

## Mauritius

### 1. Discrimination in the family

#### a) Overarching legal framework for marriage

While discrimination of all forms is prohibited by the state's Constitution, the law provides exemptions in matters relating to personal status, including marriage, divorce, death and inheritance (Human Rights Council Working Group, 2013).

In Mauritius, civil and religious marriages have equal legal status under the Civil Code. Civil marriages are only recognised if conducted by a civil officer, and moreover, consent is given by both parties (Civil Status Act, 1981). Religious marriages, on the other hand, have legal effect if conducted by the Muslim Family Council (Civil Status Act, 1981). While the law does not make a distinction on if the individuals to be married are of the same or different sex, same-sex marriages do not enjoy the same protections and spousal rights in practice (Namwase and Jjuuko, 2017). Further, bigamy is prohibited by law and punishable by up to 20 years imprisonment (Civil Code, 1805; Government of Mauritius, Follow-up Report, 2014).

#### b) Child marriage

Under the Civil Code, the universal minimum age for marriage is 16 years old (Art 144, rev. 2011). For persons under the age of 18 years old, but over the age of 16 years old, consent is required by the parents or guardians of the minor, or alternatively a judge who rules in favour of the marriage (Civil Code, Art 145, rev. 2011). Forced or child marriages were not reported to be an issue in the country (US Department of State, 2017).

#### c) Household responsibilities

In marriage, women hold legal equal status to men in the household, including the right to be recognised as the head of household, the right to decide where to live, and the right to decide one's occupation (Civil Code, rev. 2011). Further, under the Civil Code, women and men have equal authority to be the legal guardian of their children, irrespective of their marital status (Art. 340, 372, rev. 2011). Accordingly, women and men have equal rights and responsibilities with regard to the care of their children (Art 371, 381, rev. 2011).

There are also laws in place to ensure that women in particular are protected in the household. These include laws that criminalize: the abandonment of a pregnant spouse or one's family for more than two months, the habitual drunkenness or ill conduct of a spouse, and the failure to pay court-ordered alimony (US Department of State, 2017; Government of Mauritius, Follow-up Report, 2014).

Still, it remains discriminatory attitudes and cultural norms that deem men the breadwinners and head of the household, while women are the care takers for the children and household (Human Rights Council Working Group, 2013; CEDAW, 2011). These patterns are reflected in the country's labour

force participation, where women often drop out of the work force once married due to household responsibilities (Dieterich, Huang, and Thomas, 2016).

#### **d) Divorce**

Under the state's Civil Code, women have the same rights as men to initiate and finalise a divorce (rev. 2011). In 2011, the law was amended to expand the grounds of divorce to include divorce by mutual consent or by the acceptance in the breakdown of a marriage (Civil Code, rev. 2011). Previously, the law only recognised divorce by fault or a breakdown in the marriage.

With regard to guardianship and care of children, women and men share equal rights and responsibilities, irrespective of their marital status (Civil Code, rev. 2011). For children under the age of five years old, the mother is routinely granted custody (Civil Code, rev. 2011). In all other cases, child custody rulings tend to favour women over men (Government of Mauritius, Follow-up Report, 2014).

While civil in effect, religious marriages in Muslim communities are also subject to Islamic law. To this effect, women and men in religious marriages can petition divorce in civil court, but a civil judge does not have jurisdiction to provide a final ruling without the consultation of a religious authority (Government of Mauritius, Follow-up Report, 2014).

#### **e) Inheritance**

In Mauritius, women and men have equal rights to create a will to outline the succession of their property (Civil Code, Art. 967, 1805). In the same manner, women and men also have the same rights to inheritance (Art 731-733), extending to female and male surviving spouses, regardless of a written will (Art 767-770). Additionally, the law provides every citizen with protection against property dispossession (Constitution, Art 8, 1968). In Muslim communities, inheritance is regulated by both civil and Islamic law. Under Islamic law, a woman is only entitled to half the share of a man (Kureembokus, 2010).

## **2. Restricted Physical integrity**

### **a) Violence against women**

In 2005, Mauritius signed the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (The Maputo Protocol), but to date it has not ratified it. The country has however enacted some laws pertaining to different forms of violence against women, such as domestic violence and rape. There is however no single bill that comprehensively addresses violence against women.

