

A SHADOW REPORT ON THE VIOLATION OF ICCPR  
OBLIGATIONS RELATING TO LESBIAN, GAY,  
BISEXUAL, TRANSGENDER PERSONS IN THE  
COMMONWEALTH OF DOMINICA

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## INTRODUCTION

On June 17<sup>th</sup> 1993 the Commonwealth of Dominica became a party to the International Convention on Civil and Political Rights (ICCPR) with no reservations or declarations. Since becoming a signatory to the ICCPR, Dominica has not submitted any reports on its compliance as required by Article 40 of the Convention. Ratification of the ICCPR placed certain obligations on the State with respect to the general population including lesbian, gay, bisexual and transgender persons. This report seeks to evaluate Dominica's progress in honouring its ICCPR obligations by highlighting instances where individuals suffer discrimination and other violations of their basic human rights on the ground of real or perceived sexual orientation and gender identity. Measures taken by the State to protect persons from discrimination will also be outlined.

Having gained independence in 1978, Dominica has a written Constitution which is superior to all other laws including international law.<sup>1</sup> The Supreme Law Clause is located in section 117 of the Constitution: "This Constitution is the supreme law of Dominica and, subject to the provisions of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void." International law is not directly applicable in domestic courts and as such international treaties must first be incorporated through an Act of Parliament before being enforceable by local courts.<sup>2</sup> Although the ICCPR has not been incorporated by an Act of Parliament, it may still be indirectly applicable by local courts.

The two final appellate courts in the region, the Caribbean Court of Justice (for Barbados and Guyana) and the UK Privy Council (for Dominica et al) have both held that international law influences their interpretation of the Constitution and other legislation since the court will 'so far as possible, construe domestic law so as to avoid creating a breach of the State's international obligations.'<sup>3</sup> Where domestic legislation is ambiguous, in the sense that it can be interpreted in a manner that either conforms to or conflicts with the State's international obligations, the court will

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<sup>1</sup> *Attorney General of Barbados v Jeffrey Joseph and Lennox Ricardo Boyce* CCJ Appeal No CV 2 of 2005 para 55; *Lennox Boyce and Jeffrey Joseph v The Queen* [2004] UKPC 32 para 25.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

choose the former. Decisions of the Privy Council, adjudicating in jurisdictions with Westminster constitutions similar to that of Dominica, are binding on local courts while decisions of the Caricom Court of Justice form strongly persuasive authority.

With a population of 68,635<sup>4</sup> persons and an area of 750 km<sup>2</sup>, Dominica is one of the least densely populated Caribbean islands. Religion plays a crucial role in the Dominican society with approximately 93% of the population professing adherence to some religious denomination in a 2001 census. Approximately 91% of the population are Christians and 61% are Roman Catholics. The close association between religion and the State is illustrated by the State's national motto, 'After the Good Lord, We Love the Earth' and also by the opening lines of the Constitution 'Whereas the People of Dominica have affirmed that the Commonwealth of Dominica is founded upon principles that acknowledge the supremacy of God...'. Religious leaders have been known to play a controversial but significant role in election campaigns.

The State keeps no record of the sexual orientation or gender identity of persons living in Dominica. A 2001 survey reveals that 31% of the participants were currently married while 61% had never been married. These statistics do not depict what proportion of the 61% were in opposite sex common law unions, same sex unions or were single. The phrase 'common law union' refers to a relationship where the parties are not married but live like husband and wife. As a result of the popularity of common law opposite sex unions, there is little or no stigma attached to the arrangement.

Although LGBT individuals suffer from particular vulnerabilities such as high rates of HIV infection, abuse and discrimination, the Government of Dominica has not implemented any measure to cater to their specific needs. However, in March of 2011 Dominica signed onto a non binding joint statement 'Ending acts of violence and related human rights violations based on sexual orientation and gender identity' to be presented before the United Nations General Assembly. Signatories to the statement expressed 'concern at continued evidence in every region of acts of violence and related human rights violations based on sexual orientation and gender identity brought to the Council's attention by Special Procedures since that time (2006), including killings, rape, torture and criminal sanctions.'

