

# REPUBLIC OF MAURITIUS

## Shadow report for ‘list of issues’ for the pre-sessional working group of the Committee of the Elimination of all forms of Discrimination Against Women<sup>1</sup>

submitted by the Young Queer Alliance<sup>2</sup>

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### Executive Summary

This shadow report to the list of issues prior to reporting of the Republic of Mauritius is aimed to different forms of discriminations and issues faced by women of Lesbian, Bisexual and Transgender (LBT)<sup>3</sup> identities. The report identifies the following main problems faced by LBT women: 1) availability of and accessibility to healthcare, 2) social security and protection, 3) violence, discrimination and harassment, 4) sexual offences and anti-sodomy law, and; 5) marriage and spousal benefits. The report further suggests numerous questions to the State of the Republic of Mauritius with to be answered in the eighth periodic report on the implementation of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).<sup>4</sup>

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<sup>1</sup> Special thanks to the International Lesbian and Gay Association for their support in submitting this shadow report

<sup>2</sup> Young Queer Alliance is a non-governmental, youth-led and apolitical organisation for young people based on their sexual orientation, gender identity and gender expression. More information can be found at: <http://www.youngqueeralliance.com/>

<sup>3</sup> LBT: Lesbian, Bisexual and Transgender

<sup>4</sup> The report may be made available online as may be desired by the CEDAW committee

The commitment of the State to the CEDAW process and its involvement with all concerned actors – including Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and Asexual (LGBTQIA)<sup>5</sup> organisations and young people – has been to a large extent non-existent. Furthermore, despite various requests towards government representatives to hold meetings on important issues pertaining to local legislation or for government to consider its actions in favour of people due to their diverse sexual orientation, gender identity and gender expression have been non-responsive, uncomprehensive and inaccessible.

However, the Young Queer Alliance reaffirms its appreciation to government actions 2010 – 2014 as follows:

- (a) Mauritius supporting United Nations Human Rights Council resolution (A/HRC/17/19) on 17<sup>th</sup> June 2011 to affirm the rights of LGBT people
- (b) Promulgation of the Equal Opportunities Act 2008 in 2012 and in an ensuing procedure; setting-up of the Equal Opportunities Commission as well as the Equal Opportunities Tribunal
- (c) After registration of a complaint at the Equal Opportunities Commission in June 2012, the approval by the State by end 2014 to allow gay and lesbian persons to donate blood after conciliation and mediation with the Ministry of Health and Quality of Life and the Blood Donors Association.

Notwithstanding these positive developments, women and girls of diverse sexual or gender identities and the way they express these identities are subject to multiple forms of discrimination because of their real or perceived identities and diversity in their behaviours. These forms of discrimination manifest as violation of human rights that include but is not limited to right to health, right to be free from violence, right to be free from degrading treatment and right to justice.

With regards to the CEDAW convention, the Young Queer Alliance suggests a **summary of main questions** to the State of the Republic of Mauritius:

- (a) Shall the State inform if it intends to commit to ensure availability of and accessibility to healthcare for LBT women and girls?**
- (b) Shall the State inform if LGT women and girls are considered under the Social Register of Mauritius social aids and empowerment?**

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<sup>5</sup> LGBTQIA: Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and Asexual

- (c) **Shall the State commit to ensure implementation of measures as may be appropriate or as spelled in this report to decrease violence, forms of discrimination and harassment against LBT women and girls?**
- (d) **Shall the State inform if it intends to reduce socio-cultural stigma and forms of discrimination towards LBT women by decriminalising consensual same-sex sexual relations between adults?**
- (e) **Shall the State inform if it intends to ensure that LBT women enjoy the same spousal rights through marriage equality?**

Furthermore, the following are the *main issues and guiding questions* as set-up by the Young Queer Alliance<sup>6</sup>:

