



Stakeholder submission of Commonwealth Human Rights Initiative (CHRI) for the 2013
Universal Periodic Review of Mauritius

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Commonwealth Human Rights Initiative (CHRI) stakeholder submission for the
Universal Periodic Review of Mauritius (2013)
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1. This UPR stakeholder submission for Mauritius includes information on the following areas: cooperation with UN human rights mechanisms, core international human rights instruments and their monitoring bodies; the freedom of information; media freedom; and the criminalisation of same-sex conduct.

2. Co-operation with UN Human Rights Mechanisms

3. At the last session of the UPR, Mauritius stated that it would consider issuing a standing invitation to all Special Procedures of the Human Rights Council. However, no final response was given by Mauritius in the outcome report adopted at the 11th session.

4. Recommendation:

- a. The Government of Mauritius should extend a standing invitation to all Special Procedures of the U.N. Human Rights Council.

5. Core International Human Rights Instruments and Their Monitoring Bodies

6. During its 2009 review, Mauritius said that it would consider ratification of a number of international human rights instruments. Mauritius went on to ratify a number of the suggested instruments including: the optional protocols to the Conventions on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

7. However, Mauritius has still not ratified the following human rights instruments: The Convention on the Protection of the Rights of All Migrants Workers, the Convention for the Protection of All Persons from Enforced Disappearance, the Second Optional Protocol to ICCPR and the Optional Protocol to the ICESCR.

8. Mauritius has completed some of its reporting obligations under international treaties, but has failed to satisfy all of its requirements. Mauritius has completed 14 rounds of reporting under ICERD but still owes reports for 2001, 2003, 2005, 2007, 2009 and 2011. It has completed two rounds of reporting under CAT but the additional information it was required to submit by June 2012 is overdue. Under CCPR, Mauritius has completed four rounds of reporting but its report from 2010 is now overdue.

9. Recommendations:

10. CHRI recommends that Mauritius:

- a. Immediately ratifies the Convention on the Protection of the Rights of All Migrant Workers, the Convention for the Protection of All Persons from Enforced Disappearances, the Second Optional Protocol to the ICCPR and the Optional Protocol to the ICESCR.
- b. Urgently submits the seven reports to treaty bodies and the additional information that is currently overdue and commits to meeting deadlines in relation to future reports.

11. Freedom of Information

12. There is presently no Freedom of Information law in Mauritius that gives the public the right to access information from the government. The Parliament of Mauritius discussed the implications of introducing a Freedom of Information Bill in April 2011¹ but no further progress has been made on the Bill in the reporting period.
13. A law is urgently required so that public access to information does not depend on the discretion of government agencies and officials. A freedom of information law is a valuable mechanism to bring transparency and accountability to governance.
14. Recommendations:
15. CHRI recommends that
 - a. Mauritius should draft, enact and implement a Freedom of Information Act at the earliest in accordance with international best practice. Such an Act should:
 - i. Include exemptions that are clearly stated and only apply to specific information that protects the public interest and be subjected to the harm test.
 - ii. Should envisage the establishment of an independent commission to oversee the implementation of the Act.
 - iii. Ensure that the time frame for providing information should not be unduly long.
 - iv. Be flexible and not deter citizens from accessing information.
 - v. Extend its ambit to: private bodies that receive state funding and work in the public interest; and companies that use the natural resources of Mauritius.

16. Media Freedom

17. At its last UPR Mauritius accepted the recommendation to ensure that any legislation, regulation or measure concerning the media must fully respect the right to freedom of opinion and expression and the freedoms of the media. Mauritius also accepted that this should include the preservation of the media's ability to investigate and report on public officials without fear of penalty².
18. During the reporting period, on 27th May 2010, journalists from La Sentinelle, a media agency were refused entry into a press conference³. The editors were reportedly told that they would pay the price for supporting the opposition during the May 2010 elections. In the aftermath of the elections, government ministries, interstate agencies and libraries were told to cancel their subscription to L'Express which was one of La Sentinelle's newspapers⁴.
19. Recommendations:
 - CHRI recommends that Mauritius should:
 - a. Ensure that human rights guarantees relating to media freedom are observed in practice.

20. Criminalisation of same-sex conduct

21. The Criminal Code of Mauritius (1838), Section 250 criminalises any person who is guilty of sodomy with a penalty of up to five years in prison.⁵

¹'Government is Working on Freedom of Information Bill', Business Mega, April 13th 2011: <http://business.mega.mu/2011/04/13/govt-working-information-bill/> as on 22 February 2013.

² UN General Assembly, Human Rights Council 11th Session, Report of the Working Group on the Universal Periodic Review, Page 18, para 80.

³ "Communiqué d'Amnesty International sur la liberté de la presse", Amnesty International Mauritius, 31 May 2010: <http://www.amnestymauritius.org/french/more.php?readmore=45> as on 22 February 2013.

⁴ CHRI 'Easier Said Than Done' Report 2010, Page 129, section 3.1. Reporters Sans Frontières, "Politically-motivated boycott of media group by government", 2 June 2010: <http://en.rsf.org/mauritius-politically-motivated-boycott-of-03-06-2010.37657.html> as on 22 February 2013.

⁵ Criminal Code of Mauritius Cap 195 (1838 Amended): <http://www.gov.mu/portal/sites/legaldb/files/criminal.pdf> as on 22 February 2013.

22. Under Article 17 of ICCPR, Mauritius has a responsibility to protect individuals against “arbitrary or unlawful interference” with their “privacy, family, home or correspondence”. Laws banning same-sex conduct have been found by the Human Rights Committee to be in breach of Article 17.¹¹ Article 26 affords individuals “effective protection against discrimination on any ground” and the right to “the equal protection of the law”. The Human Rights Committee has held that state parties “should guarantee equal rights to all individuals and protect the right to equality before the law regardless of their sexual orientation”.¹² It has also previously held that criminalisation is incompatible with both the right to privacy and equality before the law.¹³ The criminalisation of same-sex sexual conduct by Mauritius is therefore incompatible with its obligations under the ICCPR.
23. Mauritius also has an obligation under Article 12 of the ICESCR to promote “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. The criminalisation of same-sex conduct interferes with the realisation of this right and the Committee on Economic, Social and Cultural Rights has held that the criminalisation of same-sex conduct has the effect of “nullifying or impairing the equal enjoyment or exercise of the right to health”.⁶
24. Mauritius has enacted the Equal Opportunities Act (2008) that prohibits discrimination at the workplace based on sexual orientation.⁷ While Mauritius has promulgated such a progressive law, domestic legislation should be clear and consistent, and the Criminal Code should be repealed to decriminalise same-sex conduct between consenting adults.
25. While there have been no reported prosecutions of under the Criminal Code for adult same sex consensual conduct in recent years, the mere existence of the law encourages discrimination based on real or perceived sexual orientation.
26. Recommendations:
27. CHRI recommends that Mauritius should:
 - a. Repeal Section 250 of the Criminal Code that penalises same-sex conduct between consenting adults
 - b. Promote and facilitate constructive dialogue on decriminalisation of same-sex conduct, sexual orientation and gender identity with government ministries, civil society actors and other relevant stakeholders.

⁶ Committee on Economic, Social and Cultural Rights (August 2000) General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/2000/4, , paragraph. 18.

⁷ Equal Opportunities Act, 2008, Mauritius: <http://sqdatabase.unwomen.org/uploads/Mauritius%20-%20Equal%20Opportunities%20Act%202008.pdf> as on 22 February 2013.