



MAURITIUS 3rd UNIVERSAL PERIODIC REVIEW

Individual submission of Collectif Arc-En-Ciel

29 March 2018

This individual submission has been prepared by Collectif Arc-en-Ciel (CAEC), the first locally registered LGBT (Lesbian, Gay, Bisexual, Transgender) association in Mauritius. Since 2005, CAEC has been advocating for equality of human rights for all, including a person's right to dignity, equality and privacy, irrespective of sexual orientation and gender identity. It is the main spokesperson for the LGBT community in Mauritius.

For almost thirteen years, CAEC has been supporting LGBT persons who have been victims of blackmail, harassment, discrimination and violence from relatives, colleagues, etc., through its empowerment, psychological and / or legal assistance services.

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1. This individual submission to the third Universal Periodic Review (UPR) of the Republic of Mauritius has been prepared by Collectif Arc-En-Ciel (CAEC). The last submission of CAEC to the UPR dates back to 2009.

2. The issues highlighted and the recommendations made accordingly in this submission are broadly presented in particular thematic areas and focus mainly on the human rights issues faced by lesbian, gay, bisexual and transgender (LGBT) persons in Mauritius.

Criminalisation of consensual same-sex conduct and the enjoyment of human rights by LGBT persons

3. Mauritius is a small island with a conservative population and strong religious beliefs which generate a climate where homophobic attitudes persist; homosexuality tends to be framed within a discourse of sin and unnatural behaviour. Many LGBT persons experience stigmatisation within their own family: they hide their sexuality and / or gender identity from their family for fear of ostracism or, in some cases, reprisal. CAEC regularly receives calls from non-heterosexuals concerning issues in this regard, such as harassment by neighbours, forced marriages following kidnapping and sequestrations by the family, physical violence and blackmail.

4. Section 250 of the Criminal Code of Mauritius still criminalises sodomy between two consenting adults¹. This section is often used as blackmail in neighbourhoods, workplaces etc. It is often cited by homophobic groups - which often conflate sodomy with deviant or unnatural forms of sexuality - to denounce homosexuality. It reinforces the stigmatisation of homosexual and bisexual men and transgender people, as well as of lesbian and bisexual women even though not expressly criminalised in Mauritius.

5. Section 250 also violates the right to protection of privacy of the home as provided for in section 9 of the Mauritian Constitution.

6. Notwithstanding the recent appearance of “sexual orientation” in the Mauritian legal discourse², the fact remains that there is no recognition of non-heterosexual couples in society. As applied to same-sex couples, procedures such as joint bank accounts or joint loans are not available to them.

7. Discrimination is also strongly present in the workplace. In 2015, CAEC conducted an interview-based study³ that revealed that more than 45% of transgender people are unemployed, while 73% of them confessed that they had to get involved in sex work.

¹ “Any person who is guilty of the crime of sodomy or bestiality shall be liable to penal servitude for a term not exceeding 5 years”

² The Employment Rights Act (2008) and the Equal Opportunities Act (2008) explicitly forbid discrimination based on sexual orientation

³ “Male Sex Workers in Mauritius – The MSM Perspective”, study conducted by Collectif Arc-en-Ciel under the Global Fund, 2015

8. Laws that criminalise same-sex relations also lead to the virtual exclusion of LGBT people from many national HIV/AIDS policies and to a lack of implementation of such policies insofar as they refer to men who have sex with men.

9. Although the Mauritian government has taken several positive steps on the international stage including being in support of some of the major Resolutions and Declarations at the UN on Sexual Orientation and Gender Identity, any progress in adopting legislative measures leading to decriminalisation appears to have stalled.

10. In response to UPR recommendations made by Australia, Canada and Ireland⁴ to repeal section 250 of the Criminal Code, the Government of Mauritius indicated⁵ that it had not yet taken any policy decision regarding the decriminalisation of sodomy, and that further consultations were required in view of the sensitivity of the issue.