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<sup>4</sup> 2001 Population and Housing Census of Dominica.

## SUBSTANTIVE VIOLATIONS OF THE INTERNATIONAL CONVENTION ON CIVIL AND POLITICAL RIGHTS

### **1. Articles 2(1) and 26 (Non-Discrimination)**

The non-discrimination obligations of State Parties are outlined in Articles 2(1) and 26 of the ICCPR. Article 2(1) provides:

‘Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’

Article 26 provides:

‘All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’

A belief in equality is affirmed in the preamble to the Constitution of Dominica. Additionally, section 13(1) prohibits laws that are discriminatory either directly or in effect while section 13(2) forbids the discriminatory treatment of individuals by any other ‘person or authority’. The Constitution expressly proscribes discrimination on the basis of ones ‘sex, race, place of origin, political opinions, colour or creed’. However, Caribbean courts have treated this provision as a closed list and have been reluctant to extend the list in order to recognise new categories of discrimination.<sup>5</sup>

Furthermore, a 1999 UK Privy Council judgment concerning the Constitution of Mauritius held that there is no general right to equality and that the grounds of discrimination listed in the non-discrimination provision are exhaustive.<sup>6</sup> This decision of the Privy Council is binding on local courts except in so far as it may be distinguished on the basis of differences between the Constitution of Mauritius and that of Dominica. The Board opined that the drafters of the Mauritius Constitution could reasonably leave it to Parliament to create remedies for other forms of

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<sup>5</sup> *Neilsen v Barker* (1982) 32 WIR 254.

<sup>6</sup> *Matadeen v Pointu* [1999] 1 AC 98 (Mauritius).

discrimination. This is supposedly because the issue of discrimination involves questions of social policy.

Considering that the Bill of Rights and other human rights instruments are specifically concerned with protecting minorities against the prejudices of majorities, it is questionable whether popularly elected politicians are willing to protect persons from discrimination on the basis of their sexual orientation. There is evidence<sup>7</sup> that politicians in Dominica tend to use intolerant language when referring to LGBTs especially during the election season in order to gain support from the majority.

Although 'sex' is listed as a forbidden ground of discrimination, the absence of 'sexual orientation' in the list makes it unclear whether persons are afforded constitutional protection against discrimination on the basis of their real or perceived sexual orientation or gender identity in Dominica. The Supreme Court has the authority to declare buggery laws, policies of the State and actions of state officials unconstitutional and therefore invalid. While there are cases<sup>8</sup> that recognise a difference between sex and sexual orientation, this question has never been posed before Dominican courts in any constitutional action.<sup>9</sup>

The Human Rights Committee, in *Toonen v Australia*<sup>10</sup>, held that the criminalisation of consensual sexual activity between same-sex adults in private constituted a violation of Articles 2(1), 17 and 26 of the ICCPR. The term 'sex', used in the non-discrimination ICCPR provisions, was interpreted as including sexual orientation. Although international law is not directly applicable in domestic courts, *Toonen v Australia* should serve as persuasive authority in resolving any ambiguities in the definition of 'sex' as used in the Constitution of Dominica.

### Laws Prohibiting Same Sex Intimacy in Dominica

The Sexual Offences Act<sup>11</sup> contains one of the most blatant violations of the country's ICCPR obligations. Buggery is made an offence under section 16 of the Sexual Offences Act 1998 and is defined as 'sexual intercourse per anum by a male

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<sup>7</sup> 'More on AIDS, Homosexuality and the Buggery Law in Dominica', *Dominica Weekly* (December 17th 2008) <http://www.dominica-weekly.com/?s=dr+carissa+etiienne> Accessed August 18<sup>th</sup> 2010.

<sup>8</sup> *Suratt v Attorney General of Trinidad* 71 WIR 391, 406 and 417. In his dissenting judgment Lord Bingham stated 'I would not understand 'sex' in section 4 of the Constitution to embrace sexual orientation...'. Baroness Hale seems to have adopted a similar stance.

