

EXECUTIVE SUMMARY

1. Since its Third-Cycle Universal Periodic Review conducted in May 2019, the Commonwealth of Dominica (hereinafter “Dominica”) continues to discriminate against people based on their perceived and actual status as members of the lesbian, gay, bisexual, transgender, queer, and other sexual and gender minority (“LGBTQ+”) community. In addition to explicitly criminalizing consensual same-sex sexual activity between adults, Dominica does not adequately investigate, hold accountable perpetrators of, or prevent violence, harassment, and discrimination against LGBTQ+ individuals by State and non-State actors. The continued criminalization of consensual same-sex sexual activity between adults, combined with public animus towards gender and sexual minorities, fosters a hostile and dangerous environment for members of the LGBTQ+ community in Dominica.
2. Dominica criminalizes consensual same-sex sexual activity between adults under two separate sections of the Sexual Offences Act 1998, as amended (the “Act”). The statute has its origins in laws that were transplanted and initially enacted in 1873, at which point Dominica was a colony of the British Empire. Section 14 criminalizes consensual same-sex sexual activity between adults regardless of gender under the broad category of “gross indecency” which the statute defines as “*an act other than sexual intercourse . . . by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual desire.*”¹ Section 16 specifically and disproportionately targets consensual same-sex sexual activity between adult men by criminalizing “buggery” which the statute defines as “sexual intercourse per anum by a male person with a male person.”²
3. In addition to the possibility of legal prosecution, members of the LGBTQ+ community experience discrimination, enabled in large part by the continued criminalization of consensual same-sex sexual activity between adults. State and non-State actors discriminate against LGBTQ+ people in matters of obtaining housing, education, employment. There is also a negative social stigma within Dominica of LGBTQ+ people, who experience further violence and harassment from the public. Dominican law does not prohibit discrimination based on sexual orientation, and/or gender identity or expression (SOGIE) in employment, housing, education, or health care, and Dominican law enforcement authorities reject or poorly investigate claims of violence and harassment against LGBTQ+ people.
4. The authors of this stakeholder report note that information and news regarding this subject matter in Dominica is relatively limited given the social stigma and circumstances surrounding LGBTQ+ people in the country.

I. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

A41 Constitutional and legislative framework; G2 Lesbian, gay, bisexual and transgender and intersex persons (LGBTI)

Status of Implementation: Not Accepted, Not Implemented

5. During the Third-Cycle review, Dominica received 15 recommendations pertaining LGBTQ+ issues.³ These recommendations included calls to repeal or amend the statutes that criminalize consensual same-sex sexual activity between adults and to adopt new legislation and amend current legislation to prevent discrimination, stigmatization, and violence against LGBTQ+ people. Dominica noted all such recommendations.⁴
6. Section 14 of the Act criminalizes consensual same-sex sexual activity between adults, regardless of gender, under the broad category of “gross indecency.”⁵ A consensual act of gross indecency between adults is punishable by up to 12 years imprisonment.⁶
7. Section 16 of the Act disproportionately targets consensual same-sex sexual activity between adult men by criminalizing an act of “buggery.”⁷ There is no equivalent criminal statute that specifically targets women. An act of buggery between adult men is punishable by up to 10 years imprisonment and the possibility of court-ordered psychiatric treatment.⁸ Section 16 does not distinguish between consensual and nonconsensual activity, effectively equating consensual same-sex sexual activity between adult men with rape. Notably, while this is a severe punishment for consensual activity, it also has the effect of affording men less protection from rape by men than is provided by law from other forms of rape, as the punishment for nonconsensual same-sex sexual activity between adult men is considerably less than the punishment for other forms of nonconsensual sexual activity. For instance, Section 3 penalizes rape (i.e., nonconsensual sexual activity) by up to 25 years imprisonment regardless of the guilty party’s gender.
8. Dominica has not repealed Sections 14 and 16 and they remain in effect. The laws are vaguely worded, use broad terminology, and target consensual same-sex sexual activity between adults in the same “sexual offenses” section of the Act that otherwise covers crimes such as rape, statutory rape, incest, and sexual assault. The continued existence of such laws in Dominica contrasts growing global trends regarding the rights of sexual and gender minorities, including recent court decisions in Antigua and Barbuda, Barbados, and Saint Kitts and Nevis that struck down laws that criminalized consensual same-sex conduct.⁹
9. In 2022, Dominica Acting Director of Public Prosecution Sherma Dalrymple was quoted as saying that Dominica has the “most stringent and comprehensive Sexual Offences Act.”¹⁰ Her comments followed a comparative analysis of similar statutes in the Caribbean Community and Organization of the Eastern Caribbean State jurisdictions.¹¹
10. In 2019, an anonymous gay man filed a legal claim in Dominica’s High Court of Justice challenging the provisions of the Act that ban consensual same-sex sexual activity and punish this activity with prison terms and psychiatric confinement.¹² The individual challenging these laws alleges that the laws violate Dominica’s constitutional provisions

that guarantee rights to freedom of expression, privacy, and freedom from inhumane or degrading punishment.¹³

