



DOMINICA

AMNESTY INTERNATIONAL SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW 19TH SESSION OF THE UPR WORKING GROUP, APRIL-MAY 2014

FOLLOW UP TO THE PREVIOUS REVIEW

Dominica committed to sign and ratify a number of international human rights standards during its first Universal Periodic Review (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, Dominica has failed to ratify a number of other standards which in March 2010 it had committed to doing within three months. These included 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 acknowledged there had been a self-imposed moratorium on the use of the death penalty since 1986; however, it maintained the death penalty in its legislation.⁵

Amnesty International regrets that during the previous review, Dominica also rejected a recommendation to “repeal those legal provisions which criminalize sexual relations between consenting adults of the same sex and decriminalize sexual activities between consenting adults of the same sex”.⁶ See also below.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

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

THE HUMAN RIGHTS SITUATION 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 any person who commits “buggery” is liable to 10 years’ imprisonment. Furthermore, the court may order the convicted person to be admitted to a psychiatric hospital for treatment.

At the Working Group in December 2009, the Dominican delegation acknowledged at existing legislation in this regard

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, Dominica stated that it was not prepared to decriminalize sexual relations between consenting adults of the same sex.⁹ In May 2013, the Dominican Prime Minister reiterated the government’s refusal to repeal this legislation and stated that no “compelling argument can be made for it to be repealed”.¹⁰ Amnesty International is concerned by recent reports of police in Dominica using this legislation to charge individuals with “buggery”, although it appears that in all cases the charges were subsequently dropped.¹¹

The organization 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”. 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 was carried out in 1986 and this is also the only execution carried out since Dominica obtained independence in 1978. There is currently nobody on death row and nobody has been sentenced to death 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 2011, 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 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; sign and ratify the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, and 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 and transgender persons

- To acknowledge that LGBT persons are at risk of greater discrimination, prejudice and violence because of the existence of laws criminalizing consensual same-sex activity and to repeal all provisions 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, as provided by four UN General Assembly resolutions adopted since December 2007, including most recently 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 A/HRC/13/56, paragraph 579.

⁸ A/HRC/13/12, paragraph 33.

⁹ A/HRC/13/56, paragraph, 585.

¹⁰ Dominica News Online, "Buggery laws will not be repealed – PM", 27 May 2013

¹¹ The Dominican.net, "Police drop sodomy charges", 22 March 2012; Dominica News Online, "DPP drops buggery charges", 6 November 2012

¹² Dominica News Online, 25 September 2012, "Men facing serious charges walk free"

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.