***“Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity”***

1. LGBTQI rights and discrimination based on sexual orientation are emerging human rights concerns that are attracting much attention these days throughout the world. The Republic of Mauritius is no exception to that. There are a few nongovernmental organizations which are advocating actively for recognition of rights of LGBTQI. However, in view of the particular social fabric in Mauritius, LGBTQI or sexual orientation is still a subject of taboo to some extent.
2. The people of the Republic of Mauritius are multicultural and multilingual. They have freedom of conscience and can manifest and propagate their religion, belief in worship, teaching, practice and observance. This diversity in unity makes the beauty of the country.
3. Protection of Fundamental Rights and Freedoms of the Individual is enshrined in Chapter II, Section 3 of the Constitution. All individuals are equally protected, be it if they are lesbians, gays, bisexuals, transgender, Queer and Intersex (LGBTQI).
4. Section 3 of the Constitution provides for:

"*It is hereby recognised and declared that in Mauritius there have existed and shall
continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms –*

1. *the right of the individual to life, liberty, security of the person and the protection of the law;*
2. *freedom of conscience of expression, of assembly and association and freedom to establish schools,” and*
3. *the right of the individual to protection for the privacy of his home and other
property and from deprivation of property without compensation.*
4. Sections 4 and 5 of the Constitution make also provision for the protection of right to
life and right to personal liberty. Moreover, Section 16 of the Constitution, inter alia, provides that *"no law shall make any provision that is discriminatory either of itself on in its effect"*. The term "discriminatory” is defined as *"affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour, creed or sex whereby persons of one such
description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description;"*
5. In our Criminal code and specific legislations (Domestic Violence Act, Child Protection Act, the Protection of Elderly Persons Act, The Protection of Human Rights Act 1998, etc.) any act of violence or discrimination, simple and aggravating assaults, sexual offences, sexual harassment, acts of domestic violence, inciting racial hatred etc., is an offence under the different legislations. Specific rights of LGBTQIs are not specified in domestic law but the legislations afford the same protection to all individual irrespective of their gender identity of sexual orientation.
6. The Equal Opportunities Act which was passed in the year 2008, aims at protecting likely victims of discrimination and sexual harassment. Discrimination on the basis of “status” is also forbidden (section 5 of the Equal Opportunities Act). “Status”, under section 2 of the Equal Opportunities Act, includes sexual orientation of a person (whether he/she is gay, lesbian, bisexual, transgender, Queer or Intersex).

“ "Status"-
means age, caste, colour, creed, ethnic origin, impairment, marital status, place of
origin, political opinion, race, sex or sexual orientation.”

1. Since the setting up of the Equal Opportunities Commission (EOC) in 2012, the national human right institution has received only 8 complaints for discrimination on ground of sexual orientation. Out of the 8 complaints, one (1) was conciliated and a written agreement made, two (2) were settled with no written agreement, three (3) were investigated and no evidence of discrimination was found, one (1) was withdrawn and the remaining one (1) was set aside.
2. It is worth noting that The EOC organises regularly sensitisation campaigns targeted towards the citizens around the island in its combat against discrimination.
3. Furthermore, the Workers' Rights Act protects workers' jobs and protects workers against precarious employment and discrimination, among others.
4. As per Section 5 (5) of the Workers' Rights Act, discrimination is
defined as affording different treatment, inter alia, to different workers
attributable, wholly or mainly, to their respective description by age,
race, colour, caste, creed, sex, sexual orientation, gender, HIV status,
impairment, marital or family status, pregnancy, religion, political
opinion, place of origin, national extraction or social origin, which has
the effect of nullifying or impairing equality of opportunity or treatment
in employment or occupation;
5. Section 64 of the Workers' Rights Act also provides for protection
against termination of an agreement by reason of, inter alia, a worker's
race, colour, caste, national extraction, social origin, place of his origin,
age, pregnancy, religion, political opinion, sex, sexual orientation,
gender, HIV status, impairment, marital status or family
responsibilities:
6. Section 114 of the Workers' Rights Act makes it a criminal offence to:
7. harass, sexually or otherwise;
8. assault;
9. verbally abuse, swear at or insult or humiliate in any
manner whatsoever;
10. express the intention to cause harm to;
11. bully or use threatening behaviour towards;
12. use aggressive gesture indicating intimidation, contempt or
disdain towards; or
13. by words or act, hinder,

a worker, including any person undergoing training under any training
scheme, in the course of or as a result of his work or training.

