

## NGO Report: Young Queer Alliance

Submitted for the 31<sup>st</sup> Session of the working group on the Universal Periodic Review (*3<sup>rd</sup> Cycle of the UPR of Mauritius*)

Geneva, Switzerland

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**Brief Description:** The YQA is a non-profit, non-governmental and apolitical organisation, which works against homophobia, biphobia and transphobia, and for the recognition and well-being of Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual (LGBTQIA) community in Mauritius. The organisation was founded in 2014 and is open to young people aged 14 to 29 years. It counts around 50 members and more than 1500 beneficiaries from all regions across Mauritius. The Young Queer Alliance provides various services to attain its mission: Education, empowerment and sensitisation, Psycho-social counselling and case management, HIV/AIDS and STIs prevention, Safe spaces and emergency sheltering (emergency sheltering for LBT women and girls only) and Advocacy.

Members of the YQA act on behalf of the organisation in a voluntary and unpaid capacity. Other sources of revenue for the financing of activities of the YQA are membership fees, donations and sponsorship.

**Summary of Submission:** The present submission is prepared by the Young Queer Alliance with the support of its Advocacy and Research team for the consideration of the Human Rights Council's 3<sup>rd</sup> Cycle of the Universal Periodic Review (UPR) of the Republic of Mauritius. This submission, therefore, aims to:

- a) shed light on actions taken by the State Party in applying recommendations of the UPR since Cycles 1 & 2; and,
- b) cover key issues affecting the Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and Asexual (LGBTQIA) community in the Republic of Mauritius; namely, violence and hate speech, marriage equality/civil partnership and decriminalisation of same-sex sexual acts among people of age of consent

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## 1.0 UPR Cycles 1 & 2 recommendations

The YQA would like to draw attention to the UPR committee members of recommendations made to the State party during the 1<sup>st</sup> and 2<sup>nd</sup> cycles at the UPR on Sexual Orientation and Gender Identity.

### 1.1 Decriminalisation of same-sex consensual sexual activities between people of legal age

Cycle	Recommending State	Recommendation	Response
1	Canada	Finalize and adopt the Sexual Offences Bill currently under consideration.	Accepted
2	Australia	Repeal the sections of its Criminal Code that criminalize consensual homosexual activity	Noted
	Canada	Remove from the Criminal Code the penalization of same-sex conduct between consenting adults	Noted
	Ireland	Repeal section 250 of the Criminal Code which criminalizes sexual conduct between consenting adults of the same sex	Noted
<p><b>YQA's comment:</b> The YQA wishes to draw the attention of committee that Mauritius <i>accepted the recommendations of Canada during the 1<sup>st</sup> Cycle of the UPR</i> to “Finalize and adopt the Sexual Offences Bill currently under consideration,” with regards to Sexual Orientation and Gender Identity; which was however not implemented. Furthermore, during the 121st Session of the HRC in 2017 and including to its reply to the “list of issues” concerning Section 250 of the Criminal Code 1838, the State Party showed firm intentions not to go ahead with decriminalisation of consensual same-sex sexual relationships between people of legal age.</p>			

### 1.2 Marriage Equality/Civil-partnership

Cycle	Recommending State	Recommendation	Response
1	United Kingdom	Take further measures to prevent discrimination based on sexual orientation, and that the Equal Opportunities Act allow legal acknowledgement of homosexual couples and their human rights.	Noted
<p><b>YQA comment:</b> The YQA wishes to draw the attention of committee that the Recommending State made two recommendations; the first being on measures to prevent discrimination on the basis of sexual orientation and the second being for the Equal Opportunities Act to allow legal acknowledgement of homosexual couples and their human rights.</p> <p>Concerning recommendation one, the YQA wishes to inform the committee that the Equal Opportunities Act</p>			

2008 has been promulgated in 2012 and since the Equal Opportunities Commission and the Equal Opportunities Tribunal has been established. The Equal Opportunities Act 2008 makes provision for non-discrimination (direct and indirect) and equal opportunities on the basis of different statuses, inter-alia on Sexual Orientation. In addition, the YQA wishes to draw attention of the committee that Gender Identity is not covered under the Equal Opportunities Act 2008.

Concerning recommendation two, the YQA wishes to inform the committee that the Equal Opportunities Act 2008 is to be:

- a) Binding to the State
- b) Have effect **notwithstanding any other enactment** relating to employment, education, qualifications for a profession, trade or occupation, the provision of goods, services, facilities or accommodation, the disposal of property, companies, partnerships, “*sociétés*”, registered associations, sports, clubs and access to premises which the public may enter or use.
- c) In addition to, and not in derogation of, the Training and Employment of Disabled Persons Act.

Despite the provisions for the application of the Equal Opportunities Act 2008, and non-definition of “spouse” in the Civil Status Act 1982 as “*a person civilly or religiously married to another person of the opposite sex*”, the State party uses the definition of “spouse” in the Protection from Domestic Violence (amendment) Act 2016 “*...a person who has been civilly or religiously married to a person of the opposite sex*” so as not to allow for the legal acknowledgement of homosexual couples and their human rights.

