

DOMINICA

Failure to address key human rights concerns overshadows minor progress

*Amnesty International
Submission to the UN Universal
Periodic Review, May 2014*

**AMNESTY
INTERNATIONAL**



CONTENTS

Introduction	2
Follow up to the previous review	2
Normative and institutional framework in Dominica.....	3
Promotion and protection of human rights on the ground	3
Discrimination against lesbian, gay, bisexual, transgender and intersex people	3
The death penalty.....	4
Recommendations for action by the State under review	4
Endnotes	5
Annex.....	7

INTRODUCTION

In this submission, prepared for the Universal Periodic Review (UPR) of Dominica in May 2014, Amnesty International assesses the implementation of recommendations made in the previous UPR. The organization welcomes Dominica's ratification of the Convention on the Rights of Persons with Disabilities and its Optional Protocol, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons), while regretting that due to limited funding and resources other instruments, including the International Convention for the Protection of All Persons from Enforced Disappearance, have yet to be ratified by Dominica.

Amnesty International is deeply concerned about discrimination against lesbian, gay, bisexual, transgender, and inter-sex (LGBTI) persons in Dominica, specifically the prohibition of same-sex sexual relations between consenting adults. While Amnesty International welcomes the de facto moratorium on executions in Dominica, with no executions carried out since 1986, it remains concerned that domestic legislation still contains provisions which allow the death penalty.

FOLLOW UP TO THE PREVIOUS REVIEW

Dominica pledged to sign and ratify a number of international human rights standards during its first UPR in December 2009.¹

While the country has ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, it has failed to ratify a number of other standards, despite having committed to do so within three months of its first UPR in March 2010. These include the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Elimination of All Forms of Racial Discrimination, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol.²

Despite rejecting recommendations to abolish the death penalty,³ Dominica accepted a recommendation to "consider a moratorium on the imposition of the death penalty, as a step towards completely abolishing it".⁴ When the Human Rights Council adopted the review outcome at its thirteenth session in March 2010, Dominica emphasized its self-imposed moratorium on the use of the death penalty since 1986, but maintained the death penalty in its legislation.⁵

Amnesty International notes that during the previous review, Dominica rejected a recommendation to "repeal those legal provisions which criminalize sexual relations between consenting adults of the same sex".⁶ The existence of these legal provisions has led to increasingly discriminatory policy and practice against LGBTI persons.

NORMATIVE AND INSTITUTIONAL FRAMEWORK IN DOMINICA

As mentioned above, Dominica has failed to ratify a number of international human rights standards since its first UPR. Amnesty International is aware of the technical and financial challenges faced by Dominica in meeting its commitments in this regard and notes the country's request for technical and financial support from the United Nations system.⁷

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE

Consensual same-sex conduct is criminalized in Dominica. Under Article 16 of the Sexual Offences Act 1998, a person who commits “buggery” can be sentenced to 10 years' imprisonment, and may be ordered to undergo treatment at a psychiatric hospital.

At the UPR Working Group in December 2009, the delegation of Dominica acknowledged that the existing legislation was “discriminatory” and that there was a “certain element of discrimination in the society towards same sex relationships”.⁸ However, at the 13th session of the Human Rights Council in March 2010, at which the UPR outcome on Dominica was formally adopted, Dominica stated that it was not prepared to decriminalize sexual relations between consenting adults of the same sex.⁹ In May 2013, the Prime Minister of Dominica reiterated the government's refusal to repeal this legislation and stated that no “compelling argument can be made for it to be repealed”.¹⁰ While there have been recent reports of police in Dominica using this legislation to charge individuals with “buggery”, it appears that in all cases the charges were subsequently dropped.¹¹

Amnesty International is also concerned by the precedent set by the Eastern Caribbean Court of Appeal in 2009, in the case of *Clem Philbert v the State*, where a murder conviction was quashed because the victim was considered to have made “unnatural advances” towards the accused, leading to a situation of “justifiable homicide”. Following this ruling, in a murder trial in September 2012, the Director of Public Prosecution reportedly informed the court that he was discontinuing proceedings against the accused based on the above decision by the Eastern Caribbean Court of Appeal.¹²

Lesbian, gay, bisexual, transgender and inter-sex persons have the right not to be discriminated against on the basis of their sexual orientation or gender identity, the

right to equality before the law, the right to privacy, the right to health, life, liberty and security of the person, and the right to be free from torture and inhuman or degrading treatment or punishment. These rights are guaranteed under international human rights law, and by continuing to criminalize consensual same-sex conduct, Dominica is violating its international obligations under the treaties to which it is a party.