<sup>9</sup> It is accepted obiter dicta in *SUrrat* that sex does not include sexual orientation,

<sup>10</sup> *Toonen v. Australia*, Communication no. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

<sup>11</sup> Act No 1 of 1998.

person with a male person or by a male person with a female person.’<sup>12</sup> It is punishable by a term of 10 years imprisonment when committed by adults, 25 years when committed by an adult on a minor and 5 years when committed by a minor. Additionally, the Court has discretionary powers to order that a person convicted of buggery be admitted to a psychiatric hospital for treatment. Prior to the Sexual Offences Act 1998, buggery was criminalised by the Offences Against the Person Act 1873 Cap 10:31 and punishable by the same length of imprisonment and threat of being admitted to a psychiatric hospital.

It must be highlighted that section 16 does not distinguish between consensual and non-consensual anal sex and that it regards persons who prefer this form of sexual expression as having a mental disease. This is undoubtedly an atrocious impairment of human dignity and a violation of the State’s ICCPR obligations. Part of the problem stems from the fact that offences such as rape<sup>13</sup>, sexual intercourse with a person under fourteen<sup>14</sup> and sexual intercourse with a person between fourteen and sixteen,<sup>15</sup> are defined using the phrase ‘sexual intercourse’. The courts have held that ‘sexual intercourse’ necessarily involves the penetration of a vagina by penis and as such a person who has sex *per anum*, without the other party’s consent, can not be charged with rape or any offence prohibiting ‘sexual intercourse’ with a minor. Instead, these persons are charged with the offence of buggery.

Additionally the Sexual Offences Act 1998 creates an offence of gross indecency (section 14) which, for the first time, criminalises sexual acts between females as well as between males. Gross indecency is defined broadly in section 14(4) as ‘an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.’ A person who commits such an act is liable to five years imprisonment on conviction. The only defence provided in the section is that the act of gross indecency was committed in private between an adult male person and a female person, both of whom consented. Therefore same sex sexual acts are punishable by imprisonment under the Sexual Offences Act of Dominica.

Statistics provided by the Criminal Records Office show that fifty (50) cases of buggery were reported between 2000 and 2010. There is no record of how many of

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<sup>12</sup> Sec 16(3).

<sup>13</sup> Sec 3.

<sup>14</sup> Sec 7.

<sup>15</sup> Sec 8.

these cases were between consenting adult men and as such this figure may represent non-consenting heterosexual, consenting heterosexual, non consenting same sex and consenting same sex buggery. For example, a 2010 *Dominica News Online* article on court room proceedings reports a 17 year old boy being charged with committing the act of buggery on a 9 year old girl.<sup>16</sup> Although members of the legal profession attest that buggery laws are not enforced between consenting adults, the statistics evince that persons have been charged with buggery over the past ten years.

In 2008, Minister of health Hon. John Fabien<sup>17</sup> advocated for repealing buggery laws. His reasoning resembled that of the Human Rights Committee in *Toonen v Australia*: in light of the AIDS epidemic plaguing the Caribbean,<sup>18</sup> discrimination only serves to exclude individuals and promote risky behaviour. Research shows that men who have sex with men are more likely to contract HIV than any other group. Fabien's suggestion is reported to have caused an uproar among Dominicans.<sup>19</sup>

Recently, Senior Lecturer at the University of the West Indies Tracy Robinson asserted, in a public lecture<sup>20</sup>, that laws criminalising sex between persons of the same sex violate human rights and can not be justified today. In an interview with *The Sun*, Ms Robinson stated that the population of the region "have to recognise that others live their lives in different ways and should have a measure of freedom to do so."<sup>21</sup>

### Intolerance by Political Leaders

In 2009, a few days before the general election, Minister for Tourism and Legal Affairs Hon. Ian Douglas was reported as saying that gay tourism will not form part of the Dominica Labour Party's tourism plan. As part of the election campaign, Douglas urged Dominicans to vote against persons wishing to make gay tourism legal

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<sup>16</sup> 'Buggery, Unlawful Sexual Intercourse, Burglary, Violence Cases in September Assizes' *Dominica News Online* (May 31<sup>st</sup> 2011) <<http://dominicanewsonline.com/dno/Buggery-Unlawful-Sexual-Intercourse-Burglary-Violence-Cases-in-September-Assizes>>

<sup>17</sup> Fabien was speaking at the Eighth Annual Meeting of the Pan Caribbean Partnership Against HIV/AIDS; 'Ban Buggery Laws' *The Sun* (The Sun Inc November 7 2008).

