

Submission to the 81st Ordinary Session of the African Commission on Human and Peoples' Rights on the Situation of Human Rights Defenders in Mauritius

MAURITIUS

September 2024

The International Service for Human Rights (ISHR) and Droits Humains Océan Indien (DIS MOI) acknowledge the periodic report submitted by the Government of Mauritius to the African Commission on Human and Peoples' Rights (ACHPR), covering the period from September 2019 to March 2024¹. Mauritius submitted this report in compliance with its obligations under Article 62 of the African Charter on Human and Peoples' Rights (African Charter). This parallel report provides additional or contradictory information regarding some of the issues addressed in Mauritius' state report, with specific emphasis on the situation of human rights defenders. The report aims to meaningfully engage the country so that more institutional and normative efforts are made to improve the situation of human rights defenders.

A. THE SITUATION OF HUMAN RIGHTS DEFENDERS IN MAURITIUS

1. In Mauritius, while violations against defenders are not systemic, civil society feels increasingly threatened and numerous regulations are in place to restrict their work. In an increasing number of cases, they face alleged arbitrary arrests, arbitrary or unlawful interference with privacy, censorship, lack of investigation of and accountability for gender-based violence.
2. Although the Constitution of Mauritius² and the African Charter³ provide for the right to freedom of association and assembly, assemblies and protests are being

¹ Mauritius 11th Periodic Report, 2019-2024, ACHPR <https://achpr.au.int/index.php/fr/node/4088>

² Constitution of the Republic of Mauritius 1968 (rev. 2016), The Constitute Project https://www.constituteproject.org/constitution/Mauritius_2016?lang=en

³ Articles 10 and 11, African Charter on Human and Peoples' Rights, 1981, https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf

heavily monitored by law enforcement agencies. Since 2021, in several cases, militarised police have been deployed during peaceful protests in Port-Louis⁴.

3. LGBTIQ defenders continue to fear the repercussions of exercising their right to assemble. Such a fear derives, in part, from the government's inability to prosecute the religious groups that disrupted the June 2018 gay pride parade⁵. Indeed, the organisations Collectif Arc-en-ciel and RekonekT often receive threats for participating in gay pride-related activities.
4. Defenders interviewed in Port-Louis denounced the reprisals they face when defending human rights. Too often, they are threatened with the possibility of losing their employment and, in some instances, they do. In other cases, their activism can be used against them when looking for employment. In Port-Louis, some defenders advocating for the rights of persons with disabilities shared the difficulties they faced when looking for employment, preventing them from continuing their activism as defenders.
5. Moreover, journalists in Mauritius are still being silenced by the government using both legal and financial tactics. The editor-in-chief of RadioPlus raised, in an interview, several alarming issues with regards to the treatment of media by the government. Many radios depend on advertising revenues and the State is the one deciding who gets those contracts. In 2020, RadioPlus, a private radio station owned and broadcast by Defimedia Group, was afforded one of those contracts with the government but when they denounced the wrongful allocation of funds during the COVID-19 pandemic to non-medical companies, the government terminated the contract, leaving them in a dire financial situation. Their journalists were also summoned by the police.
6. According to RadioPlus, journalists are being discredited online for their work, while fake profiles are being created on social media platforms and used to publish false information about journalists linking them to notorious drug dealers in some instances⁶.
7. According to Association Kinouété, following the new internal policy of the National Human Rights Commission (NHRC), defenders working with detainees are not able to submit complaints on detainees' behalf to the NHRC anymore. In addition, they have been refused access to the prison, which allowed them to

⁴ Mauritius in Crisis as Militarized Police Deployed against Peaceful Protestors, Forbes
<https://www.forbes.com/sites/nishandegnarain/2021/01/11/mauritius-in-crisis-as-militarized-police-deployed-against-peaceful-protestors/?sh=42f797a8bc48>

⁵ Mauritius Church Condemns Blocking of Gay Rights March, 2018, France 24,
<https://www.france24.com/en/20180606-mauritius-church-condemns-blocking-gay-rights-march>

⁶ "How do you prove that the drugs were planted by the police?", 2022, Mauritius Times,
<http://www.mauritiustimes.com/mt/how-do-you-prove-that-the-drugs-were-planted-by-the-police/>

inform detainees about their rights and legal remedies when their rights have been violated.

