceedings Act, the Court may, at any time, on application made by either party, amend or discharge an order made under section 13, an agreement made under section 14 or an agreement made under article 238-3 of the Code Civil Mauricien ("the CCM"), if it appears necessary to do so, having regard to any material change in the circumstances relating to either of the parties or to any child.
- e) Regarding adoptions, there are three methods by which an interested party may wish to proceed before Family Division of the Supreme Court namely (a) by way of adoption simple vide article 343 to 363 of the CCM ; (b) adoption plénière vide articles 364 to 369 of the CCM; (c) and by legitimisation par adoption vide article 370 to 370-
- d) The Judge will only grant an adoption provided all the conditions as provided under the CCM are met and provided that the adoption is in the best interests of the child vide article 353 of the CCM, which article applies to adoption simple; adoption plénière and legitimisation par adoption.
- e) In so far as the existing laws and practices regarding the establishment and recognition of legal parentage same are provided under-
 - o articles 319 to 330 of the CCM are in relation to *des preves de la filiation des enfants légitimes*;

- articles 331 to 333 of the CCM are in relation to *de la legitimisation des enfants naturels*;
 - articles 334 to 342-1 of the CCM are in relation to *de la reconnaissance des enfants naturels*.
- f) Regarding contestation of legal parentage there is a presumption that a child born from a marriage bears the surname of his father as provided under article 26 and 27 of the CCM. However, there are instances where an interested party may bring a case for contestation of legal parentage as provided under article 312-318 of the CCM.
- g) The existing law in relation to children that are ill-treated, neglected, abandoned or otherwise exposed to harm is to be found under section 8 of the Child Protection Act, which reads as follows-

(1) *Where the Permanent Secretary has reasonable ground to believe that a child is ill-treated, neglected, abandoned, destitute or otherwise exposed to harm, and that it is in his interests to be committed to a place of safety, he may apply in writing to the Court for a committal order.*

(2) *Upon an application under subsection (1), the Court-*

(a) *may make an interim order for the child to be put in a place of safety for a period not exceeding 14 days and may extend such interim order for further periods of 14 days until the final determination of the application;*

(b) *shall order an urgent enquiry and report by the Probation Service as to the child's family background, general conduct, home surroundings and school record as may enable it to deal with the case in the best interests of the child;*

(c) *may request that the child be medically examined.*

(3) *Where after hearing evidence including that of any parent, wherever possible and practicable, the Court considers it necessary in the interests of the child, it shall order that the child be committed to a place of safety until the child reaches the age of 18 or for such shorter period as the Court may deem fit.*

(4) *An order made under subsection (3) may be varied in the interests of the child at the instance of any interested party.*

(5) *Any expenses incurred for the care and protection of a child who has been committed under subsection (3) may be recovered from any parent of the child.*

2.0 Sale of Children

2.1 Legal framework prohibiting the sale and trafficking of children in the Republic of Mauritius

- **The Child Protection Act 1994**
- **Combatting of Trafficking in Persons Act 2009**

2.2 There are laws prohibiting the sale and trafficking of children which, are to be found under sections 13A, 13 B and 13 C of the Child Protection Act and section 11 of the Combatting of Trafficking in Persons Act which read as follows-

"13A. Child trafficking

(1) Any person who Willfully 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 30 years.

(2) Any person who willfully 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 at term not exceeding 30 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 30 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 30 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 30 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 200,000 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.

(7) Where the Court finds that a person who has parental responsibility and rights in respect of a minor has committed an offence under this section in relation to that minor, it may-

(a) suspend the parental responsibilities and rights of that person; and

(b) order the minor to be admitted to a place of safety for such period as things fit.

(8) In this section, "exploitation" has the same meaning as in the Combating of Trafficking in Persons Act."

"13B. Abandonment of child

(1) Any person who, for pecuniary gain or by gifts, promises, threats or abuse of authority, incites a parent to abandon a 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 20 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 700,000 rupees and to penal servitude for a term not exceeding 30 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 500,000 rupees and to imprisonment for a term not exceeding 10 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 be a wound willfully 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 willful 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 200,000 rupees and to imprisonment for a term not exceeding 5 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 25 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 200,000 rupees and to imprisonment for a term not exceeding 5 years.*

(3) *In the case specified in subsection [L], where the abduction is committed without fraud or violence, the offender shall be liable to penal servitude for a term not exceeding 20 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 Civil Mauricien, 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."*

Combatting Trafficking in Persons Act 2009- Section 11

(1) (a) Any person who traffics another person or allows another person to be trafficked shall commit an offence.

(b) It shall not be a defence to a charge under paragraph (a) that a person who is a victim of trafficking or a person having control or authority over a minor who is a victim of trafficking, has consented to the act which was intended to constitute trafficking.

(2) Any person who knowingly-

(a) leases a room, house, building or establishment or subleases or allows it to be used for the purpose of harbouring a victim of trafficking; or

b) advertises, publishes, prints, broadcasts, distributes, or causes the advertisement, publication, broadcast or distribution of, information which suggests or alludes to trafficking by any means, including the use of the internet or other information technology, shall commit an offence.

(3) (a) Every internet service provider operating in Mauritius shall be under a duty to report to the Police forthwith any site on its server which contains information in contravention of subsection (2) (b).

(b) Any internet service provider who fails to comply with paragraph (a) shall commit an offence.

(4) Any person who knowingly benefits, financially or otherwise, from the services of a victim of trafficking or uses, or enables another person's usage of, the services of a victim of trafficking shall commit an offence."

3.0 Since there are no specific provisions relating to surrogacy in Mauritius, no data is available.