11. Pressure to decriminalise sodomy also continues to mount at the international level. In October 2017, during the review of Mauritius'5th periodic report to the UN Human Rights Committee, the Committee enquired as to what steps were being taken to abolish section 250 and to address homophobia. The Government responded that it *"intended to amend the Criminal Code to better deal with sexual offences. However, that question was very sensitive in Mauritius and still had to be resolved by various stakeholders. The Government did not plan to amend the article on sodomy in the immediate future, even though it was aware that it should be addressed."*

12. The concluding observations of the Human Rights Committee following the consideration of the 5th periodic report of Mauritius in November 2017 included protecting LGBT persons from all forms of discrimination based on sexual orientation and gender identity, including with regard to marriage or civil partnerships, and repealing article section 250 of the Criminal Code criminalising "sodomy". The Committee also recommended *inter alia* that police officers, judges and prosecutors be trained, and awareness-raising campaigns on the rights of LGBT persons be conducted.⁶

13. To date, no national consultations have been conducted and the recommendations of the Human Rights Committee have not yet been included in the National Human Rights Action Plan 2012-2020 under the aegis of the Human Rights Secretariat/ National Mechanism for Reporting and Follow-up. **CAEC recommends that the observations of the Human Rights Committee be implemented and that progress thereon be monitored under *inter alia* the National Human Rights Secretariat/ National Mechanism for Reporting and Follow-up.**

Gender identity

14. Transgender people in Mauritius face many forms of discrimination, stigma, and both psychological and physical violence because of their gender identity. In fact, the Mauritian

⁴ During the last UPR of Mauritius under the 2nd cycle (2013)

⁵ In its Second Cycle Mid-term Report 2015 available at

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx>, paras 145- 147

⁶ Concluding observations on the fifth periodic report of Mauritius by the UN Human Rights Committee, 9 November 2017, CCPR/C/MUS/CO/5, para. 10

constitution does not explicitly mention the right to equity based on sexual orientation and gender identity for all citizens.

15. The Civil Status Office does not recognise transgender persons who would like their identity documents (National Identity Card, passport) to reflect their self-identified gender. This year, CAEC was contacted by a Mauritian national who has had a change of sex abroad and who could not be guaranteed by the Immigration Office of passing through identity checks at immigration in Mauritius; the administrative procedures are unclear if not non-existent for transgender persons.

16. Relevant Government policies and programmes⁷, in particular those of the line Ministry of Gender Equality, Child Development and Family Welfare, are limited to "men and women" and exclude other genders such as transgender, non-binary gender or gender free. As a corollary to this, the definition of gender-based violence as provided by the Family Welfare and Protection Unit of the Ministry of Gender is restricted to "any harmful act perpetrated against a person's will and is based on socially ascribed **gender differences between males and females**" (our emphasis).⁸

17. The official response to CAEC's recommendations in national human rights fora⁹ in regard of the above has been that a policy decision will have to be taken thereon by the Government. Furthermore, the latest National Gender Policy Framework (NGPF) produced in 2008 has not been updated since then. According to the Government, it is a generic document providing an overarching framework for all actors, namely the public and private sectors, the media and civil society to incorporate gender in their policies and programmes¹⁰. However, Government has clearly indicated that it is not envisaging, at this point in time, to review the NGPF to include policy measures pertaining to other genders.¹¹

18. Furthermore, it is to be noted that Government has no existing mechanism for inclusive stakeholder consultations. While a National Steering Committee on Gender Mainstreaming was set up in July 2010 to obtain feedback on gender mainstreaming strategies and to update its members on gender related issues, membership is restricted to Government representatives who are mandated to *inter alia* evaluate the overall implementation of the NGPF with regard to progress made towards the formulation of their sector-specific gender policies.

19. Although the Mauritian legislation on domestic violence was amended in 2016, sexual orientation or gender identity were not included in this legislation.¹² The current legislation reinforces the vulnerability of LGBT persons as it neither provides for protection against violence on the basis of sexual orientation or gender identity nor allows rape victims to be considered as such.

⁷ Such as the National Gender Policy Framework, National Action Plan on Gender, National Action Plan to end Gender-based violence, National Coalition against Domestic Violence Committee

⁸ <http://gender.govmu.org/English/Pages/Units/Family-Welfare-and-Protection-Unit.aspx>

⁹ Meetings of the National Human Rights Monitoring Committee for the National Human Rights Action Plan 2012 -2020, and National Mechanism for Reporting and Follow Up (NMRF), both chaired by the Attorney General, under the aegis of the Ministry of Justice, Human Rights and Institutional Reforms

¹⁰ National Human Rights Action Plan 2012 -2020, a working document which is regularly updated between and during Monitoring Committee meetings

¹¹ Meeting on the National Human Rights Action Plan 2012- 2020

¹² Former Ministers of Gender did not respond to CAEC's requests to discuss domestic violence against LGBT persons before the latest amendment to the Protection from Domestic Violence Act in 2016.