<sup>18</sup> The Caribbean region had the second highest rate of HIV infection in 2003.

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/EXTLACREGTOPHEANU/TPOP/EXTLACREGTOPHIVAIDS/0,,contentMDK:21137541~pagePK:34004173~piPK:34003707~theSitePK:841609.00.html> Accessed July 4<sup>th</sup> 2011.

<sup>19</sup> 'More on AIDS, Homosexuality and the Buggery Law in Dominica', *Dominica Weekly* (December 17<sup>th</sup> 2008) <http://www.dominica-weekly.com/?s=dr+carissa+eitiene> Accessed August 18<sup>th</sup> 2010.

<sup>20</sup> 'Family Law's Institutions in Transition: Rights, Rhetoric and Reform' delivered on Thursday 5<sup>th</sup> May 2011 at the UWI NBD Lecture in Dominica.

<sup>21</sup> 'Ban Buggery Law', *The Sun* (The Sun Inc May 9<sup>th</sup> 2011)

in Dominica.<sup>22</sup> In the past, gay ships have been allowed entry into the country's waters. For example, in 2003 a gay cruise ship called *Norwegian Sky* visited Dominica. Acting Prime Minister Hon. Charles Savarin raised no objections, stating that the passengers had not violated any laws of the State.

When political leaders portray gay visitors as undesirable persons, the State alienates LGBTs causing them to go further underground and adopt risky lifestyles. It also fosters an atmosphere of discrimination where civilians are encouraged to ill-treat each other as a result of real or perceived sexual orientation.

### Intolerance by Religious Leaders

Bill Daniel, President of the Evangelical Association<sup>23</sup> speaking on behalf of the group, made the following statement in 2009: "We want the government to ensure that gay tourists do not come to the island and conduct themselves in any immoral way."<sup>24</sup> The Association protested against allowing gay cruises to visit the island and promoting Dominica as a 'gay tourist destination'. However, some of those who stand to benefit directly from gay tourism i.e. taxi drivers and vendors, have expressed their support for allowing gay cruise ships to dock in Dominica's harbours.<sup>25</sup>

### Unequal Laws

In addition to laws criminalising sexual activities between homosexuals, there are laws that deprive LGBT couples of certain benefits awarded to persons in heterosexual relationships. The Human Right Committee, in *Young v Australia*<sup>26</sup> and *X v Colombia*,<sup>27</sup> noted that while the differences in the receipt of benefits between married couples and unmarried opposite couples were reasonable and objective<sup>28</sup>,

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<sup>22</sup> 'Gay Tourism will not for part of the Tourism plan says Ian Douglas' (Dominica Weekly December 10<sup>th</sup> 2009) <http://www.dominica-weekly.com/news/gay-tourism-will-not-form-part-of-tourism-plan-says-ian-douglas/> Accessed June 20<sup>th</sup> 2011.

<sup>23</sup> A group of evangelical churches.

<sup>24</sup> Carter, Ellsworth, 'Gay Cruises Draw Protest in the Caribbean' *The Associated Press* (November 10<sup>th</sup> 2008) < <http://www.gossiprocks.com/forum/little-big-world/30103-gay-cruises-draw-protests-caribbean.html>.> Accessed June 18<sup>th</sup> 2011.

<sup>25</sup> Ibid. Francisco Esprit, a board member of the Dominica Taxi Association, was reported as saying: "We don't have any problem with gay cruises coming to Dominica... We see it as part of the business and we are yet to receive any negative comments from our members about gay tourism."