### **1. Availability of and accessibility to healthcare**

Women and girls of diverse sexual orientation, gender identity and gender expression face unique issues within the health sector that have direct effects on their health. Healthcare professionals do not have the necessary trainings to be aware of the specific health issues of lesbians, bisexual and gender-diverse women. Furthermore, when taking personal health histories, health professionals might not consider the identity of the person. Mauritian government did not plan for inclusive healthcare for LBT persons in its various action plans or policy papers. These are in violation of Article 12 of the CEDAW. Thus,

- (a) **With reference to the ‘White Paper on Health Sector Development & Reform – 2002’<sup>7</sup>, concerning LBT persons, shall the State:**
  - (i) Inform of the status of the white paper concerning any implementation or changes thereof;
  - (ii) Inform if mentioned-groups of individuals have been considered; and if not, take commitment that they shall be considered in subsequent health-related policy papers especially with regards to Sexually Transmitted Infections (STIs)<sup>8</sup>, mental health and substance use and abuse thereof;

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<sup>6</sup> Access to information concerning various action plans and policies of the State remains a challenge for individuals and civil society organisations.

<sup>7</sup> White Paper on Health Sector Development & Reform – 2002; available at: <http://health.govmu.org/English/Documents/whitepap.pdf>

<sup>8</sup> Sexually Transmitted Infections that Lesbian and Bisexual Women and Girls are prone to are Bacterial vaginosis, Chlamydia, Genital herpes, Human papillomavirus, Pubic lice, Trichomoniasis, etc.

- (iii) Inform if any programmes have been set-up and/or implemented towards the concerned groups of individuals thereof;
- (iv) Take commitment to implement a key-population dental dam information and distribution programme thereby; and,
- (v) Take commitment that, in concert with other law enforcement bodies, appropriate protocols shall be set-up at the level of health care settings in case of domestic violence and out-of-house violence thereby?

**(b) With reference to the ‘Global School-based Student Health Survey – 2007’<sup>9</sup>, concerning young LBT persons, shall the State:**

- (i) Inform if recommendations of the report have been implemented; and if so, to what extent; and if not, what are the reasons thereof;
- (ii) Inform if as per recommendations, age-specific, inclusive and continuous comprehensive sexuality education programme shall be implemented thereof;
- (iii) Commit to implement age-specific, inclusive and continuous comprehensive sexuality education programme thereof and present with a tentative action plan therewith;
- (iv) Inform if amendments shall be made to anti-bullying policies of the Ministry of Education and Human Resources, Tertiary Education and Scientific Research to include LBT young people thereby; and finally,
- (v) Inform if recommendations to employ school counsellors or school nurses shall be implemented thereby?

**(c) With reference to the ‘National Cancer Control Programme Action Plan 2010 – 2014’<sup>10</sup>, concerning LBT persons, shall the State:**

- (i) Inform if the mentioned action plan has been reviewed; and if so, what are the considerations for LBT persons; and if not, does the State consider to take remedial actions thereof?

**(d) Finally, concerning LBT persons, shall the State:**

- (i) Commit to include people of diverse sexual orientation, gender identity and gender expression as indicators in samples for upcoming health-related reports, surveys and studies; and,

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<sup>9</sup> Global School-based Student Health Survey – 2007; available at: <http://health.govmu.org/English/Documents/gshsreport.pdf>

<sup>10</sup> National Cancer Control Programme Action Plan 2010 – 2014; available at: <http://health.govmu.org/English/Documents/cancer-ap.pdf>

- (ii) Commit to make such reports, surveys and studies freely available to public and civil society organisations thereby;
- (iii) Commit to recognise transgender individuals; and if so, commit to provide free healthcare and medical services for gender reassignment thereof; and,
- (iv) Commit to train health care personnel and officers in accessible service delivery thereby?

## **2. Social security and protections**

In 2008, Mauritius voted the Equal Opportunities Act that has for objective to prevent differential treatment based on sexual orientation among other statuses<sup>11</sup> in provision of goods, services or facilities or differential access to opportunities by the State, private sector organisations and other service providers and organisations.

Due to perceived or real sexual orientation, gender identity or gender expression, LBT (especially transgender) individuals face poverty and lack of access to affordable decent housing, increasing the risks for them to be victims of bullying, harassment and violence, as well as prone to prostitution, forced marriage, exploitation and/or trafficking. All these raise concerns with regards to Article 3, Article 6, Article 11, Article 13 and Article 14 of the CEDAW.