The narrow redefinition of “spouse” (limited to two persons of opposite sexes) in the Protection from Domestic Violence Act perpetuates discrimination against same-sex couples and reinforces their vulnerability.

20. An in-depth study on Gender Based Violence Indicators undertaken by Gender Links Mauritius¹³ recommended to the Mauritian Government that *inter alia* the National Action Plan on Gender be updated regularly and be costed; and that violence on LGBTI must be looked into¹⁴, while an Advisory Committee on Reinforcement of Framework for Protection from Domestic Violence¹⁵ found that the Protection from Domestic Violence Act has several lacunas such as a narrow definition of domestic violence. The Committee recommended a review of relevant legislation and more specifically, the adoption of a more comprehensive definition of “domestic violence” therein so as to include all acts of physical, sexual, psychological or economic violence that occur within the family or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.¹⁶ So far, there has been no indication that those recommendations have been taken on board or of the timing of further consultations on the matter.

21. At the time of finalising this report, the Ministry of Gender Equality, Child Development and Family Welfare started consultations on the drafting of a Gender Equality Bill. However various requests from CAEC to be included in the consultations on the Children's Bill and Adoption Bill have not been responded to.

22. CAEC recommends that the Government of Mauritius

(a) conducts wider consultations to update/ renew the existing 2008 National Gender Policy Framework;

(b) includes civil society in consultations related to gender, gender-based violence, family welfare and child development, including the Children's Bill and Adoption Bill;

(c) allows for legal recognition of self-identified gender under national law without the need for surgery and related medical procedures;

(d) amends discriminatory definitions in the Mauritian legislation to include same-sex couples on the same basis as spouses of opposite sexes;

(e) repeals article section 250 of the Criminal Code criminalising sodomy;

¹³ A local NGO focusing on gender and governance, gender and the media, and gender justice

¹⁴ Input of Gender Links in the National Human Rights Action Plan 2012- 2020

¹⁵ set up under the Minister of Gender Equality, Child Development and Family Welfare

¹⁶ 2014 Report of the Advisory Committee on Reinforcement of Framework for Protection from Domestic Violence, accessed at

[http://gender.govmu.org/English/Documents/2015/Publications/Report%20Advisory%20Committee%20Reinforcement%20Framework%20for%20Protection%20against%20Domestic%20Violence%20\(1\)%20\(1\).pdf](http://gender.govmu.org/English/Documents/2015/Publications/Report%20Advisory%20Committee%20Reinforcement%20Framework%20for%20Protection%20against%20Domestic%20Violence%20(1)%20(1).pdf) on 9 March 2018

(f) ensures that requirements for individuals to provide information on their sex or gender are relevant, reasonable and necessary as required by the law for a legitimate purpose in the circumstances where it is sought, and that such requirements respect all persons' right to self-determination of gender;

(g) expands the definition of 'gender' used in policies and programmes to become fully trans-inclusive;

(h) ensures that all programmes working on gender equality and violence against women and girls also address the particular issues faced by lesbian, bisexual and trans women;

(i) With the assistance of UN agencies, promotes education and awareness by integrating the issue of sexual orientation and gender identity into the educational curriculum including through human rights education and/ or through specific courses focussing on sexual orientation and gender identity, at all stages;

(j) In line with its commitment to the implementation of the 2030 Sustainable Agenda and the Sustainable Development Goals at its core, ensures the implementation of SDGs, including

(i) SDG 5 on achieving gender inequality and empowering all women and girls, and eliminating all forms of violence and discrimination against all women and girls, irrespective of their sexual orientation or gender identity;

(ii) SDG 10 on reducing inequality within countries, including through the empowerment and promotion of the inclusion of all, irrespective of sex, status etc, and ensuring equal opportunity for all by eliminating discriminatory laws, policies and practices;