B. OFFICIAL RESTRICTIONS ON THE SPACE FOR HUMAN RIGHTS DEFENDERS

8. In Mauritius, a number of restrictions, legal and financial, are in place. They impede on the work of defenders and contribute to forging a more restrictive working environment.
9. Companies are obliged to dedicate 2% of their annual profits to corporate social responsibility. These funds can be donated to the NGO of their choice. Since 2019, however, the State, through the National Corporate Social Responsibility Foundation, has been collecting 75% of the corporate social responsibility funds⁷. This has greatly impeded on the work of civil society organisations, which are not able to access the source of funding. Moreover, several NGOs have complained of not being able to carry out their work to its fullest extent because of the fear of being deprived of those funds.
10. In the country, both private and public media can operate. However, the Independent Broadcasting Authority (IBA)⁸ sits within the government under the authority of the Prime Minister, which seriously impedes on its independence. In addition, the Chairperson of the IBA as well as the members of its Board, which handles complaints made against media and journalists, have all been nominated from the ranks of the current ruling political party and disproportionately attack private media, which often support the opposition⁹.
11. Since the review of the Information and Communications Technologies Act (ICT) in 2016, journalists can face prison sentences up to ten years for content that is “offensive” and “is likely to cause harm” (Section 46(ga))¹⁰. This provision is extremely vague and can be abused. It is, in addition, not in line with international human rights standards on the right to freedom of expression, in particular the Declaration of Principles on Freedom of Expression and Access to Information in Africa, which, at Principle 21, states that none shall be held “liable for true

⁷ Corporate Social Responsibility Guide, Mauritius Revenue Authority, <https://www.mra.mu/download/CSRGuide.pdf>

⁸ Independent Broadcasting Authority Act, amended 2021, [https://www.iba.mu/documents/iba_act\(2021\).pdf](https://www.iba.mu/documents/iba_act(2021).pdf)

⁹ Mauritius: Freedom in the World 2022, Freedom House, <https://freedomhouse.org/country/mauritius/freedom-world/2022>

¹⁰ Information and Communications Technologies Act 2001, https://www.icta.mu/documents/2022/09/ict_act.pdf

statements” and that “public figures shall (...) tolerate a greater degree of criticism”¹¹.

- 12.** According to a group of organisations, including Access Now, in 2021, the Information and Telecommunications Authority proposed additional amendments to the ICT Act that would further impede on the work of defenders and set a dangerous precedent, allowing state surveillance of their lawful conduct online. Indeed, the new National Digital Ethics Committee would be in charge of identifying “illegal and harmful contents”. Again, this phrase is not clearly defined, leaving the Committee with a high degree of discretion¹².
- 13.** Furthermore, there is a confusion about the legal regime applicable to assemblies, in particular whether those seeking to assemble need to notify public authorities or to obtain authorisation. According to the Public Gathering Act (PGA), the organisation of assemblies follows the notification rule, in accordance with Article 11 of the African Charter, which subjects the right to assembly to only “necessary restrictions”. 1 Section 3 subsection 1 of the PGA provides that “any person wishing to hold or organise a public meeting (...) shall give written notice to the Commissioner not less than 7 clear days before the meeting (...) is to be held or organised”¹³. Yet, on several instances, the Commissioner of Police refused to let assemblies proceed alleging that people needed authorisation from the authorities, including assemblies of less than 12 people, which do not even require notification under Section 2(a) of the PGA¹⁴.

C. HUMAN RIGHTS DEFENDERS FACING PARTICULAR RISKS

- 14.** In Mauritius, LGBTIQ+ people often face threats and discrimination. According to Collectif Arc-en-ciel, LGBTIQ defenders continue to face discrimination, in spite of the recent 2023 ruling by the Supreme Court finding section 250 of the

¹¹ Declaration of Principles on Freedom of Expression and Access to Information in Africa, 2019, <https://achpr.au.int/en/node/902>

¹² Joint Civil Society Statement in Response to the *Information and Telecommunications Authority Consultation Paper on Proposed Amendments to the ICT Act for Regulating the Use and Addressing the Abuse and Misuse of Social Media in Mauritius*, April 14, 2021, Access Now, <https://www.accessnow.org/wp-content/uploads/2021/05/Mauritius-ICT-Act-Submission.pdf>

¹³ Public Gathering Act 1991, <https://www.global-regulation.com/law/mauritius/11873077/public-gatherings-act.html>

¹⁴ Law and Order: What the Police Commissioner got Wrong about his Power to Regulate Public Protests, 2022, L'Express, <https://lexpress.mu/article/414799/law-and-order-what-police-commissioner-got-wrong-about-his-power-regulate-public>

Criminal Code - on sodomy - unconstitutional¹⁵. In its resolution 275 on the protection of persons on the basis of their sexual orientation or gender identity, the African Commission specifically called on States to create an “enabling environment (...) free from stigma” for human rights defenders working on the rights of sexual minorities¹⁶.