In 2011, the government established a National Platform as well as a costed National Action Plan to end Gender Based Violence (GBV) for the period of 2012 to 2015. Key elements of the action plan include: reviewing, adopting and enforcing protective laws and policies; improving health, legal/justice security, education and social welfare systems to monitor and respond to GBV survivors and perpetrators; ensuring provision of essential services to survivors; and bringing behavioural change amongst men and boys likely to perpetuate GBV (OHCHR Human Rights Council Working Group, 2013).

Moreover, the state also has engaged religious partners in their efforts to end GBV, initiated joint sensitisation programmes among youth, men and women, conducted capacity building activities for law enforcement officers, and created a Family Support Bureaux to provide legal advice and counsel to GBV survivors (OHCHR Human Rights Council Working Group, 2013).

To date, violence and discrimination against women remains one of the most significant human rights issues in the country (US Department of State, 2017).

### **b) Domestic violence**

In 1997, the government passed the Protection from Domestic Violence Act, which does not criminalise the act itself, rather it provides for protection orders, occupancy orders and tenancy orders for victims of domestic violence. Domestic violence as defined by the law includes physical, mental, emotional, economic or sexual abuse (Protection from Domestic Violence Act, 1997).

Since then, the law has had several amendments to include a more comprehensive definition of domestic violence, to further criminalise forms of domestic violence, to provide better services to victims, and to strengthen the enforcement of the law (UN Human Rights Committee, 2017; Human Rights Council Working Group, 2013). Moreover, the amended act also expands the definition of “spouse” to include unmarried couples of the opposite sex, and includes new provisions for counseling for perpetrators (US Department of State, 2017).

Additionally, the government has put in place other measures to support the legislation, including the National Plan to Combat Domestic Violence, the National Coalition against Domestic Violence Committee, gender sensitization trainings for police officers, awareness raising initiatives for victims’ rights, a toll free hotline to report domestic violence cases, and a Trust Fund for Shelter for Women and Children in Distress (Government of Mauritius, List of issues, 2017; UN Human Rights Committee, 2017; OHCHR Human Rights Council Working Group, 2013).

Despite this, the number of cases of domestic violence continues to increase, and the number of deaths of women due to domestic violence in the country (UN Human Rights Committee, 2017). This is attributed to the ineffectiveness of the police to enforce the law and protect victims, the limited shelters available to house victims, the inadequate support provided to victim’s needs (US Department of State, 2017; CEDAW, 2011). Often, women do not report incidents of domestic violence to the police for fear of losing financial support, or the overwhelming family and societal pressures that force victims to take the blame (US Department of State, 2017; Human Rights Council Working Group 2013; CEDAW, 2011).

### **c) Rape**

Under the state’s Penal Code, rape is prohibited and punishable from a minimum of 10 years to a maximum of 40 years imprisonment as well as additional fines (Art. 249, 1838). Spousal rape is not specifically addressed in the law, however the Domestic Violence Act does stipulate that a spouse cannot force or threaten their partner into a sexual act, and further, the spouse under duress has the right to abstain.

The government has also introduced other measures to support the legislation related to rape. In 2006, the government introduced a Protocol of Assistance to Victims of Sexual Assault, which promotes a more coordinated response by law enforcement and service providers who deal with rape cases (Human Rights Council Working Group, 2013). In 2007, the government drafted a Sexual Offense Bill which provides clearer definitions on rape, includes gang rape, and provides harsher penalties for the crime (Nyarango, et al, 2017). To date, the bill has not been passed by parliament.

In practice, the state's police and court systems did not effectively enforce the law, leaving rape widespread in the country (US Department of State, 2017). Given the cultural pressures, fear of retaliation, and lengthy court processes, women often did not report incidents of rape or file charges against their assaulters (US Department of State, 2017).

#### **d) Sexual harassment**

In Mauritius, sexual harassment is prohibited by law and is punishable by imprisonment and additional fines (Penal Code, 1838). In 2008, the Employment Rights Act included a section on sexual harassment that criminalised the act specifically in the workplace. Moreover, the government established a specific body, the Equal Opportunities Commission to investigate allegations of sexual harassment and gender discrimination in the workplace (Equal Opportunities Act, 2008).

Despite these legal measures, sexual harassment in the workplace was common and in most cases unreported. (Human Rights Council Working Group, 2013).