## 2.0 United Nation Bodies' concluding observations, general comments and jurisprudence

Following the Alternative Report submitted by the Young Queer Alliance at the 121<sup>st</sup> Session of the Human Rights Committee (HRC) for the 5<sup>th</sup> Periodic Report of Mauritius, the HRC made the following **concluding observations** concerning Sexual Orientation and Gender Identity:<sup>1</sup>

- a) There are reported cases of hate speech and violence; which includes death threats, brutality and humiliation against LGBT persons;
- b) LGBT persons are not authorised to officially enter into marriage or civil partnerships and are denied other rights relative to personal status; and,
- c) Article 250 of the Criminal Code of Mauritius which criminalises “sodomy” and “bestiality” has not yet been repealed.

Therefore, the HRC **recommended** that the Mauritian State:<sup>2</sup>

- a) To prevent and protect LGBT persons from all forms of discrimination based on sexual orientation and gender identity including through reviewing of the Criminal Code.
- b) To take all necessary measures to eradicate discrimination against LGBT persons with regards to marriage and civil partnership as well as repeal article 250 of the Criminal Code.
- c) To ensure that complaints of violence, death threats, brutality relative to discrimination against LGBT persons are registered by the police and investigated, and those responsible are duly prosecuted and if convicted, sanctioned with appropriate penalties.
- d) To train police officers, judges and prosecutors and conduct awareness-raising campaigns for the general public on the rights of lesbian, gay, bisexual and transgender persons.

In its General Comment No. 35 (HRC, 2017), the HRC has, in respect to Article 9 of the International Covenant on Civil and Political Rights (ICCPR), explained that the Article guarantees the right to the security of persons – including lesbian, gay, bisexual and transgender persons. The right to security of person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained. This right obliges States parties to, *inter alia*, take measures to prevent future injury and to take measures in response to past injury such as by enforcing criminal laws or for example, by responding “appropriately to patterns of violence against categories of victims such as [...] violence against persons on the basis of their sexual orientation or gender identity”; and to take appropriate measures in response to death threats against persons in the public sphere.

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<sup>1</sup> CCPR/C/MUS/CO/5, 11 December 2017

<sup>2</sup> CCPR/C/MUS/CO/5, 11 December 2017

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

Violence due to homophobia and transphobia is a lived reality for many LGBTQIA living in Mauritius. According to a survey conducted by YQA (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.

During the 12<sup>th</sup> edition of the Gay Pride in Mauritius celebrated on 03 June 2017 some 20 anti-LGBT supporters acted violently towards the persons present at the march despite the presence of the Police Force to deter violent actions. As at now, no legal sanctions have been taken against these anti-LGBT supporters.

Besides, human rights defenders and organisations are also the targets of hate crimes as a result of their work in defending the rights of LGBT people for instance, death threats that the former president of YQA received in 2014. The latter was again indirectly targeted on the 29 January 2017 through an e-mail that was sent to the Minister of Public Infrastructure and Land Transport and some of its staff with the intention of harassment. No action was taken.

In addition, on 19 September 2016, a transgender person named Giovanni who worked for the Association VISA G (a transgender-led organisation) reported being unjustly arrested, humiliated and brutalised by Police Officers of Sodnac and Central Investigation Division of Quatre – Bornes.

The definition of “racial hatred” adopted by article 282 of the Criminal Code Act 1838 of Mauritius is based on social group as follows: *“Any person who, with intent to stir up contempt or hatred against any section or part of any section of the public distinguished by race, caste, place of origin, political opinions, colour or creed -”* The definition is clearly restrictive as there is no mention of ‘sexual orientation’ or ‘sexual identity’ as a social group. Hence, hate motive on the basis of criminal acts against an individual based on their sexual orientation and gender identity cannot be considered as an aggravating factor for criminal sentences under the Criminal Code Act 1838.

In 2013, Geoffrey Robertson 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.<sup>3</sup>

In 2016, the Law Reform Commission (LRC) of Mauritius, in its Interim Report on “Reform of Criminal Code” suggested that Section 282 of the Criminal Code of Mauritius be revised to include sexual orientation as a social group on aggravating circumstances grounds.<sup>4</sup>

<sup>3</sup> <http://gis.govmu.org/English/Documents/Media%20Law%20-%20Preliminary%20Report.pdf>

<sup>4</sup> <http://lrc.govmu.org/English//DOCUMENTS/INTERIM%20REPORT%20ON%20REFORM%20OF%20CRIMINAL%20CODE.PDF>

#### 4.0 Marriage equality/Civil partnership

Both marriage and civil partnership are legally or formally (resulting from religious or social norms) recognised unions between people as partners. States recognising marriages and/or civil partnerships between its citizens with citizens from other countries ensure that the social, cultural and economic benefits enjoyed by these persons are maintained. These benefits range from rights to housing, spousal social benefits, social-security for spouses, inheritance rights, pension, insurances, loans and institutional rights and benefits. People who do not have these rights to enter into marriage and/or civil partnership are thus, in a disadvantageous position as they do not enjoy the same benefits and rights.

