

Criminalisation of Homosexuality

Updated 25 October 2015

 Mauritius		
<p>National Law: <i>Criminal Code, 1838</i>¹</p> <ul style="list-style-type: none"> - S250: Sodomy and Bestiality² 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 5 years' imprisonment 	<p><u>Treaty Ratification</u></p> <p>AFRICAN CHARTER</p> <p>CAT</p> <p>CEDAW</p> <p>CEDAW OP</p> <p>CRC</p> <p>ICCPR</p> <p>ICCPR OP</p> <p>ICESCR</p>
The law is applicable only to men.		
Enforcement	<ul style="list-style-type: none"> - The law, whilst enforced, is equally applicable to both gay and straight men. The law does not specifically criminalize consensual same-sex sexual activity. It criminalizes the act of sodomy, however, among both same-sex and heterosexual couples. Sodomy cases that reach the courts almost exclusively involve heterosexual persons, especially as an aggravating factor in divorce cases. The sodomy statute was rarely used against same-sex couples, unless one of the partners cited sodomy in the context of sexual assault.³ - 2013: The US Country Report states that while cases do occasionally reach the courts, they <i>'almost exclusively involve heterosexual persons'</i>, with cases being brought against gay people only where one person is alleged to have been assaulted.⁴ 	
Statements by Public Figures	<ul style="list-style-type: none"> - January 2013: Paul Bérenger (below) stood down for health reasons and has been replaced temporarily by Alan Ganoo whose position on gay rights is unknown. - 28 June 2011: Then Opposition Leader Paul Bérenger raised a Private Notice Question in Parliament as to whether the Government proposed to amend domestic laws discriminating against homosexuals. The Prime Minister replied that the Government would await the study to be commissioned by the UN High Commissioner for Human Rights, followed by a panel discussion to be convened by the Human Rights Council. Thereafter, a Select Committee would be set up at national level to study the matter and to determine which amendments should be 	

	<p>brought to domestic law.</p> <ul style="list-style-type: none"> - Bérenger has taken a conservative approach stating that Mauritius should not have signed the UN Resolutions in view of the various religious sensitivities of the country.
<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - 2014: Verbal abuse or violence within the family based on sexual orientation was reported to local NGOs. Few complaints were made to the police out of fear of reprisals or ostracism. A 16-year-old committed suicide on January 27 after constant bullying and taunting from classmates due to his sexual orientation.⁵ Following a complaint about the questionnaire used by the Ministry of Health and Quality of Life to prohibit blood donation from LGBT persons, the ministry amended its policy and website in 2013 to indicate individuals who have had same-sex sexual activity could donate blood.⁶ - 2013: Reports of discrimination are rare, with the US Country Report finding no instances of discrimination in a number of areas. In the last 2 years, the country changed its policies on blood donation and the wording of some of its websites to be more inclusive of sexual and gender minorities. In respect of violence and persecution, the report found few reported instances of violence; however, it added that due to societal pressures, many people may be discouraged from reporting.⁷
<p>Legislative News</p>	<ul style="list-style-type: none"> - 2015: The Mauritian NGO <i>Arc-en-Ciel</i> has organised a series of activities to raise awareness of their goals as a community. Their main aims are to legalise sodomy.⁸ - 2014: (UPR) In response to calls from Canada and Australia to remove those provisions which criminalise homosexuality, Mauritius responded: <i>[the] Government has not yet taken any policy decision regarding the decriminalization of sodomy. In view of the sensitivity of the issue, further consultations are required.</i>⁹ - January 2012: The Equal Opportunities Act 2008 came into force. It prohibits discrimination on the basis of sexual orientation, among other statuses, in employment and education, and with respect to the provision of goods or services, and accommodation, among other areas.¹⁰ Other similar legislation includes the Employment Rights Act 2008 (as amended)¹¹ and the Employment Relations Act 2008 (as amended).¹² Both Acts prohibit discrimination on the basis of sexual orientation. - 2009: (UPR) Mauritius accepted recommendations to implement progressive legislations regarding sexual orientation and gender identity stating: <i>A Sexual Offences Bill was referred to a Select Committee in 2007 for further study and</i>

consultation. The object of the Bill is to make further and better provision for sexual offences. In that context... provision is made for decriminalizing of sexual activities among consenting adults.¹³

- Mauritius has taken several positive steps on the international stage at the UPR and in support of some of the major Resolutions and Declarations at the UN on Sexual Orientation and Gender Identity¹⁴ but progress on decriminalisation appears to have stalled.

¹ The law is : <http://attorneygeneral.govmu.org/English/Documents/A-Z%20Acts/C/Page%201/CRIMINAL%20CODE,%20Cap%20195.pdf>

² *Criminal Code 1838, s.250: '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.'*

³ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Mauritius*, 2014, <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236384>> accessed on 10 August 2015

⁴ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013: Mauritius*, 2013, <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220139>> accessed on 19 July 2014

⁵ Ibid n2.

⁶ Ibid.

⁷ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013: Mauritius*, 2013, <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220139>> accessed on 19 July 2014

⁸ Patel, N., 'Protest Against Illegality of Anal Sex in Mauritius', *Island Crisis*, 19 February 2015, <<http://news.islandcrisis.net/2015/02/protest-against-illegality-of-anal-sex-in-mauritius/>> accessed on 10 August 2015

⁹ UNHRC, *Report of the Working Group on the Universal Periodic Review*, 14 March 2014, UN Doc A/HRC/25/8/Add.1

¹⁰ Equal Opportunities Act 2008, Act No. 42 of 2008 <http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_126781.pdf> accessed on 10 August 2015. s 2: 'status' means age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex or sexual orientation

¹¹ The Employment Rights Act 2008, Act No. 33 of 2008 <<http://labour.govmu.org/English/Documents/Legislations/Employment%20rights%20acts%202008/RiA%202008%20as%20at%20Dec%202013.pdf>> accessed on 10 August 2015

¹² The Employment Relations Act 2008, Act No. 32 of 2008 <<http://labour.govmu.org/English/Documents/Legislations/Employment%20relations%20act%202008/EReA%202008%20updated%20as%20at%20%202013.pdf>> accessed on 10 August 2015

¹³ UNHRC 'National Report', 30 October 2008, UN Doc A/HRC/WG.6/4/MUS/1 para 105

¹⁴ Mauritius supported UNHRC Resolution 17/19: Human rights, sexual orientation and gender identity (14 July 2011), A/HRC/RES/17/19, but neither supported, opposed nor abstained from the most recent UNHRC Resolution on 26 September 2014 (A/HRC/RES/27/32). Mauritius supporting the joint statement on human rights, sexual orientation and gender identity delivered at the UN General Assembly in December 2008, on behalf of 66 States from all 5 UN regions. Amongst other things, this statement urged States to take all the necessary measures 'to ensure that sexual orientation or gender identity may under no circumstances be the basis for criminal penalties'.