THE DEATH PENALTY

The crimes which are punishable by death in Dominica are murder (Offences Against the Person Act, Article 2) and treason (Treason Act, Article 2).

The last execution in Dominica was carried out in 1986, and is the only execution since Dominica obtained independence in 1978. There is currently nobody on death row, and no death sentences have been handed down in recent years.

Having voted against the Resolution on a Moratorium on the Use of the Death Penalty at the UN General Assembly in 2007 and 2008, Dominica abstained in the December 2010 vote. However, regrettably it reverted to voting against the resolution in the December 2012 vote.¹³

At the adoption of its UPR outcome by the Human Rights Council in March 2010, Dominica stated that “there was a popular sentiment in the country in favor of reinstating executions for persons convicted of murder”, and that “as a democratically elected Government, elected by the people to represent the people, the laws it would submit to the Parliament should, to the extent possible, reflect the sentiments and desires of the people”.¹⁴

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Dominica:

Ratification of regional and international human rights instruments

- To ratify and implement key international human rights standards, including the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and the Convention on the Elimination of All Forms of Racial Discrimination (with technical and financial support of the UN and Inter-American systems, as necessary);
- To ratify and implement the Inter-American Convention to Prevent and Punish Torture, and to sign and ratify the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, as well as the Inter-American Convention against All Forms of Discrimination and Intolerance Discrimination (with technical and financial support of the UN and Inter-American systems, as necessary).

Discrimination against lesbian, gay, bisexual, transgender and intersex persons

- To acknowledge that LGBTI persons are at risk of greater discrimination, prejudice and violence due to existent laws criminalizing consensual same-sex activity;
- To repeal all provisions in national law that criminalize same sex relations, including in the Sexual Offences Act.

The death penalty

- To establish a formal moratorium on executions with a view to abolishing the death penalty, in keeping with the UN General Assembly resolutions on this issue adopted since December 2007, including resolution 67/176 of 20 December 2012;
- To support calls to abolish the death penalty nationally and internationally, including by voting in favour of future UN General Assembly resolutions on a moratorium on the use of the death penalty;
- To ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty.

ENDNOTES

¹ Human Rights Council, Report of the Working Group on the Universal Periodic Review on Dominica, A/HRC/13/12, 4 January 2010, recommendations 70.1-7 (Belarus, Argentina, France, Azerbaijan, Chile, France, Slovenia).

² Report of the Human Rights Council on its thirteenth session, A/HRC/13/56, 8 February 2011 paragraph 577.

³ A/HRC/13/12, recommendation 72.2. (Azerbaijan, Spain, Sweden).

⁴ A/HRC/13/12, recommendation 70.36 (Argentina).

⁵ A/HRC/13/56, paragraph 580-581.

⁶ A/HRC/13/12, recommendation 72.1 (France, Spain).

⁷ Human Rights Council, *Report of the Human Rights Council on its thirteenth session* Report of the Human Rights Council on its thirteenth session, A/HRC/13/56, para. 579

⁸ Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Dominica*, A/HRC/13/12, para. 33

⁹ A/HRC/13/56, para. 585

¹⁰<http://dominicanewsonline.com/news/homepage/news/general/buggery-laws-will-not-be-repealed-pm/>, accessed on 3 October 2013

¹¹ <http://thedominican.net/2012/03/police-drop-sodomy-charges.html>, accessed on 3 October 2013; <http://dominicanewsonline.com/news/homepage/news/crime-court-law/dpp-drops-buggery-charges-against-nicholas-roberts/>, accessed on 3 October 2013

¹² <http://dominicanewsonline.com/news/homepage/news/crime-court-law/men-facing-serious-charges-walk-free/>, accessed on 3 October 2013

¹³ UN General Assembly resolutions 62/149 of 18 December 2007; 63/168 of 18 December 2008; 65/206 of 21 December 2010; and 67/176 of 20 December 2012.

¹⁴ A/HRC/13/56, paragraph 582.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

Caribbean: Death penalty in the English-speaking Caribbean: A human rights issue (Index: AMR 05/001/2012).

What it takes to make society safer: Op-ed by Javier Zúñiga and Leela Ramdeen (ACT 50/012/2012)

Human Rights Day: Civil society from the Caribbean calls for an end to the death penalty (Index: AMR 05/004/2012).

Death penalty 2013: Executions no solution to violent crime in the Caribbean

¹ All of these documents are available on Amnesty International's website:
<http://www.amnesty.org/en/region/Dominica>

AMNESTY
INTERNATIONAL



www.amnesty.org