Legal provisions relating to marriage or civil partnership in the Mauritius are as follows:

- a) the Civil Status Act 1982 of Mauritius defines ‘marriage’ as civil or religious marriage between two persons but it does not define ‘spouse’ as a person married to another person of another sex;
- b) section 5 of the Interpretation and General Clauses Act 1974 states that “... words importing the masculine shall include the feminine and the neuter...”;
- c) the Equal Opportunities Act 2012 defines ‘spouse’ as “...in relation to a person, means the person to whom he is, or has been, civilly or religiously married...”; and
- d) the Protection from Domestic Violence (amendment) Act 2016 defines ‘spouse’ as “...a person who has been civilly or religiously married to a person of the opposite sex.”

According to a survey carried out by the YQA (2017), from among the top five priorities to be included on the LGBT agenda in Mauritius during the next five years, **civil partnership/marriage equality was chosen as the first priority** by respondents (73.1%) **while adoption rights was voted their fourth priority** (56.6%), thus, showing the need for a family life by people of the LGBT community.

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. A complaint at the EOC and in 2016, the EOC stated that same-sex marriage is not recognised under Mauritian law.

The Republic of Mauritius posits itself as the crossroad for the economic and tourism sectors for Asian countries, the African Continent and Europe. In this context, it is to be expected that same-sex couples in a civil partnership or married couples come to Mauritius for business, leisure or tourism activities. **In parallel, YQA has reports of the non-registration by the CSD LGBT Mauritians citizens have also migrated to other countries whereby civil partnership and marriage between same sex couples are recognised.**

The former British High Commissioner posted to the Republic of Mauritius was accompanied by his partner. He was “openly gay and attend[ed] official functions with his husband as his civil partner.”<sup>5</sup>

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<sup>5</sup> Office of the Director of public prosecutions, April 2017

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

In Mauritius, there is no law *per se* which criminalises the identity of being a homosexual. However, the Equal Opportunities Commission Interim Report 2012 states that homosexuality, that is sodomy, is illegal.

Section 250 of the Criminal Code 1838 of Mauritius makes reference to ‘Sodomy’ and ‘Bestiality’, which have been amalgamated together under a single section and is hence, suggestive of the fact that the two acts, though different are being treated as being of similar severity.

The Constitution of Mauritius guarantees the following:

- a) **Article 3:** Fundamental rights and freedoms of the individual
- b) **Article 5:** Protection of right to personal liberty; and
- c) **Article 9:** Protection of privacy of home and other property

Therefore, as long as Sodomy is conducted between consenting adults, is a matter of freedom and privacy of these individuals. The State, therefore, cannot interfere in the private life of individuals and the right to engage in such sexual activity relates to bodily integrity.

On 7 December 2016, *Le Défi*, a local newspaper, reported that an individual aged 17 years, engaged in the act of sodomy consensually, with another person of the same sex aged 15 years. The former was convicted for the crime of sodomy.<sup>6</sup>

In 2007, an attempt to introduce a sexual offences bill failed. The bill, altogether with defining acts of sexual violence, would have decriminalised sodomy.<sup>7</sup>

The LRC, in its Issue of June 2007, gave substantive arguments for the decriminalisation of sodomy as per human rights treaty obligations, the CCPR and precedent cases in other jurisdictions.

In 2017, the Director of Public Prosecutions has advanced that Article 250 of the Criminal Code of Mauritius might not be constitutional.<sup>8</sup>

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<sup>6</sup> Le Défi: Accusé de sodomie par un copain - le suspect, âgé de 17 ans : «nous nous aimons...»

<sup>7</sup> L'Express: Sodomy halts debate on Sexual Offences Bill, 12 April 2017

<sup>8</sup> E-newsletter, issue 69, 2017; available at: <http://dpp.govmu.org/English/Documents/Issue69.pdf>

## 7.0 Recommendations

The YQA recommends the following in respect to actions to be taken by the State Party in light of the above:

- a) Develop and implement policies and programmes (e.g. training courses) for police officers, judges and prosecutors and conduct awareness-raising campaigns for the general public on the rights of lesbian, gay, bisexual and transgender persons;
- b) Amend article 282 of the Criminal Code Act 1838 by inserting direct indication of the hate motive against people based on their real or perceived sexual orientation, gender identity and gender expression as aggravating circumstances;
- c) Abide by provisions of the application of the Equal Opportunities Act 2008; and thereby, amending the Protection from Domestic Violence (amendment) Act 2016 in order to recognise marriage and/or civil partnership for same-sex couples in the definition of ‘spouse’; and,
- d) Repeal article 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 the CCPR.

## REFERENCE

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