

## Report on Dominica- 5th Round of the Universal Periodic Review – May 2009

This report is submitted by the **Sexual Rights Initiative**<sup>1</sup> and was written by Caleb Orozco a HIV/ Human Rights Advocate working on sexual and reproductive health issues and sexual minorities' rights in the English speaking Caribbean since 2005. It deals with the situation of **sexual rights** in Dominica, making special references to **national human rights institutions; discriminatory laws and legal gaps; HIV/AIDS; and sexuality education.**

### Introduction

1. Dominica is an island nation with a size of 754 square kilometres with an estimated population to be 72,514 (July 2008) with 86.8% being Afro-descendent, 8.9% being mixed, 2.9% being indigenous peoples called Kallinago and 1.5 classified as “other groups”<sup>2</sup>.
2. There are five major religions in Dominica, but the majority of the population (61.4%) declare themselves to be Catholics. It remains a conservative society, strongly influenced by readings of the Bible, particularly in their attitudes towards sexuality.

### Legal framework and national human rights institutions

3. Dominica acceded to the International Covenant for Civil and Political Rights on June 17th, 1993; signed the CEDAW on 15th September 1980 and on 15th September 1980 ratified the convention. Dominica acceded to the International Covenant on Economic, Social and Cultural Rights on 17th June 1993; signed the Convention of the Rights of the Child (CRC) on 26th January, 1990 and ratified it on 13th March, 1991 among other treaties<sup>3</sup>.
4. However, national legislation for implementing the substantive rights set out in international human rights law has not been passed, leaving the country's international obligations unfulfilled up to date.
5. According to Dominica's Human Rights Report 2008 there was no ombudsman, but civil society advocacy organizations that exist without government interference. There is a parliamentary commissioner who is charged with investigating complaints against government<sup>4</sup>
6. Recommendations
  - To undertake a comprehensive legal reform to domesticate the international legal instruments ratified by Dominica
  - To institutionalize human right monitoring through a national office that works on addressing violations that fully abides by the Paris Principles.

### Discriminatory laws and legal gaps

7. As the Yogyakarta Principles observe, all persons, regardless of their sexual orientation or gender identity, are entitled to the full enjoyment of all human rights. In spite of Dominica's obligations by virtue of the ratification of international treaties, the government

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<sup>1</sup> A coalition including Mulabi – Latin American Space for Sexualities and Rights; Action Canada for Population and Development; Creating Resources for Empowerment and Action-India, the Polish Federation for Women and Family Planning, and others

<sup>2</sup> [www.cia.gov/ library/publications/the-world-factbook/geos/do.html](http://www.cia.gov/library/publications/the-world-factbook/geos/do.html)

<sup>3</sup> [www2.ohchr.org/english/bodies/ratification/4.htm](http://www2.ohchr.org/english/bodies/ratification/4.htm)

<sup>4</sup> [www.state.gov /g/drl/rls/ hrrpt/2008/wha/119156.htm](http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119156.htm)

continues to deny legal recognition and protection to persons with same-sex sexual preferences/orientations and persons living with HIV/AIDS, among others.

8. The Constitution of Dominica prohibits discrimination of all citizens, regardless of their race, gender, place of origin and creed subject to respect for the rights and freedoms of others and the public interest, and entitles them to the following rights: (a) life, liberty and the protection of the law; (b) freedom of conscience, of expression, of movement and of assembly and association; (c) protection against arbitrary search or entry and inhumane treatment.

9. However, there are several dispositions and legal gaps that do not reflect the application of equal treatment to all Dominicans by action or by omission:

- The Sexual offences Act of 1998 (Act.15, 16) penalizes a person engaged in same sex activity with 10 years imprisonment. Article 14 states, “Any person who commits an act of gross indecency with another person is guilty and is liable on conviction to imprisonment for five years.” Article 15 points to buggery (for both men and women) and penalizes it with up to ten years of imprisonment, offering the Court the alternative to commit the offender to a Psychological Hospital instead of imprisonment. Finally, Article 16 penalizes attempted buggery with up to four years of imprisonment.
- There are no laws that prohibit discrimination in employment, housing, education, or health care against a person on the basis of her/his sexual orientation, gender identity or against persons living with HIV/AIDS<sup>5</sup>.

