

# Immigration and Refugee Board of Canada

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## Responses to Information Requests

Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's [Refworld](#) website. Please note that some RIRs have attachments which are not electronically accessible. To obtain a PDF copy of an RIR attachment, please email the [Knowledge and Information Management Unit](#).

15 August 2014

### MUS104935.E

Mauritius: Situation of sexual minorities, including treatment by society and authorities; state protection and services available

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

#### 1. Legislation

##### 1.1 Legislation Criminalizing Sexual Acts

According to the US Department of State's *Country Reports on Human Rights Practices for 2013*, there is no law in Mauritius that "specifically criminalize[s] consensual same-sex sexual activity," but legislation exists that criminalizes the "act of sodomy," and this prohibition is applicable to both same-sex and heterosexual couples (US 27 Feb. 2014, 15). Section 250 of the Mauritian *Criminal Code* defines the punishment for the crime of sodomy as follows: "(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" (Mauritius 1838). According to the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), "sexual relationships" between males and "male to male relationships" are illegal in Mauritius (ILGA n.d.a). The same source mentions that "sexual relations" between females, as well as "female to female relationships," are legal (ibid. n.d.b).

Sources report that a "Sexual Offences Bill" was tabled in the Mauritian Parliament in 2007 (afrol News 3 May [2007]; UPR Info 18 Jan. 2012, 15). Section 24 of the proposed bill would repeal Section 250 of the *Criminal Code* and "delete the crime of sodomy" (Mauritius 2007, Sec. 24). Afrol News, an Oslo-based news agency that covers events throughout Africa (afrol News n.d.), reports that the introduction of the bill in Parliament sparked a "heated debate" within Parliament, as well as protests from religious leaders (afrol News 3 May [2007]). UPR Info, a Geneva-based NGO that aims to "provid[e] information on the implementation of [UN Human Rights Council's Universal Periodic Review (UPR)] recommendations" (UPR Info n.d.a), also reports that the provision of the bill that would legalize consensual anal sex caused "public outcry" (UPR Info 18 Jan. 2012, 15). According to the UN Human Rights Council's 2013 *Report of the Working Group on the Universal Periodic Review*, consideration of the draft bill was suspended in 2010 (26 Dec. 2013, 14). The same source reports that as of December 2013, the Mauritian government has not proceeded with the bill, since it decided that further consultations on the matter were required (ibid.). In its *Report on Sexual Orientation and Gender Identity Related Issues at the 25th Session of the UN Human Rights Council*, ARC International, a Canadian NGO that works to advance LGBT rights through raising awareness and liaising with other human rights organizations (ARC International n.d.), also said that the government of Mauritius "has not yet taken any policy decision regarding the decriminalization of sodomy," and that further consultations must take place (ibid. [2014], 39).

##### 1.2 Application of Provisions Criminalizing Sexual Acts

According to Mauritius's *Annual Report of the Judiciary 2013*, there were 16 convicted offences under the sodomy provision of the *Criminal Code* in 2013, an increase from 10 of such convicted offences in 2012 (May 2014, 37). The report states that sentences for these offences included imprisonment, fines and probation or community service, but that some of the 16 individuals convicted received a conditional or absolute discharge (ibid., 41). *Country Reports 2013* notes that

sodomy cases that reach the courts almost exclusively involve heterosexual persons, especially as an aggravating factor in divorce cases. The sodomy statute rarely was used against same-sex couples, unless one of the partners cited sodomy in the context of sexual assault. (US 27 Feb. 2014, 16)

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

### 1.3 Legislation on Homophobic Crimes

In correspondence with the Research Directorate, a representative from the Collectif Arc-en-ciel (CAEC), a Mauritian LGBT NGO (CAEC n.d.a), said that there is currently no law that penalizes [translation] "homophobic crimes" (11 Aug. 2014). Further information on whether there is legislation condemning homophobic crimes could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

### 1.4 Anti-discrimination Legislation

The Employment Rights Act, enacted in 2008, provides the following:

1 (a) No worker shall be treated in a discriminatory manner by his employer in his employment or occupation.