Harassment is defined, under this Section, as including any unwanted conduct towards the worker, whether verbal, non-verbal, visual, psychological or physical, based on age, impairment, HIV status, domestic circumstances, sex, sexual orientation, gender, race, colour, language, religion, political, trade union or other opinion or belief, national or social origin, association with a minority, birth or other status, which occurs in circumstances where a reasonable person would consider the conduct as harassment of the worker

1. The State of Mauritius is also working on the preparation of a Gender Equality Bill which will:
2. promote, protect and regulate gender equality in public and private spheres;
3. eliminate gender-based discrimination, ensure that human rights of men and women are guaranteed and acknowledged in existing as well as the proposed legislation in order to achieve gender equality;
4. provide for gender equality principles that aim at reducing socio-economic inequalities so as to achieve substantive equality in all spheres, that is socially, economically and politically;
5. provide for equal opportunities for both men and women and create responsibilities of all entities, public and private, to eliminate barriers that lead to gender discrimination; and
6. promote equality and gender balance between family roles, unpaid care work and employment for men and women.
7. It has been noted in Mauritius that very often LGBT people hide their sexuality and/or gender identity for fear of ostracism, stigma, or reprisal from their family. Most of the times they do not report cases of abuse as going to the police would reveal their sexual orientation and gender identity. Even if they go to the police, they do not disclose their sexual orientation.
8. Offences that are reported to the Mauritius Police Force are classified into four groups as follows: -
* Crimes
* Misdemeanour
* Contravention
* Others

Information of all reported cases at police stations and branches like ADSU and CCID are kept according to this classification and it is not disaggregated by gender. Consequently, LGBTQI may register their complaints easily without disclosing their gender identity and sexual orientation.

1. Disaggregated data is maintained by the Police Department / Police Family Protection Unit. only in cases of domestic violence and breaches of Protection Orders. However, these systems of recordings do not capture information specifically on LGBTQI or sexual orientation as it is not recognised as a gender status in Mauritius.
2. Moreover, the Protection from Domestic Violence Act 1997 or the amendments made to the Act does not explicitly cater for people with sexual orientation. The redefinition of “spouse’ which is limited to two persons of opposite sex, as prescribed in PDVA Amendment 2016, excludes LGBT people. Even if protection to these people is extended under this law where they are living together under same roof, they are not obliged to disclose their gender identity.

A return of cases reported for year 2018 to 2021 (*as at 18 Feb 2021)* is enclosed at **Annex A**.

1. The Government of Mauritius has solicited the assistance of a Consultant from UNDP in order to assess the current situation with regard to gender-based violence in Mauritius. After consultation with representatives from different Ministries/Departments, the Consultant formulated a National Strategy and Action Plan for the elimination of gender-based violence in Mauritius. The plan focuses on the adoption a multi-sectoral and holistic approach in order to address this pervasive phenomenon which is considered as a serious violation of human rights.
2. The National Strategy and Action Plan on the Elimination of Gender Based Violence (GBV) was launched on 25 November 2020 on the occasion of the International Day of Elimination of Violence Against Women.In order to ensure the successful implementation of the National Strategy and its accompanying Action Plan, Government has set up the following Monitoring and Evaluation mechanisms: -
3. The High Level Committee under the chair of the Hon. Prime Minister to monitor and evaluate the progress made on the implementation of the National Strategy and Action Plan on a half yearly basis;
4. A National Steering Committee on GBV chaired by the Hon Minister of Gender Equality and Family Welfare meet on a quarterly basis.
5. Four Technical Working Groups to ensure the implementation of the activities falling under each of the following sub strategies:
* Change societal norms and beliefs that are against principles of gender equality and equity;
* Priority support services for survivors while holding perpetrators accountable;
* Identify and redress discriminatory practices that perpetuate gender-based violence; and
* Coordinated Monitoring and Evaluation.

Each Technical Working Group meet on a monthly basis and report to the National Steering Committee.

