

## **Situation of Lesbian, Gay, Bisexual and Transgender (LGBT) people in Mauritius**

### **Brief Assessment of the Implementation of the Cycle 2 of the UPR:**

In 2013, Mauritius received **three** recommendations during Cycle 2 of the Universal Periodic Review (UPR) coming from **Australia, Canada and Ireland** all pertaining to the **decriminalisation of same-sex sexual conducts of people of legal age**. The State Party **noted** the recommendations. There has been no State action towards the implementation of these recommendations.

### **National framework:**

During –the past four years, Mauritius has made some progress for the rights of LGBT people:

- **Since 2014**, Lesbian, Gay and Bisexual people are allowed to donate blood following a complaint made at the Equal Opportunities Commission by a gay person. The matter was solved through conciliation with the Ministry of Health and Quality of Life.

Afrobarometer, a pan-African, non-partisan research network published its [No. 225 bulletin](#) on democracy, governance, economic conditions, and related issues in its 3<sup>rd</sup> publication for Mauritius in 2018 stating that **56% of Mauritians expressed their tolerance for people in same-sex relationships**, an increase from 49% in 2014. 5% say they would like and 51% say they would not mind having homosexuals as neighbours.

### **The rights most commonly violated:**

Right to non-discrimination

Right to prohibition from arbitrary detention

Right to privacy

Right to a family

Right to be protected from violence based on one's sexual identity

Right to equality before law

Right to equality before courts and tribunals and a fair trial

### **Challenges *Cases, facts, comments, impact***

*Violence and hate speech against persons based on their sexual orientation and gender identity*

- According to a survey conducted by the Young Queer Alliance (YQA) in 2017, an alarming 60.2% of respondents reported being victims of discrimination, stigmatisation and/or violence due to their sexual orientation and/or gender identity.
- In 2013, Geoffrey Robertson (QC) submitted a preliminary report entitled “Media Law and Ethics in Mauritius” whereby proposing that hate speech in the media targeting, inter-alia, sexual orientation be made an offence under Mauritian laws.
- In 2016, the Law Reform Commission (LRC) of Mauritius, in its Interim Report on “Reform of Criminal Code” suggested that article 282 of the Criminal Code of Mauritius be revised to include sexual orientation as a social group on aggravating circumstances grounds.
- On 19 September 2016, a transgender person named Giovanni who worked for the Association VISA G (a transgender-led organisation) reported being arbitrarily arrested, humiliated and brutalised by Police Officers of Sodnac and Central Investigation Division of Quatre – Bornes.
- During the Gay Pride 2017 and 2018, there were violent homophobic attacks despite the presence of law enforcement authorities; and a number of LGBT activists and organisers of the Gay Pride received death threats.

*Marriage equality / Civil partnership*

- According to a survey carried out by the Young Queer Alliance (YQA) in 2017, from among the top five priorities to be included on the LGBT agenda in Mauritius during the next five years (i.e., 2018 to 2022), **civil partnership/marriage equality** was chosen as the **first priority** (73.1%) and **adoption rights** was voted the **fourth priority** (56.6%) by respondents. This, thus, expresses the (legitimate) wish and need of LGBT people to enjoy the ‘privilege’ of having a family life, social recognition and social protection on an equal footing as their heterosexual co-citizens.

*Decriminalisation of consensual same-sex sexual acts among people of age of consent*

- On 27 July 2015, the Civil Status Division (CSD) of the Republic of Mauritius refused to register the marriage of two same-sex individuals on the basis that the laws of Mauritius do not recognise marriage between people of same-sex. Accordingly, the couple lodged a complaint at the Equal Opportunities Commission (EOC) and in 2016, by way of a letter dated the 7<sup>th</sup> June 2016, the EOC stated that “... *there is no provision in our laws for civil marriage of two persons of the same sex.*”
- The Constitution of Mauritius guarantees the following:  
**Article 3:** Fundamental rights and freedoms of the individual  
**Article 5:** Protection of right to personal liberty; and  
**Article 9:** Protection of privacy of home and other property
- Section 250 of the Criminal Code 1838 of Mauritius is entitled ‘Sodomy’ and ‘Bestiality’. This amalgamation of two different actions under a single section is suggestive of the fact that the two acts, through different are being treated as being of similar severity.
- On the 7<sup>th</sup> December 2016, in a [press article](#), it was reported that a minor (17 years old) was arrested after his boyfriend (15 years old) was pressurised by his parents to make a complaint against the former of engaging in the act of Sodomy. On Monday the 5<sup>th</sup> December 2016, the accused (17 years old) was convicted for a provisional charge of the Crime of Sodomy and was sent back to jail due to the police having objection to conditional liberty.
- The Law Reform Commission (LRC) in its Issue of June 2007, gave substantive arguments for the decriminalisation of sodomy as per human rights treaty obligations, Article 17 of the International Covenant on Civil and Political Rights (ICCPR) to which Mauritius is signatory and precedent cases in other jurisdictions.
- In 2017, the Director of Public Prosecutions has advanced that Section 250 of the Criminal Code 1838 of Mauritius might not be constitutional stating: “... *the likelihood that the section [Section 250] may not pass the test of constitutionality is a high one.*”

### Proposed SOGIE recommendations for Mauritius:

1. To develop and implement policies and programmes (e.g. training courses) for police officers, judges and prosecutors and conduct awareness campaigns for the general public on the rights of LGBT people;
2. To amend Section 282 of the Criminal Code Act 1838 by inserting a direct indication that hate crimes motivated on the basis of real or perceived sexual orientation, gender identity and gender expression, would be an aggravating circumstance, punishable by law;
3. To strictly adhere to and implement the provisions of the Equal Opportunities Act 2008; and thereby, the amendment of the Protection from Domestic Violence (amendment) Act 2016 in the definition of ‘spouse’, to include and recognise marriage and/or civil partnership for same-sex couples; and,
4. To consider repealing Section 250 of the Criminal Code Act 1838 with a view to decriminalise consensual sodomy between consenting individuals of legal age (with reference to the Convention of the Rights of the Child) so as to be in line with the Mauritian Constitution as well as with the International Covenant on Civil and Political Rights (ICCPR).

### Advanced Questions:

- What is the status of the inquiry in relation to complaints filled at the level of the Central Investigation Division and the Cybercrime Unit of the Police Force by activists and LGBT people in June 2018, regarding death threats received by activists in the occurrence of the Gay Pride 2018?
- Which are the remedial measures that the Mauritian government has been taking since the concluding observations and recommendations made by the United Nations Human Rights Committee in relation to Sexual Orientation, Gender Identity and Expression and Sex Characteristics at the 121<sup>st</sup> Session of the United Nations Human Rights Committee for the 5<sup>th</sup> Periodic Review of Mauritius?

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#### Link to submission:

<http://www.youngqueeralliance.com/modules/docpool/documents/9-ngo-report-by-young-queer-alliance-for-the-31st-session-of-the-universal-periodic-review-mauritius-3rd-cycle.pdf>

