

MAURITIUS

Fifth National Assembly

FIRST SESSION

Debate No. 14 of 2011

Sitting of Tuesday 28 June 2011

The Assembly met in the Assembly House, Port Louis,

at 11.30 a.m

ORAL ANSWERS TO QUESTIONS

**UNITED NATIONS HUMAN RIGHTS COUNCIL RESOLUTION - HOMOSEXUALS -
RIGHTS**

The Leader of the Opposition (Mr P. Bérenger) (*By Private Notice*) asked the Prime Minister, Minister of Defence, Home Affairs and External Communications whether, in regard to the Resolution which was recently adopted by the United Nations Human Rights Council, with the support of Mauritius, affirming for the first time the rights of the homosexuals and directing the UN High Commissioner for Human Rights to produce a report on the laws and practices that discriminate against the homosexuals in various countries, including Mauritius, by December 2011, he will state if Government proposes to bring amendments to the domestic laws which

discriminate against the homosexuals to be in line thereto and, if so, indicate the laws to be amended.

The Prime Minister: Mr Speaker, Sir, Mauritius has always adhered to the principle of universality of human rights, as enshrined in the Universal Declaration of Human Rights, Article 1 of which proclaims that “All human beings are born free and equal in dignity and rights”.

The House will recall, Mr Speaker, Sir, that the National Assembly had, after different Members had intervened on the matter, adopted, on 16 December 2008, the Equal Opportunities Act which prohibits discrimination on various grounds, including sexual orientation, in a number of spheres of activities, namely employment; education; provision of goods, services or facilities; accommodation; disposal of immovable property; companies, partnerships, “*sociétés*” or registered associations; clubs; and access to premises and sports.

Further, the Employment Rights Act and the Employment Relations Act, which were both passed in 2008, prohibit discrimination and harassment by an employer on the ground of sexual orientation.

Moreover, in December 2008, Mauritius had co-sponsored along with 66 other countries a Statement delivered in the United Nations General Assembly on human rights, sexual orientation and gender identity. This statement expressed deep concern about violations of human rights and fundamental freedoms based on sexual orientation or gender identity.

It is to be noted that at the Universal Periodic Review of Mauritius held in February 2009, the United Kingdom had called upon Mauritius to take further measures to prevent discrimination based on sexual orientation, and to make provision in our Equal Opportunities Act for the legal acknowledgement of homosexual couples and their human rights. It is noteworthy that the reaction of Mauritius to the UK proposal was that Mauritius would give further consideration to the proposal.

Against this background, Mauritius supported the Resolution on “Human rights, sexual orientation and gender identity” which was adopted on 17 June of this year by the 17th Session of the Human Rights Council.

This Resolution affirms the universality of human rights and expresses concern about acts of violence and discrimination based on sexual orientation and gender identity.

The Resolution also requests the UN High Commissioner for Human Rights to commission a study to be finalised by December 2011, to document discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, in all regions of the world, and how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity.

The Resolution further calls for a panel discussion during the 19th Session of the Human Rights Council, informed by the facts contained in the study commissioned by the High Commissioner for Human Rights and for constructive, informed and transparent dialogue on the issue of discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. The Panel will also discuss the appropriate follow-up to the recommendations of the study.

The Resolution, Mr Speaker, Sir, is a procedural one and not a normative one, in the sense that it initiates a process for a study, dialogue and further discussion, but does not establish standards.

Since Mauritius is in favour of dialogue on ending acts of violence and related human rights violations based on sexual orientation and gender identity, it voted in favour of the Resolution.

The integration of sexual orientation in the international human rights architecture in an explicit manner will depend, among others, on the study to be commissioned by the High Commissioner for Human Rights and ensuing discussions in the Human Rights Council. It is not guaranteed that such integration would be politically achievable.

As the Resolution only envisages a study to be commissioned by the High Commissioner for Human Rights, followed by a panel discussion to be convened by the Human Rights Council during its 19th Session, it is premature at this point in time to state which domestic laws would need to be amended in case they discriminate against homosexuals. However, in the light of the study and the outcome of the panel discussion, Government will consider the desirability of having a Select Committee to obtain the views of all interested parties on related legislative or other changes.

Mr Bérenger: On 30 May 2006, replying to a Parliamentary Question which wanted to know what was the Government policy on homosexuality, the same hon. Prime Minister replied -

“Given the sensitivity of this issue, I think any future policy should be determined after extensive and wide consultations have been held.”

Would the hon. Prime Minister agree with me that the same thing, that is, extensive and wide consultations should have taken place before we voted for that resolution at the Human Rights Council?

The Prime Minister: I tend not to agree with the hon. Leader of the Opposition because, as I said, this is now going to be studied by the Human Rights Council. The Commissioner will have to report by December of this year and then there will be a panel discussion. I think we will also learn from these panel discussions, what are the other issues that we might not have touched upon. Then, we will have a full debate. I think that will be the better way to proceed.

Mr Bérenger: The Opposition already strongly supports the rights of homosexuals as human rights. This is already there. The study and so on will follow. Will the hon. Prime Minister agree with me that although the resolution is not legally binding, but it is politically and morally binding, and especially that when the study of all the countries around the world is carrying out, will the hon. Prime Minister agree with me that certainly those carrying out the study will pay very special attention to countries where there are laws that discriminate against homosexuals, including Mauritius where in our legislation sodomy and bestiality are linked together?