#### **e) Female genital mutilation**

There is no law prohibiting female genital mutilation, nor is there any evidence that suggests female genital mutilation is practiced in the country.

#### **f) Abortion**

Under the state's Penal Code, abortion is illegal. In 2012, the law was amended to include provisions that authorise the termination of a pregnancy in specific circumstances; where the pregnancy would be a risk to the mother's life, a risk to the mother's physical or mental health, a risk to the physical or mental development of the fetus, or in the instance of rape or statutory rape (Criminal Code Amendment Act, 2012). These exceptions are only permitted with the approval of at least three medical specialists, and for girls under the age of 18 years old, the consent of the parents or legal guardians (Criminal Code Amendment Act, 2012).

In practice, there is limited data on legal abortions conducted. There are however concerns of clandestine abortions, especially among young girls, given the potential risks and health complications that may result from illegal abortions (Human Rights Council Working Group, 2013; CEDAW, 2011).

### **More**

While Mauritius law does not explicitly ban the sexual activity of homosexual women (as opposed to men where it is deemed illegal in the Penal Code), the social and cultural stigma of homosexuality has resulted in the violence, bullying and harassment against women who identify as lesbian, bisexual, or

transsexual, forcing them to live in secrecy and fear (Young Queer Alliance, 2017; United Kingdom, 2017).

### **3. Restricted Access to productive and financial resources**

#### **a) Secure access to land and assets**

Under the Civil Code, women and men have equal rights to own and manage property (Art. 537, 546, rev. 2011). Ownership of matrimonial property is ultimately determined by the property regime decided upon marriage, where the default is joint property regime. Under this regime, property owned prior to the marriage remains the sole property of the spouse who was the original owner, and everything acquired after the marriage is considered jointly held property shared between the spouses (Civil Code, rev. 2011). The jointly held marital property is managed by each spouse equally (Civil Code, rev. 2011).

#### **b) Secure access to formal financial resources**

In Mauritius, women and men have equal access to formal financial resources, including opening a bank account and accessing credit (World Bank, 2016; US Department of State, 2017). In 1999, the Ministry of Gender Equality, Child Development and Family Welfare established the National Women Entrepreneur Council to expand women's access to credit, and to increase their capacity to open their own businesses. There is no evidence that suggest the existence of customary or traditional laws that discriminate against women's right to access banking or credit institutions (US Department of State, 2017).

#### **c) Workplace rights**

With regard to workplace rights and protections, Mauritius has ratified several international instruments, including the conventions that address equal remuneration, discrimination in employment and occupation, workers with family responsibilities, and domestic workers. Further, it has made efforts to domesticate these into its national legal framework. In 2008, it adopted the Employment Rights Act which prohibits discrimination of all forms in the workplace and stipulates equal remuneration for work of equal value. Under this framework and further supported by the state's Civil Code, women and men, regardless of marital status, have the legal right to choose their profession (Employment Rights Act, 2008; Code Civil, 1805). Moreover, there are specific provisions pertaining to pregnant women, including protection from working night hours while pregnant, fully compensated maternity leave for 12 weeks, and job security while on maternity leave (Employment Rights Act, 2008). Additionally, men are also afforded paternity leave, fully paid by their employer, for 5 days (Employment Rights Act, 2008).

There is however a weak enforcement of such laws, resulting in continued discrimination against women in the labour force (US Department of State, 2017). This is most pronounced in the differences in unemployment between women and men, the gender wage gap in both the public and private sectors, and the occupational segregation between women and men, where the majority of women work in low skilled, low wage jobs (US Department of State, 2017; CEDAW, 2011). Moreover, sexual harassment was widespread in the workplace, where most cases are not reported to authorities

(Human Rights Council Working Group, 2013). Markedly, women migrant workers were particular vulnerable to discrimination, poor working conditions, lower wages, forced prostitution, and often restriction of movement due to the illegal withholding of their passports by their employers (CEDAW, 2011). To address these issues, the government established a specific body, the Equal Opportunities Commission to investigate allegations of sexual harassment and gender discrimination in the workplace (Equal Opportunities Act, 2008).

Discrimination in the workplace also was experienced by persons of different ethnic backgrounds and persons living with HIV/AIDS (US Department of State, 2017).