(iii) SDG 16 on promoting peaceful and inclusive societies by inter alia ensuring equal access to justice for all and building accountable and inclusive institutions;

(k) ensures that all programmes working on policing, the criminal justice system and/or civil society actively address LGBT hate crime;

(l) provides training on sensitivity and effective response to LGBT discrimination and hate crime for police, security services and the criminal justice system;

(m) builds the capacity of law enforcement officers to document instances of hate crime against LGBT people

Access to health care services

23. Transgender persons face particular forms of stigma and discrimination that undermine their access to health care, work and education. For instance, insurance companies are not only reluctant to cover transition-related medical procedures; they will also only cover expenses specific to the gender listed in their legal documents. This results in regular sexual and reproductive health services being excluded, which would otherwise be covered.

24. LGBT persons also express fears relating to disclosure of information regarding their HIV status, sexual orientation or gender identity. As a result, LGBT persons may not seek health services that they need.

25. As a result of criminal laws, stigma and discrimination against LGBT persons, health information and services in Mauritius are not designed to meet specific health care needs relating to LGBT persons' sexual orientation and gender identity. Members of the LGBT community report that HIV-related and sexual and reproductive health information and services do not target or address their specific risks and concerns. Many health facilities and service providers fail to understand and have outdated approaches to gender identity and expression. Health care services fail to provide appropriate sexual and reproductive health services such as appropriate barrier methods (for example condoms with lubricants for men who have sex with men); hormone replacement therapy or gender affirming surgery. This further discourages access to health care.

26. Currently, HIV prevalence amongst MSM (20%)¹⁷ and transgender people (28%)¹⁸ is higher than in the general population. There is no data on HIV prevalence amongst lesbians and bisexuals.

27. Whilst the Constitution of Mauritius provides no protection against discrimination on the basis of sexual orientation or gender identity, both the Equal Opportunities Act and the Employment Rights Act prohibit discrimination on the basis of sexual orientation in employment, education, qualifications for a profession, access to premises which the public may enter or use etc. In spite of the protection afforded by these laws, members of the LGBT community have reported ¹⁹ high levels of stigma and other problems at public health care facilities:

(i) "The health services are not LGBT friendly. The staff make distasteful remarks about the way that we dress. That is why so few of us go there"²⁰;

(ii) "Sodomy is illegal so I am reluctant to admit to health workers that I am engaging in anal sex or to seek assistance if injuries occur during anal sex. There are no health services that are MSM friendly"²¹;

(iii) "Hormone treatment is not available through public health facilities so we have to buy them ourselves over the counter at a cost of around 30 000 Rupees"²²;

(iv) "The public health system does not offer gender transformation surgery"²³;

28. It has also been reported that transgender inmates are placed in male prisons and are required to shave off their hair.²⁴ **The Mauritius Prisons Service should accommodate transgender prisoners**

¹⁷ Men Who Have Sex With Men Integrated Behavioral and Biological Surveillance (IBBS), AIDS Unit/ Ministry of Health of the Republic of Mauritius, 2012

¹⁸ Transgender IBBS, AIDS Unit/ Ministry of Health of the Republic of Mauritius, 2017

¹⁹ LGBT Focus Group Discussion conducted at CAEC by PILS' national consultant in the context of the Legal Environment Assessment of HIV and AIDS, 6 December 2017

²⁰ Ibid

²¹ Ibid

²² Ibid

²³ Ibid

in a prison along with people from their chosen non-birth gender, whether or not they have changed their physical sex appearance;

29. Members of the LGBT community report that although many of them are aware of the protections afforded against discrimination on the basis of sexual orientation by the Equal Opportunities Act and the Employment Rights Act, they perceive that complaints made to the Equal Opportunities Commission are treated as trivial. They also report that they are dissuaded from lodging complaints with the Equal Opportunities Commission as the lodging of a complaint entails a disclosure of the complainant's gender identity and they fear the associated publicity. **The complaints procedure at the Equal Opportunities Commission should be amended to make provision for the suppression of gender identity of the complainant.**

30. Law enforcement officials, and health and social care providers need to be trained to recognise and uphold the human rights of LGBT, and should be held accountable if they violate these rights.

²⁴ Ibid