The Prime Minister: I am sure whatever comments will be made will be made although we have in our Constitution different sections like section 3. I think section 16 talks on the fundamental rights and equal protection under the law. I suppose that also will have to be looked into and, as I said, we had debates on the Equal Opportunities Act in 2008 where this issue of homosexuality has been specifically mentioned.

Mr Bérenger: The hon. Prime Minister refers to the Equal Opportunities Act as having been voted by his Government some time back by Parliament. Of course, he does not forget that the Equal Opportunities Act has still not been proclaimed and although the presence of this prohibition of discrimination on the basis of sexual orientation appears elsewhere, as the hon.

Prime Minister said, for example, in the Employment Rights Act, but is the fact that this appears in the Equal Opportunities Act one of the reasons why to date it has not been proclaimed.

The Prime Minister: There were people who protested if the House remembers about this, but that is not the reason. In fact, the hon. Leader of the Opposition himself had suggested during the debate that the Equal Opportunities should be kept separately not a division of the National Human Rights Council which we have come to see, that might be a better procedure. We are also having an Action Plan for Mauritius on human rights which I think is coming to an end in June or July of this year and after that that we will be able to see what we will do with the Equal Opportunities Act. We have already decided that there will be a separate Equal Opportunities Commission as, in fact, was suggested by the Opposition at that time.

Mr Bérenger: Yes, I am sure that the hon. Prime Minister will agree with me that amending that part and setting up the new commission does not need to take all that long. It is a simple amendment. The hon. Prime Minister says that it is too early to say whether some of our laws will have to be amended. I am not proposing. I want to know whether consideration has been given to amending the Constitution because, as we know, the fundamental clauses of the Constitution prohibit discrimination on the base of race, caste, class, sex, but not sexual orientation.

The Prime Minister: I think all this will have to be looked at together because, as I said, section 3 says equal protection under the law of fundamental rights. Section 16 mentions all these points but does not say specifically, although it says sex; it does not say sexual orientation. Perhaps we will have to look at this in the light of the debates that we can have.

Mr Bérenger: Am I to understand that Mauritius voted the resolution on 17th June last which, again I repeat, strongly supports homosexuality rights as human rights without at this stage Government having a clear vision of things, whether the Constitution will be amended, whether the sodomy law will be amended, whether sex marriage will be provided for in the law? Am I to understand therefore that we voted this resolution without all these subjects having been thrashed out?

The Prime Minister: No, in fact, what we said is generally we are in favour of human rights. As I said, at different times we adopted even on the Employment Rights Act,

Employment Relations Act and all the statements that were delivered at the UN. We expressed our opinion on the fundamental rights of people. That goes in that line although I must say that the representative of Mauritius, when he was voted did say that we had a nuance position.

Mr Bérenger: When you think about it the way things have evolved, does not the hon. Prime Minister agree with me, especially considering *les différentes sensibilités religieuses à Maurice* that pending this survey, that report, that panel discussion, pending a dialogue that should already have taken place at national level here, we should have abstained like Burkina Faso or Zambia instead of voting for that resolution.

The Prime Minister: I tend not to agree, Mr Speaker, Sir, because, as I said, we have always adopted the position which prohibits discrimination on various grounds and I think abstaining would give the wrong impression that we are as if going back on what our positions have been in the past. We had, as I said, cosponsored in December 2008 along with the 66 other countries, a statement in the United Nations General Assembly on Human Rights, Sexual Orientation and Gender Identity and we have also, as I said, at different times, supported the different resolutions on human rights. So, I think that would be in line with what position we have taken. I know there are lots of sensitivities. Besides we had lots of debates at one point, people were writing and talking on radio, being interviewed and all this about what they think because there are sensitivities in Mauritius and we know of that, but whether we should then start a whole debate again, because we had a select committee on these things and it lapsed because of the election. I think that we should therefore look at what they say, look at what the panel discussion is and then come here with a debate; that is my opinion.

Mr Bérenger: I wanted to know from the hon. Prime Minister whether he is proposing formally that after the enquiry, after the panel discussions in Geneva and so on, there will be another select committee set up on the subject.

The Prime Minister: I think it will be proper to have the select committee at some point, Mr Speaker, Sir, after the debates, as I said, because we need to know what Members think and also what is the general opinion of the public?

Mr Bérenger: I agree fully, but on the condition that the new select committee to be set up does not perform like the one which was set up on the Sexual Offences Bill and dies a long premature death. Will we have the guarantee therefore that when the time comes to set up that committee, we will pick the right Chairperson, the right composition and we will see to it that it delivers in time.

The Prime Minister: I think that is essential, Mr Speaker, Sir. There were lots of debates. The reason it lapsed because of Parliament also, but it took a long time I must agree and because there were lots of sensitivities in Mauritius about the subject. But I think we need to take the bull by the horns and decide once and for all what kind of society we want to live in.

Mr Bérenger: A last point, with your permission. The Sexual Offences Bill, 90% was very good, protecting children, women against gang rape and so on and because of the sodomy polemic, the whole thing has died. Will the hon. Prime Minister agree with me that we should come forward with a revised Sexual Offences Bill containing all that was positive and is positive in the Bill and not wait for this long process in Geneva, then the setting up of another select committee in the meantime that we should vote the 90% of the Sexual Offences Bill that was positive?

The Prime Minister: I agree it was positive. Whether we should do it and then have to re-amend it at some point or not, that is something that I'll have an open mind at.

Mr Speaker: No further questions? Questions addressed to Dr. the hon. Prime Minister. The Table has been advised that PQ B/575 has been withdrawn. Hon. Nagalingum!