As regards measures taken in relation to the protection against violence and discrimination based on sexual orientation and gender identity, the Action Plan of Technical Working Group on Social Norms is enclosed at **Annex B.**

1. The Republic of Mauritius is signatory to many International & Regional Human Rights treaties to protect the rights and welfare of all individuals and in particular those of the vulnerable groups (Women, Children, Elderly etc.). In this respect, Mauritius has ratified the following conventions:
2. Convention on the Elimination of all forms of Discrimination against
women:
3. International Convention on the Elimination of all Forms of Racial
Discrimination;
4. Convention on the Rights of Child;
5. Convention on the Rights of Persons with Disabilities;
6. African Charter on Human and Peoples' Rights;
7. African Charter on the Rights and Welfare of the Child
8. International Covenant on Civil & Political Rights
9. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment/ Punishment.
10. Moreover, the Government fully believes in the freedom of the individual to adhere to and follow his cultural and religious principles and is fully committed to this principle. With a view to giving an opportunity to the different communities of the population to appreciate and share our rich cultural values, Government has been organizing Christams, Divali, Eid-Ul-Fitr and Spring Festival on an annual basis beside other festivals. Each community has a public holiday decreed for its major festival. To give a boost to human rights and cultural diversity, Government also provides religious subsidy to various religious bodies thus recognising that religion and cultural diversity and the pursuit of such development is a source of mutual enrichment for the cultural life of its people.
11. The right of peaceful assembly and association of all citizens of Mauritius are observed effectively. LGBTQI activists has been carrying out Prides Marches successfully with the support of the authorities over the past two years.
12. The Republic of Mauritius is indeed committed to advancing the rights of all its citizens including the LGBTQI community. It is however proceeding in a holistic manner taking into consideration the social fabric of the country and will take more visible legislative measures for recognition of the rights of the LGBTQI community once a consensus is reached within the population.

21 April 2021

**Annex A**

**Protection Against Violence and Discrimination**

**Based on sexual Orientation and Gender Identity**

**Statistics on reported cases for Island of Mauritius**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **SNO.** | **OFFENCE** | **2018** | **2019** | **2020** |
| 1 | Sexual Harassment | 8 | 6 | 9 |
| 2 | Other Offences under Sex Discrimination Act | 4 | 1 | 2 |

**Victims of Selected Offences for Republic of Mauritius**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Intentional Homicide | Attempted Intentional Homicide | Non Intentional Homicide | Assaults | Sexual Violence and Sexual Exploitation |
| Year 2016 |
| Male | 13 | 8 | 36 | 6228 | 73 |
| Female | 10 | 2 | 6 | 5545 | 597 |
|  |  |  |  |  |  |
| Year 2017 |
| Male | 20 | 5 | 42 | 6394 | 70 |
| Female | 13 | 9 | 10 | 5230 | 512 |
|  |  |  |  |  |  |
| Year 2018 |
| Male | 23 | 9 | 45 | 6,053 | 44 |
| Female | 14 | 4 | 14 | 4,788 | 573 |
|  |  |  |  |  |  |
| Year 2019 |
| Male | 21 | 12 | 49 | 5475 | 51 |
| Female | 6 | 7 | 10 | 4705 | 634 |

 ***Source: Crime Records Office as at 18 Feb 2021***

**Annex B**

**Sub-Strategy component 1:**

**CHANGE SOCIETAL NORMS AND BELIEFS THAT ARE AGAINST PRINCIPLES OF GENDER EQUALITY**

| **EXPECTED OUTPUTS** | **OUTPUT INDICATORS** | **ACTIVITIES** | **YEAR TARGETS** | ***Lead Agency*** | ***Collaboration*** |
| --- | --- | --- | --- | --- | --- |
| ***20*** | ***21*** | ***22*** | ***23*** | ***24*** |
| **Output 12:** **Awareness raised on Stigmatisation based on marginalised groups** | 12.1 Number of Awareness raising sessions to disseminate the impacts of the Study on the stigmatisation of marginalised groups  | Conduct a Study on Stigmatisation of marginalised groups in Mauritius |  | X |  |  |  | Ministry of Social Integration, Social Security and National Solidarity  | Ministry of Gender Equality and Family WelfareEqual Opportunities Commission  |
| 12.2 Number of Awareness raising of service providers such as Police/ Health Personnel to improve service delivery to marginalised groups  | Deliver awareness raising sessions to key stakeholders.  |  | X |  |  |  | Ministry of Social Integration, Social Security and National SolidarityMinistry of Gender Equality and Family Welfare | Ministry of Health and Wellness Police Department |