15. Journalists and their families don’t feel appropriately protected, including legally, and often have to count on the support of the public or civil society organisations. They live with the constant fear of defamation cases being brought against them when publishing information against the government. In November 2022, four journalists critical of the government filed a complaint denouncing cyber-harassment against them that month in Mauritius¹⁷.
16. Violence against women is still prominent in Mauritian society. In Port-Louis, women human rights defenders face reprisals for the support they provide to other women wishing to leave an abusive relationship. Indeed, the Groupement social de Souillac accompanied a victim of gender-based violence to a centre for battered women and the same night her husband broke in with a sword into the house of the defender who helped her.
17. In the last three years, lawyers have felt increasingly less safe when talking on human rights cases. They feel unsafe to carry out their profession fearlessly and independently because of the persecution carried out by the Special Striking Team, a section of the Mauritian police force. Indeed, it has been documented that a number of police officers have allegedly planted drugs in the cars and houses of prominent lawyers known to be involved in human rights cases¹⁸.

D. THE RESPONSE OF THE STATE REGARDING THE PROTECTION OF HUMAN RIGHTS DEFENDERS

¹⁵ Mauritian Court Finds Sodomy Law Unconstitutional, Discriminatory, Human Rights Watch, <https://www.hrw.org/news/2023/10/05/mauritian-court-finds-sodomy-law-unconstitutional-discriminatory#:~:text=Mauritian%20Court%20Finds%20Sodomy%20Law%20Unconstitutional%2C%20Discriminatory,-Ruling%20Removes%20a&text=Two%20landmark%20judgments%20of%20the,as%20a%20discriminatory%20colonial%20relic.>

¹⁶ Resolution on Protection against Violence and Other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, ACHPR/Res.275(LV)2014, <https://achpr.au.int/en/adopted-resolutions/275-resolution-protection-against-violence-and-other-human-rights-violations>

¹⁷ RSF Deplores Online Harassment of Four Mauritian Journalists, 2022, Reporters sans frontières, <https://rsf.org/en/rsf-deplores-online-harassment-four-mauritian-journalists>

¹⁸ Drug Planting: les accusations sont-elles fondées? 2022, Défi Média, <https://www.facebook.com/www.defimedia.info/videos/529752235460962/>

- 18.** In Mauritius, the definition of human rights and fundamental freedoms included in the Constitution only mentions civil and political rights (see chapter 2(3))¹⁹. The mandate of the NHRC is based on the definition included in the Constitution, which entails that the NHRC does not consider itself being the appropriate body to deal with issues related to economic, social, cultural, environmental, and sexual orientation and gender identity rights. This limits the possibility for defenders working on those rights to denounce violations.
- 19.** While the NHRC is an A-status national human rights institution according to the Global Alliance of National Human Rights Institutions (GANHRI)²⁰, and therefore is considered in respect of the Paris Principle, the Prime Minister of Mauritius is the one appointing the Chairperson and members of the Commission, which interferes with the independence of the NHRC²¹.
- 20.** In 2016, Mauritius, adopted the Independent Police Complaints Commission Act, which established the Independence Police Complaints Commission (IPCC). This body was put in place in 2018. While the institution has been recognised in pursuing important cases of police misconduct, a number of cases and complaints filed by defenders are yet to move forward.

QUESTIONS TO THE GOVERNMENT OF MAURITIUS

- How does the government plan to support the legitimate work of human rights defenders, including LGBTQI defenders, and to repeal all aspects of laws and policies which restrict their rights, activities, and access to funding?
- How will the government ensure that the Public Gathering Act is implemented in a manner reflecting both its content - specifically with respect to the notification rule - and its purpose - to guarantee the freedoms of association and peaceful assembly?
- What are the steps the government envisages to take to adopt a Freedom of Information Act, in line with article 9 of the African Charter on Human and Peoples' Rights?

¹⁹ Constitution of the Republic of Mauritius 1968 (rev. 2016), The Constitute Project https://www.constituteproject.org/constitution/Mauritius_2016?lang=en

²⁰ Global Alliance of National Human Rights Institutions - Membership, accessed September 2024 <https://ganhri.org/membership/>

²¹ Compendium of Documents on National Human Rights Institutions in Eastern and Southern Africa, Edited by Charles M. Fombad, 2019, <https://www.pulp.up.ac.za/legal-compilations/compendium-of-documents-on-national-human-rights-institutions-in-eastern-and-southern-africa>

- How does the government plan to amend the Independent Broadcasting Authority Act to ensure its full independence?
- How will the government ensure that advertising contracts for media companies are allocated independently and impartially?

ABOUT THIS PARALLEL REPORT

ISHR and DIS MOI - Droits Humains Océan Indien encourage the African Commission to consult parallel reports by local activists and to make recommendations to Mauritius regarding the protection of human rights defenders. This report is a result of individual and group interviews conducted by ISHR in Mauritius with defenders and a compilation of public information on the protection of human rights defenders. Readers should consult the sources provided below for additional information.