In 2016, Government launched registration for *families* living in extreme poverty and having a total monthly household threshold not exceeding **nine thousand five hundred and twenty rupees** (MUR 9,520). The persons will be listed on the Social Register of Mauritius (SRM).<sup>12</sup>

**With reference to the SRM and LBT persons and youth, since the programme mentions the minimum threshold income for one adult, shall the State:**

- (i) Inform if single individual families have been taken into consideration thereof; and if so, inform if necessary measures were taken and communicated to include single individual LBT persons on the SRM thereby;

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<sup>11</sup> 'Status' under the Equal Opportunities Act 2008 means age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex or sexual orientation

<sup>12</sup> Registration process kick-starts for families living in extreme poverty; available at: <http://www.govmu.org/English/News/Pages/Registration-process-kick-starts-for-families-living-in-extreme-poverty.aspx>

- (ii) With reference to point 2.(i), inform if not, whether the State shall commit to include single individual families including LBT persons on the SRM; and thereby give a delay for registration of these now-concerned families thereof;
- (iii) Inform if, irrespective of marital status, LBT persons living under same roof for a duration of time shall be considered to be eligible to be on the SRM if salary conditions are met thereby; and,
- (iv) Inform if, irrespective of marital status, needy LBT persons shall be considered eligible for social housing thereof?

### **3. Violence, discrimination and harassment**

Mauritius has enacted or amended various laws pertaining to protection from violence, discrimination and harassment such as the Employment Relations Act 2008, the Equal Opportunities Act 2008, and the Protection from Domestic Violence Act (amended 2016). Despite these new laws and already existing legislations, violence and harassment against LBT persons exist in Mauritius and are reported at the Young Queer Alliance. These may be through forms of family rejection of their LGBTQIA child, forced marriage of sexually diverse individuals, state-sponsored violence and harassment, school bullying, aggressions of LGBTQIA engaged in prostitution, among others.<sup>13</sup>

In failing to protect or sponsoring violence and harassment against LBT persons, the State is violating Article 1, Article 2, Article 3 and article 5 of the CEDAW. Furthermore, despite submission to the Government to consider same-sex couple in the 2016 amendment to the protection from Domestic Violence Act, backward step was taken by defining spouse as someone being married to another person of the opposite sex. Moreover, during submissions pertaining to a blood donation case at the Equal Opportunities Commission, the actual chairperson of the said commission seemed to be hostile and homophobic in their remarks.

There is also the issue 48 from the office of the Director of Public Prosecutions that speaks of bullying and other forms of violence.<sup>14</sup>

**With reference to LBT persons, youth, violence, discrimination and harassment, shall the State:**

- (i) Provide disaggregated data on records of violence and harassment of LBT persons thereof;

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<sup>13</sup> United States Mauritius 2015 human rights report; available from: <https://www.state.gov/documents/organization/252919.pdf>

<sup>14</sup> E-newsletter, issue 48, 2015; available from: <http://dpp.govmu.org/English/Documents/Issue48.pdf>

- (ii) Inform if the Protection from Domestic Violence (amendment) Act 2016 includes LGBTQIA persons in domestic settings irrespective of marital or family status, or in any other capacity, such as resident, on rent, in homes, or other settings thereof; and if not, whether the State shall commit to include these persons thereby;
- (iii) Inform if the Protection from Domestic Violence (amendment) Act 2016 includes LGBTQIA persons in *another person*; and if not, whether the State shall take remedial actions to include these persons thereof;
- (iv) Implement 1.(b).(iv) thereby;
- (v) Commit to train required public officers such as police officers and officers at the Family Protection Unit in non-judgmental service delivery thereby;
- (vi) Inform as per the Equal Opportunities Act 2008 Section 27, of the yearly disaggregated number of undertakings by the commission to engage in such actions as may be authorised from 2012 to 2016 in terms of submissions to the Attorney General's office and to sensitise the public or specific groups thereof;
- (vii) Inform if the State is considering to replace the actual chairperson of the Equal Opportunities Commission thereby;
- (viii) Amend respective above-mentioned laws to include gender expression and/or gender identity thereby; and
- (ix) Amend Section 282 of the Mauritian Criminal Code as per the Law Reform Commission of Mauritius [LRC]<sup>15</sup> Interim Report on Reform of "Criminal Code" 2016<sup>16</sup>; and shall further include gender expression and/or gender identity therewith?