(b) No person shall be treated in a discriminatory manner by a prospective employer in respect of access to employment or occupation. (Mauritius 2008a, Sec. 4(1))

The *Act* adds that discrimination includes "affording different treatment to different workers attributable to ... sexual orientation," among others (ibid., Sec. 5(a))

Further, the *Equal Opportunities Act* was enacted to "promote equal opportunities between persons [and] prohibit discrimination on the ground of status [which includes sexual orientation] and by victimisation" (Mauritius 2008b, Sec. 2). For example, the *Act* includes provisions where the employer is responsible for taking measures to minimize the risk that an employee be subjected to discrimination in the workplace or "in determining who should be offered employment" (ibid., Part III, Sec. 9-10). A copy of this law is attached to this Response. According to the CAEC representative, the *Equal Opportunities Act* was officially proclaimed in December 2011 and has been in force since 1 January 2012 (CAEC 11 Aug. 2014). The *Equal Opportunities Act* "encompasses both the public and private sector" (Mauritius n.d.a).

## 2. Treatment by Society

According to a 2011 report prepared by the CAEC, the fact that Mauritius is a small island with a strong religious presence generates a climate [translation] "where homophobia remains a real problem" (CAEC Dec. 2011). The report notes that homosexuality is viewed as a [translation] "sin" and as "unnatural behaviour" (ibid.). In correspondence with the Research Directorate, the Director of DIS-MOI, a regional human rights NGO based in Mauritius (DIS-MOI n.d.), similarly said that Mauritius "is a puritan society and a highly religious one as well, so homosexuality is not really accepted" (Director 31 July 2014).

In an article published in 2012 by the online Mauritian newspaper *Le Mauricien*, a first CAEC representative stated that the subject of homosexuality has [translation] "started to be less taboo" (*Le Mauricien* 31 May 2012). However, in correspondence with the Research Directorate, another CAEC representative stated that homosexuality is [translation] "still very taboo" (CAEC 11 Aug. 2014). In an article published in the Mauritian newspaper *Le Défi Quotidien*, the first CAEC representative said that [translation] "there remain individuals for whom [homosexuality is] ... a disease" (15 Apr. 2012). The LGBT magazine *Têtu* reports that some families confine their children to prevent them from having same-sex relationships (*Têtu* 24 Aug. 2010).

*Country Reports 2013* states that "discrimination and abuse based on sexual orientation or gender identity" were among the human rights problems reported in the country in 2013 (US 27 Feb. 2014, 1). Similarly, *Le Défi Quotidien* reports that sexual minorities face discrimination [translation] "in the workplace and elsewhere" (6 Jan. 2012). In contrast, in correspondence with the Research Directorate, the Ombudsman of Mauritius said that "LGBT people are free to declare their sexual orientation" and that "no discrimination exists" against LGBT people in the country (8 Aug. 2014).

Sources report that LGBT people are subjected to verbal abuse (*Le Défi Quotidien* 27 Apr. 2012; US 27 Feb. 2014, 16) and violence within the family (ibid.). The CAEC representative stated that there have been "many" cases of LGBT persons (both male and female) who, due to family and religious pressure, married members of the opposite sex (CAEC 11 Aug. 2014). The same source notes that many LGBT persons hide their sexuality from family and in their workplace (ibid.). The 2011 CAEC report also explains that it is difficult to be open about one's sexual orientation or sexuality without [translation] "falling prey to scandal" and that there is "no recognition of non-heterosexuals couples in society," citing the example that a same-sex couple cannot obtain a loan to purchase property (ibid. Dec. 2011).

Sources report that the LGBT community holds an annual gay pride parade, the "Rainbow Parade," in the city of Rose-Hill (*Le Défi Quotidien* 27 May 2014; *Le Mauricien* 31 May 2012). According to sources, the Rainbow Parade has been held since 2005 (ibid.; *Le Défi Quotidien* 15 Apr. 2012) and is organized by the CAEC (ibid.). *Le Défi Quotidien* indicates that the parade has been held each year without incident (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

### 3. State Protection

#### 3.1 Anti-discrimination Mechanisms

The Equal Opportunity Commission (EOC) handles discrimination complaints made under the *Equal Opportunity Act* and is mandated to "investigate allegations of discrimination and promote equality of opportunity in both the private and public sectors" (US 27 Feb. 2014, 11). The EOC was created in 2012 (*Le Mauricien* 18 July 2014; Mauritius 2014). In its 2014 report, which covers the entire period the EOC has been operating, the EOC indicates that 1 percent of the 1,058 complaints they received was related to sexual orientation (ibid., ii, 22-23). The report provides an example of a complaint where a blood-donor screening questionnaire used by an NGO and a government department allegedly contained language that amounted to "discrimination on the ground of sexual orientation as it targets [...] homosexuals" (ibid., 30). The parties involved agreed to change the language on the form (ibid.).