<sup>26</sup> Communication No. 941/2000

<sup>27</sup> Communication No 1361/2005, Para 7.2.

<sup>28</sup> *Young v Australia* Communication No. 941/2000 para 10.4

such distinction between unmarried opposite couples and unmarried same sex couples infringed Article 26 of the ICCPR.

Most of the discrimination stems from the fact that Dominica does not recognise stable civil unions between two individuals of the same sex. Although nothing in the Marriage Act Cap 35:01 specifically denies same sex couples the right to marry, the sections are phrased in 'heterosexual terms'. For example, Form D requires that the bachelor and widow be specified. Marriage is regarded as a religious institution.

In order to apply for a Protection Order under the Protection Against Domestic Violence Act 2001, one must either be a 'spouse' or must fall within other specified categories.<sup>29</sup> The term spouse, under section 2, includes a former spouse, common law spouse and former common law spouse. 'Common law spouse' is also defined as 'an unmarried person who has lived with or is living with an unmarried person of the *opposite sex* as husband or wife although not legally married to that person.'<sup>30</sup> Although the use of the word 'include' in the definition of spouse suggests that the list is not exhaustive, this legislation seems to prima facie exclude persons who are in same sex unions. Interestingly, the definition of domestic violence includes abuse against a 'member of the household' which may include a same sex partner. By excluding same sex unions in the definition of 'common law spouse' the Act denies such persons of an essential protection or benefit afforded to heterosexual unmarried persons. It therefore constitutes a breach of Article 26.

Under the Maintenance Act Cap 35:61 s. 3(1) every man has a duty to provide reasonable maintenance for his wife. Under section 3 (2) every married woman has a duty to provide reasonable maintenance for her husband. This legislation aims to ensure that persons in stable relationships are not financially abused by their spouse . This is especially relevant where there is an income earning disparity between the parties as a result of sacrifices made by one party so that the other would prosper. Since homosexual unions are not recognised in Dominica, members of the same sex in stable unions are unable to realise the benefits of the Maintenance Act. Similarly,

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<sup>29</sup> These are, person who has a child in common with the respondent; special category where the alleged abuse involves a child or dependent; parent or sibling by blood or marriage and a person who is or has been in a visiting relationship with the respondent for a period exceeding twelve months.

<sup>30</sup> Sec. 2.

under section 6(1)(a) of the Citizenship Act<sup>31</sup> a person may obtain citizenship by marriage. Same sex couples in stable unions are deprived of this benefit.

## **2. Article 6 (Right to Life) and Article 7 (Protection from Torture)**

Article 6(1) stipulates: ‘Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.’ Article 7 provides: ‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.’

There have been suspected hate crimes against individuals believed to be homosexuals in Dominica. Very often one may hear persons in a dispute use derogatory words like ‘buggerman’ or ‘battyman’ to refer to ‘effeminate’ men. In 2010 a Portsmouth man, Clement James, was stabbed to death after being accused of ‘watching’ his male assailant in a public place. The accused, Davis St Jean, allegedly had a habit of singing and preaching aloud in the street about killing gay people. Before stabbing Clement, he reportedly said ‘all battie boi must dead’.

In a 2008 case, *Clem Philbert v The State*<sup>32</sup>, the appellant appealed against his murder conviction after being sentenced to 18 years imprisonment. In his defence, the appellant alleged that deceased had made ‘unnatural advances’ towards him and had embarked on a ‘sodomital attack’<sup>33</sup> after giving him gifts. The main ground of appeal was as follows:

“That there was a material irregularity where the learned trial judge directed the Jury that the degree of force used to repel a sodomital attack is generally relevant, but did not apply the law to the facts by directing the Jury that the injuries observed by the doctors on the body of the deceased would be of no moment if they accepted that the deceased was repelling such an attack.”

The defence of justifiable homicide was employed by the accused but not accepted by the jury. However, the Appellant is now a free man since his conviction was overturned by the Court of Appeal.