#### **4. Sexual offences and anti-sodomy law**

Section 250 of the criminal code refers to Sodomy and Bestiality. An acute observation in African Commonwealth countries is the association of Sodomy with: a) Bestiality; b) Immorality or acts of immorality; and c) Homosexuality or acts against nature.

An attempt to introduce a sexual offences bill in 2007 failed. The bill, altogether with defining acts of sexual violence, would have decriminalised Sodomy. The Law Reform Commission, in its June 2007 issue, gave substantive arguments for decriminalisation of Sodomy as per human rights treaty

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<sup>15</sup> Law Reform Commission: LRC

<sup>16</sup> Law Reform Commission of Mauritius Interim Report on Reform of "Criminal Code" 2016; available at: <http://lrc.govmu.org/English/DOCUMENTS/INTERIM%20REPORT%20ON%20REFORM%20OF%20CRIMINAL%20CODE.PDF>

obligations, the United Nations Covenant on Civil and Political Rights and precedent cases in other jurisdictions. In 2017, the Director of Public Prosecutions has forwarded that the Article 250 might not be constitutional.<sup>17</sup>

While there has recently been two cases of same-sex male arrests due to practice of sodomy<sup>18</sup>, the law is usually much applied to effect divorce in heterosexual marriage. While the law seems to be a recourse to divorce for some women, it applies to men having sex with men and other heterosexual couples as well.

Note however that the police does not really apply the law towards LGBTQIA or heterosexuals (unless as aforementioned for divorce). Furthermore, medically, the anal penetration can be more violent for a person if lubrication is not used as compared to vaginal penetration (since the vagina is generally self-lubricating) and this may cause additional harm than “normal rape” for LGBTQI individuals.

Despite the application of Article 250 of the criminal code in aforementioned situations, it remains a fact that criminalisation of same-sex consensual acts entails socio-cultural stigma and forms of discrimination towards LGBTQI individuals including LBT women.<sup>19</sup> Manifestations of the socio-cultural stigma and forms of discrimination are in forms of hate speech, violence, prosecution, lack of Statal support and protections among others; forcing LBT women in lives of secrecy, double lives and fear.

**With reference to LBT, sexual offences and anti-sodomy law, shall the State:**

- (i) Respond to the constitutionality of Section 250 of the Criminal Code pertaining to anti-sodomy provisions thereof;
- (ii) Take actions as may be necessary to repeal or decriminalise sodomy for consensual adults thereby; and,
- (iii) Implement any measure or legislation concerning non-consensual sodomy thereof?

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<sup>17</sup> E-newsletter, issue 69, 2017; available at: <http://dpp.govmu.org/English/Documents/Issue69.pdf>

<sup>18</sup> One pertaining to sodomy in a public area (beach) and the other parents forcing their gay child to file a case against another gay child for engaging in same-sex sexual relationships

<sup>19</sup> The Relationship between Homophobia, Transphobia, and Women’s Access to Justice for the Forthcoming CEDAW General Recommendation on Women’s Access to Justice: <http://www2.ohchr.org/English/bodies/cedaw/docs/ngos/IGLHRC.pdf>



## 5. Marriage and spousal benefits

In Mauritius Civil Code, the Civil Status Act 1981, marriage between two persons has not been defined as between individuals of same or different sexes. Furthermore, the Interpretation and General Clauses Act 1974, the masculine applies to the feminine and the neuter.<sup>20</sup>