According to its 2014 report, since 2012, the EOC has been conducting a public anti-discrimination awareness campaign that has targeted almost 10,000 individuals working in public and private organizations (Mauritius 2014, 48). *Country Reports 2013* notes that "[w]hile the government generally enforced [anti-discrimination] provisions, some societal discrimination occurred" (US 27 Feb. 2014, 11). *Country Reports 2013* also notes that the EOC is "independent, adequately resourced, and effective" (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

In correspondence with the Research Directorate, the Ombudsman of Mauritius said that they can receive complaints based on sexual orientation and gender identity (8 Aug. 2014). The Ombudsman is appointed by the president of Mauritius to address complaints against public officials, including police officers (US 27 Feb. 2014, 11). The Ombudsman said that their mission is to "make recommendations to redress wrongs that may be found to have been committed" (Mauritius 8 Aug. 2014). He also said that they have not dealt with any complaints based on sexual orientation or gender identity since 2012 (ibid.).

According to *Country Reports 2013*, the Ombudsman is "independent, adequately resourced, and effective" (US 27 Feb. 2014, 11). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. However, *Country Reports 2013* also indicates that while "the government took steps to prosecute and punish officials who committed abuses ... enforcement was inconsistent, and impunity occurred" (ibid., 1).

#### 3.2 Treatment by Police

According to *Country Reports 2013*, LGBT victims of verbal abuse or violence within the family "generally refused to file complaints with police ... for fear of ostracism or, in some cases, fear of reprisal from family members" (ibid., 16). Similarly, *Le Défi Quotidien* reports that LGBT persons [translation] "avoid the police," prefer to keep silent for fear of being "attacked" again, and fear the consequences of coming forward about an assault (*Le Défi Quotidien* 6 Jan. 2012). A transsexual quoted in *Le Défi Quotidien* explains that police officers mock LGBT people who go to the police station (ibid.).

A 24 August 2010 article published in *Têtu* reports that in one instance where a young LGBT person was confined by her parents, the police refused to investigate the complaint made by the individual's friend. Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Further information about protection offered by Mauritian authorities to LGBT persons could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

#### 4. Support Services

*Country Reports 2013* notes that LGBT victims report abuse and violence to the CAEC (US 27 Feb. 2014, 16). The CAEC provides support to LGBT victims of discrimination, including advice and legal assistance (CAEC 11 Aug. 2014). Sources report that the CAEC also maintains a telephone helpline (ibid. Dec. 2011; *Le Défi Quotidien* 6 Jan. 2012) that receives, according to *Le Défi Quotidien*, an average of 13 calls per day (ibid.). The helpline provides LGBT persons with legal advice and psychological support (CAEC Dec. 2011). The CAEC also engages in advocacy work (CAEC Dec. 2011). The CAEC has also participated in drafting a national strategy to fight against HIV/AIDS that takes LGBT people into account (*Le Mauricien* 31 May 2012). The CAEC has also been involved in leading workplace anti-discrimination training sessions within companies (ibid.; *Le Défi Quotidien* 6 Jan. 2012).

Sources report that a new youth LGBT association, Young Queer Alliance (YQA), was created in 2014 (CAEC 11 Aug. 2014; YQA n.d.a). According to the NGO's website, YQA works to prevent discrimination of LGBT youth under the *Employment Rights Act* and the *Equal Opportunities Act*; provides counselling and support to LGBT victims of discrimination, including "family rejection and bullying"; and is involved in educating "law enforcers and policy makers" on LGBT youth issues (ibid. n.d.b). YQA indicates that it "is still struggling to have official recognition with the Registration of Associations" (ibid. n.d.a).

Additional information about support services available to LGBT persons in Mauritius could not be found among the sources consulted by the Research Directorate.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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## Additional Sources Consulted

**Oral sources:** Attempts to contact the following individuals and organizations were unsuccessful within the time constraints of this Response: Mauritius – Equal Opportunities Commission, Police Force; Prévention information lutte contre le SIDA (PILS). A professor of Global Development Studies at Queen's University, Kingston, Ontario; a professor of Comparative Sexual Orientation Law at Leiden University, Netherlands; and a representative of ILGA Pan Africa could not provide information for this Response.

**Internet sites, including:** Amnesty International; BBC; ecoi.net; Factiva; Freedom House; Global Gayz; Human Rights First; International Day Against Homophobia and Transphobia; International Gay and Lesbian Human Rights Commission (IGLHRC); Mauritius – National Human Rights Commission, Police Force; Pink News; Prévention information lutte contre le SIDA (PILS); UN – Office of the High Commissioner for Human Rights, Refworld.

## Attachment

Mauritius. 2008. *Equal Opportunities Act 2008*.

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