Although no written judgment has yet been delivered, the Appellant’s argument before the Court of Appeal was that the usual rules of self defence do not

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<sup>31</sup> Laws of Dominica Cap 1:10

<sup>32</sup> Criminal Appeal No 2 of 2008

<sup>33</sup> Refers to a forceful attempt to engage in buggery.

apply when a person is warding off a ‘sodomitical attack’ and that any amount of force may be used since the attack is ‘abominable’ and ‘unnatural’. This point was expressly rejected by one of the three Court of Appeal judges. The prosecutor tried to establish that the deceased had merely made advances towards the Appellant. On the ground of provocation, the line of questioning adopted by the Court of Appeal judges shows that the propositioning of a man by another man is sufficient provocation for violence.<sup>34</sup> The following extract is taken from the Court’s transcript:

Justice J Creque: ‘Telling him, Mr Pestina, ‘let me suck you’, is an unnatural act to a man.’

Justice O Edwards: And that would not cause any heat?’<sup>35</sup>

### Homophobic Music

Section 8 of the Small Charges Act Cap 10:39 makes it an offence to use ‘abusive, blasphemous, indecent, profane or threatening language’ in a public place.<sup>36</sup> However, there is no legislation specifically banning persons from playing homophobic music in public places. In 2008, there were discussions<sup>37</sup> about banning dancehall star, Movado, from performing in Dominica because of the high level of violence and homophobia encouraged by his lyrics. Refusing to cancel the concert, the Minister of Tourism reasoned that Movado had not committed any crime in Dominica and as such withholding permission would not be in keeping with the spirit of Caricom. Homophobic music, when played at public events, subconsciously develops anti-gay sentiments in listeners including children, teenagers and even those who do not hold strong moral convictions. Persons attending public events are forced to listen to these songs. Listeners include individuals of different sexual orientations and those predisposed to violence.

### **3. Article 9 (Right to Liberty and Security of the Person)**

Article 9 states: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by

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<sup>34</sup> Page 38.

<sup>35</sup> Ibid.

<sup>36</sup> It is punishable by a fine of two hundred and fifty dollars or one month imprisonment

<sup>37</sup> ‘Dominica Government Refuses to Ban Movado’ *The Dominican* (July 7<sup>th</sup> 2008)

<<http://www.thedominican.net/articlesone/mavadoone.htm>> Accessed June 28th 2011

law.”

LGBT persons are constantly under the threat of being deprived of their liberty under the Sexual Offences Act. With such a threat hanging over their heads and the negative attitude of State actors,<sup>38</sup> individuals feel severely restricted in their actions. Furthermore, *Toonen v Australia* has already established that laws prohibiting same sex sexual intimacy are unlawful under international law considering the State’s ICCPR obligations. In light of *Toonen*, by retaining such laws, Dominica is undermining the rights of LGBT persons to liberty and security.

#### **4. Article 17 (Right to Privacy)**

Article 17(1): ‘No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.’ The criminalisation of sexual intercourse between members of the same sex, even in private is a violation of Article 17 (*Toonen v Australia*). In order to prosecute someone for buggery or gross indecency committed in private, a violation of the right to privacy is inevitable.

#### **5. Article 19 (Freedom of Expression) and Article 22 (Freedom of Association)**

Article 19(2) declares that ‘Everyone shall have the right to freedom of expression’. Article 22 guarantees the right to freedom of association with others.

Many LGBT persons, are unable to express their orientation because of laws criminalising their sex of preference and the general stigma attached to homosexuality. They are therefore forced by social pressures to disguise their orientation by entering into relationships with members of the opposite sex. Considering that the high rate<sup>39</sup> of HIV infection is higher among men who have sex with men, this phenomenon of ‘disguising sexuality’ places the heterosexual female population at greater risk.

There are in Dominica a few persons who were born male but regularly dress in what is considered female attire and a few who were born female and regularly dress in what is considered male attire. Some of these persons identify as male to female transgenders. One such person is referred to with the suffix ‘marco’ attached

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<sup>38</sup> See n 41.