On this basis, on the 27<sup>th</sup> July 2015 a same-sex couple accompanied by two other persons filed a complaint at the Equal Opportunities Commission against the Civil Status Office since it refused to register their marriage.<sup>21</sup> The Civil Status Office is a service provider, not providing same services of registering marriages to homosexual persons constitutes an alleged violation of the Equal Opportunities Act 2008. Former chairperson of the Equal Opportunities Commission, Mr. Brian Glover held only one hearing and *off-record* opinion was that either the State would have to agree to marriage equality or that the Equal Opportunities Act 2008 should be modified so that it would not apply to the Civil Status Act 1981. However, before ensuing hearings, Mr. Brian Glover was out of office and newly nominated chairperson was allegedly homophobic; thus, leaving for reply that marriage equality was not legal in Mauritius.

There have been previous attempts from same-sex couples married out of Mauritius to have their marriages recognised. Moreover, the partner of the British High Commission in Mauritius has his male-spouse recognised as spouse by the authorities and is invited as such in various events.<sup>22</sup>

Following reply from the Equal Opportunities Commission in 2016 of non-recognition of marriage equality by the State, for the first time ever, government defined spouse in the Protection from Domestic Violence (amendment) Act 2016 as people from opposite sexes. From research by the Young Queer Alliance in its Barometers 2000 – 2010<sup>23</sup> and 2010 – 2016<sup>24</sup>, it was observed that current government showed anti-LGBTQIA stands and bringing the marriage equality case to the Supreme Court was not considered as this point in time; this, despite other sections of laws in Mauritius that could have been raised in addition to the Civil Status Act 1981. For strategic reasons, however, Young Queer Alliance shall not mention the other sections of laws in Mauritius.

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<sup>20</sup> The Interpretation and General Clauses Act 1974 gives an opening for application of laws towards transgender persons by mentioning the “neuter”

<sup>21</sup> Mariage pour tous: un couple gay porte plainte à l’EOC ; available at : <https://www.lexpress.mu/article/268693/mariage-pour-tous-un-couple-gay-porte-plainte-leoc>

<sup>22</sup> E-newsletter, issue 69, 2017; available at: <http://dpp.govmu.org/English/Documents/Issue69.pdf>

<sup>23</sup> LGBTQI and politics in the Republic of Mauritius: 2000 – 2010 Barometer

<sup>24</sup> LGBTQI and politics in the Republic of Mauritius: 2010 – 2016 Barometer

Non-recognition of marriage equality is discriminatory when compared to heterosexual couples and same-sex partners (irrespective of marital statuses) find that their marriages and families are not protected under law, have insurance and loans issues, lack social welfare, and other spousal rights. It is thus a denial of right to expression and other freedoms. Women, being already disadvantaged in society, and LBT women more so, non-recognition of marriage equality thus means, lesser economic power, lesser social independency, lack of inheritance rights, single parenthood, increased social stigma and forms of discrimination.

**With reference to LBT, marriage and spousal benefits, shall the State:**

- (i) Inform if amendments in defining spouse in the Protection from Domestic Violence (amendment) Act 2016 had for objective to prevent marriage equality thereof;
- (ii) Inform of or table records, if any, of applications for marriage equality at the level of the Civil Status Office in Mauritius thereof;
- (iii) Inform if the State is considering to allow for marriage equality thereof;
- (iv) Inform if it intends to apply point 3. (vii) thereof; and,
- (v) Inform if it intends to implement a form of Civil Partnership for both same-sex couples and heterosexual couples thereby?

**Conclusion**

This Shadow report for the List of issues prior to reporting of the Republic of Mauritius submitted by the Young Queer Alliance for the Republic of Mauritius aims at providing a better insight on the situation of LGBTQIA in Mauritius and holding the State accountable as well as encouraging it to take actions as may be necessary to promote LGBTQIA persons. We are fully aware and supportive of similar shadow reports submitted by other non-governmental organisations working for LGBTQIA issues.

*NOTE: For sustainability and transparency issues, this report shall be forwarded to members of other political parties and opposition members in Mauritius so as to ensure that they are aware of our stand on LGBTQIA issues and recommendations thereof.*