10. Recommendations:

- Repeal Articles 15 and 16 of the Sexual Offences Act, as they contradict international standards to which Dominica is a party, specifically Articles 2 and 26 of the International Covenant on Civil and Political Rights
- Promulgate legislation protecting Dominicans against discrimination based on sexual orientation, gender identity and HIV status at all levels, and take all necessary measures to enforce it, including through sensitization campaigns and programs aimed at the general population and at key government sectors like education, health and justice, and the creation of mechanisms for redress when the rights of these populations are violated.
- Amend the Offences Against the Person Act Laws to define rape in gender-neutral terms in such a way that men and boys are also protected

## HIV/AIDS

11. The prevalence rate is of 0.75% with 2,414 individuals tested up to 2006; 72% of HIV cases affect men and 70% persons in the 25-44 years group. Despite the fact that 72% of HIV/AIDS cases are men and that there has been an acknowledgement of the need to address the vulnerability of men who have sex with men to social stigma and HIV by Health Minister John Fabien in November 2008, Prime Minister, Roosevelt Skerrit was recorded in December 2008 as saying that buggery would not be made legal under his administration<sup>6</sup>

12. There is a community base group on the island called Chaps Dominica trying to make an effort in delivering HIV prevention to men who have sex with men (MSM) populations, but there is no structured health programme for this population on Dominica despite the

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<sup>5</sup> [http://www.msmnpa.org/issue19/pri2008\\_s03.php](http://www.msmnpa.org/issue19/pri2008_s03.php)

<sup>6</sup> <http://www.dominica-weekly.com/?s=buggery>

disproportionate impact of HIV/AIDS on men. There is a National Strategic Plan for HIV/AIDS, but there is no explicit inclusion of MSM in the Strategic Plan.

13. As stated above, there is no legal framework that protects the rights of people living with HIV/AIDS although there is widespread institutional awareness of the problems faced by such persons. Stigma and discrimination have been very widely discussed, including buggery. Acting Attorney General Bernard, Wiltshire was quoted back in 2000 as saying the law against homosexuality "discriminates and is unfair."

14. In this context and for the population of men who have sex with men, the Sexual Offences Act, Articles 14, 15 and 16 constitutes a barrier in access to care, treatment and prevention. The criminalized legal status of consensual same-sex relationships feeds the socio-cultural basis of discrimination, as, among other things, it does not allow the carrying on of sustained public education campaigns that would be helpful in reducing health barriers or societal biases.

15. Young people face specific violations affecting their right to uncensored sexual health information for those attending Catholic schools and access to HIV/AIDS Voluntary Counselling and Testing Services without parental consent for those younger than 16. The latter violates the right to privacy and in the end the right to health of young people, particularly of those having same-sex relationships and young women having pre-marital sex, who might choose not to access the services in order to avoid being punished by their parents if they reveal their sexual behaviour.

16. Recommendations:

- Promulgate comprehensive legislation that respects a young person's right to comprehensive sexual and reproductive health information, and carry on educational campaigns targeted to those who might be left out of other State efforts for different reasons, including their religious schooling.
- Remove the requirement of parental consent for access to counselling and testing services by individuals younger than 16 to ensure that young Dominicans will be able to fully enjoy their right to privacy and to health.
- Review the National Strategic Plan for HIV/AIDS to include in it prevention, treatment and care initiatives addressed to the population of men who have sex with men.

## **Abortion**

17. Under section 8 of the Offences Against the Person Act, "no person shall be found guilty of the offence of destroying a child capable of being born alive if the act was done in good faith for preserving the life of the mother". Thus, abortion is not legal on any other grounds other than to save a woman's life. It is not available on demand, for rape or incest, to protect a woman's mental or physical health, for economic or social reasons, or due to foetal impairment<sup>7</sup>.

18. Recommendations

- In order to protect women's right to life and health, broaden the grounds on which abortion is legal in Dominica, to include at least rape or incest, protection of a woman's mental or physical health and foetal impairment.

## **Sexual violence**

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<sup>7</sup> [www.un.org/esa/population/publications/abortion/doc/domini1.doc](http://www.un.org/esa/population/publications/abortion/doc/domini1.doc)

19. The Offences Against A Person Act refers in articles 3, 4, 7, 14, 15, 50 and 52 to "incest, rape or sexual abduction" affecting women and girls, but does not define those offences as also affecting boys as the law assumes only women can be raped or experience incest and ignores the reality that males can be raped whether by peers, relatives, or in a prison environment<sup>8</sup>.

20. Currently, there are no legal provisions against sexual harassment in the workplace.

21. Recommendations:

- Amend the relevant articles in the Offences Against a Person Act to make it gender neutral, so it protects also boys and men from incest, rape or sexual abduction.
- Promulgate laws to criminalize sexual harassment in the workplace and conduct the necessary awareness raising campaigns and programs to ensure the enforcement of this provision.

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<sup>8</sup> <http://www.interpol.int/public/Children/SexualAbuse/NationalLawsold/csaDominique.asp>