<sup>39</sup> Avert International HIV and AIDS Charity Accessed 4<sup>th</sup> July 2011 <http://www.avert.org/young-gay-men.htm>

to the end of his name, like a surname. The term 'marco' is used to refer to an effeminate man in a derogatory manner. These individuals are occasionally ridiculed and taunted but are generally 'tolerated' by the population. Cross dressing has traditionally been accepted as a source of entertainment during the carnival celebrations when men dress as women and women as men.<sup>40</sup>

Additionally, LGBT groups are forced to operate underground because of fear that their members will be victimised. Members who are openly gay complain of acts of vandalism committed against their property. Reports made to the police are not taken seriously and the victims are sometimes ridiculed.<sup>41</sup> Through the systematic encouragement of discrimination on the basis of sexual orientation, the State has deprived individuals of their right to freedom of expression and freedom of association.

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<sup>40</sup> Honychurch, Lennox, *Our Island Culture* (Dominica National Cultural Council 1988) 68

<sup>41</sup> Interview with LGBT group, Dominica CHAP, on June 14<sup>th</sup> 2011 by Cara Shillingford.

## CONCLUDING NOTES

1. One of the most blatant violations of the ICCPR is the existence of laws forbidding buggery and gross indecency. Although both opposite and same sex couples are affected by these provisions, they disproportionately affect same sex by criminalising all forms of sexual gratification between persons of the same sex. The Sexual Offences Act 1998 created a new offence criminalising all forms of same sex sexual intimacy. Dominica is in contravention of Articles 2, 17 and 26.
2. It is unclear whether persons are afforded constitutional protection against discrimination on the basis of their sexual orientation in Dominica. No one has tested the ambits of the term 'sex' as used in the non-discrimination provision of the Constitution of Dominica.
3. Intolerance has been demonstrated in the speeches of religious and political leaders. These are persons held in high esteem by Dominicans.
4. Homophobic music when played in public places, adds to the stigma surrounding homosexuality. It has a significant role in the growing levels of violence against LGBTs.
5. The Protection Against Domestic Violence Act does not afford same sex unmarried persons and heterosexuals persons equal treatment. Stable homosexual unions are not recognised by the law and as a result, same sex partners receive less favourable treatment than heterosexual couples.
6. LGBT groups are forced to operate underground because of fear that their members will be victimised if their identities are revealed. This affects their ability to publicly advocate on behalf of their constituents and therefore further impedes access to justice. Men who have sex with men are sometimes forced by social pressure to enter into opposite relationships and are unable to disclose their orientation to their wives or girlfriends. Stigma and discrimination against LGBT people therefore fuels the spread of HIV in the Commonwealth of Dominica.

7. The State has not implemented any HIV/AIDS prevention programme specifically aimed at men who have sex with men.

## RECOMMENDATIONS

1. Dominica is advised to repeal laws prohibiting consensual sexual activities between adults of the same sex.
2. The State Party is called upon to amend the Constitution to include 'sexual orientation' as a prohibited ground of discrimination and to specify that the list of grounds is not comprehensive.
3. Leaders are called upon to publicly condemn discrimination against LGBTs.
4. The State Party is called upon to pass and enforce legislation banning individuals from playing music that incite violence against homosexuals over the radio and in public places.
5. The State Party is called upon to give unmarried same sex partners the same level of protection as unmarried heterosexual partners under the Protection Against Domestic Violence Act.
6. The State Party should develop such a programme educating men who have sex with men on ways in which they can protect themselves. It is important to ensure that such individuals are treated in a respectful and dignified manner so as to not drive them further underground. Men incarcerated at the State Prison should be among those targeted and given condoms

## PROPOSED QUESTIONS FOR THE GOVERNMENT DELEGATES

1. Why does the State Party retain laws prohibiting consensual sexual intercourse between same sex adults in *private*?
2. What is the State Party's policy on gay tourism?
3. How will the government address the problem of homophobic music played in public places?
4. Will the Government recognise and encourage the existence of LGBT groups that are mandated to advocate on behalf of homosexual persons so as to decrease discrimination?