## **4. Restricted Civil liberties**

### **a) Citizenship rights**

Under the Mauritius Citizenship Act, women have the right to acquire, change, or retain citizenship equal to men, regardless of marital status (1968). Moreover, women and men may equally confer their nationality to their foreign spouse (Citizenship Act, 1968). With regard to children, each parent has equal standing to confer their nationality to their child, regardless of their marital status (Civil Status Act, 1981). Further, the mother or the father may legally register the birth of the child (Civil Status Act, 1981). In the joint adoption of a child, only the adoptive father has the legal authority to confer his citizenship upon the child (Citizenship Act, 1968).

Under the state's Constitution, the freedom of movement of all individuals is protected, whereby women and men may move freely throughout the country, travel outside of it, and choose to live in any part of Mauritius (Constitution, Art 15, 1968). Regarding identity documents and passports, both women and men may apply for such documents for themselves and for their children (World Bank, 2016). There is, however, one stipulation for a married woman, namely she must submit a marriage certificate when applying to such documents (Passport Act, 1969).

In practice, there are deeply rooted cultural and societal barriers that prevent women from fully accessing their legal rights (US Department of State, 2017). At large, the discrimination of race, caste, and ancestry was also prevalent in the country (Human Rights Council Working Group, 2013).

### **b) Voting**

The right to vote is a fundamental principle enshrined in the Constitution, where women and men may exercise this right, provided they are 18 years old or older (Art. 44, 1968). Excluded from this group are women and men with mental illness (Art. 44, 1968).

### **c) Political voice**

By law, women have the same rights as men to hold public office, serve as electoral monitors, and participate in political life (US Department of State, 2017). To ensure this right, the government introduced a quota system at the local level to promote women's political voice. In 2011, the state adopted the Local Government Act, which stipulates that at least one-third of candidates in local elections are women. At the national level, the government has not introduced a quota system for women.

Additionally, the government introduced other mechanisms to increase the participation of women in government. In 2011, the National Platform on Women in Politics was established (CEDAW, 2011). In 2017, the speaker of the National Assembly established a Parliamentary Gender Caucus to create a more gender-sensitive culture in the National Assembly (US Department of State, 2017). The objectives of the Caucus will be to conduct periodically gender assessments of various governmental policies, and in turn, use these findings to inform future policies and strategies (Government Information Service, Prime Minister's Office, 2016).

In recent years, there has been a marked increase of female candidates at the local level, and at the national level, there has been some progress (UN Human Rights Council, 2017; Freedom House, 2016). Most notably, the country elected its first female president, Ameenah Gurib-Fakim in 2015 (UN Human Rights Council, 2017; Department of State, 2017). Yet, there still remains a low participation rate of women at the local level and even lower at the national level (Department of State, 2017). Systematic barriers that continue to hinder women's participation in political life include cultural attitudes and doubts about women's leadership capabilities, lack of capacity-building of potential women candidates, and the limited financial backing and general support for women candidates (Human Rights Council Working Group, 2013; CEDAW, 2011).

#### **d) Access to justice**

The state's Constitution affords both women and men the same rights to access justice, including provisions for legal aid and interpretation services (Constitution, 1968). Moreover, the government has taken additional steps to ensure that the courts take into account the specific interests of women and girls, particularly in cases of domestic violence. In particular, the law mandates enforcement officers to provide or arrange transport for the victims to an alternative residence, shelter or safe house; to provide transport of victims to the nearest hospital or medical facility; to assist the victim in filing a complaint; and to assist the victim in the collection of their belongings in their previous residence (Protection from Domestic Violence Act, 1997).

In 1998, the Protection of Human Rights Acts established a National Human Rights Commission to promote and protect human rights of the women and men in Mauritius. Key functions of the committee include receiving and resolving complaints on discrimination, monitoring compliance of national laws with international human rights standards, including those relating to gender equality, and public awareness rising on human rights, including women's rights (Human Rights Acts, 1998). Moreover, the government established a specific body, the Equal Opportunities Commission to investigate allegations of sexual harassment and gender discrimination in the workplace (Equal Opportunities Act, 2008).

In practice, particularly with instances such as rape, women often do not report or file charges against their attackers due to cultural pressure, fear of retaliation, and the lengthy court processes in the country (US Department of State, 2017).

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