11. The anonymous man has faced frequent violence, threats, and other acts of discrimination and hate from State and non-State actors because of his sexual orientation.¹⁴ He said that he has suffered from significant and extreme violations of his human rights, including being attacked in his own home and not receiving any assistance from the police.¹⁵
12. This individual has explicitly stated that he “fears for himself and for others who are part of the Lesbian, Gay, Bisexual, Transgender (LGBT) [sic] community in Dominica.”¹⁶ The challenger opined that the perpetrators of acts of violence, hatred, and discrimination directed toward members of the LGBTQ+ community “find a sense of comfort and safety in the laws that criminalize buggery and gross indecency.”¹⁷
13. The authors of this stakeholder report received information from a Dominican partner organization that the initial case challenging the Act was approximately 16 months prior to the drafting of this report.¹⁸ One month before the case was scheduled to be heard, however, the Government submitted its brief admitting that Sections 14 and 16 violated Sections 1 and 10 of the Constitution of Dominica and were therefore void. During the actual hearing, the judge did not hear any arguments about these sections or how they were discriminatory.¹⁹
14. Although the judgment was expected to be issued in early 2024 and that the judgment is expected to decriminalize consensual same-sex sexual activity, as of the writing of this report, the Court has not issued its judgment.²⁰
15. Although Dominican officials rarely enforce the gross indecency and buggery laws,²¹ the effects of the laws extend further.²² Not only are the laws discriminatory themselves, but they enable, encourage, and incite stigma against and violent conduct towards LGBTQ+ individuals. Further, police discriminate against LGBTQ+ individuals and fail to act when LGBTQ+ individuals report violations of their human rights.²³

B31 Equality & non-discrimination

Status of Implementation: Not Accepted, Not Implemented

16. In its Third-Cycle review, Myanmar recommended that Dominica “[t]ake measures to address discrimination based on sexual orientation or gender identity.”²⁴ Dominica noted this recommendation.
17. Currently, Dominica has passed no laws that prohibit discrimination on the basis of sexual orientation, and/or gender identity or expression in employment, housing, education, or health care.²⁵
18. There are credible reports that discrimination is deeply embedded in Dominican society. One gay man in Dominica told Human Rights Watch “[e]very day I fear for my safety living in this country because of my sexual orientation. I am alive but if anyone ever finds out and wanted to find out, they can kill me...I am an easy target for anything.”²⁶

19. Although acceptance of LGBTQ+ people is slowly growing, there remains considerable stigma, preventing LGBTQ+ organizations from attracting members or organizing events like pride marches. Due to such stigma, many Dominicans do not wish to publicly associate with visible LGBTQ+ organizations or events due to fears that members of the public would assume them to be LGBTQ+ and, thus, discriminate against them.²⁷
20. Members of civil society report that the police do not take reports of violence against LGBTQ+ individuals seriously.²⁸ Due to the criminalization of consensual same-sex sexual activity between adults, police have been known to decline aid to members of the LGBTQ+ community who report being victims of acts of violence and other illegal conduct.²⁹
21. Dominican courts have the power to order that person convicted of “buggery” be “admitted to a psychiatric hospital for treatment.”³⁰ This adds to the stigma that LGBTQ+ individuals are mentally ill.
22. The stigma against LGBTQ+ individuals makes it difficult to gain in-depth information about the situation in Dominica, as LGBTQ+ individuals fear for their safety if their identities are revealed.³¹ This is furthered by the general dismissive attitude of the police to investigate claims of violence against LGBTQ+ people in Dominica and the State’s insufficient reporting of the incidents LGBTQ+ people face.
23. Across the Caribbean, including in Dominica, access to vital medications to counteract HIV and AIDS such as PrEP are blocked due to misguided viewpoints that access to these drugs will promote a culture of promiscuity.³²

II. RECOMMENDATIONS

24. This stakeholder report suggests the following recommendations for the Government of Dominica:
 - Immediately repeal the criminal prohibition on consensual same-sex sexual activity between adults.
 - Draft and adopt legislation in consultation with LGBTQ+ organizations that permits transgender individuals to change their legal gender.
 - Introduce and pass amendments to existing legislation to broaden the definition of “rape” to include nonconsensual sexual activity perpetrated by any individual or individuals against another or others without reference to gender with a standardized punishment.
 - Establish an independent and properly funded human rights council or national human rights institution to investigate and address reports of other human rights violations by State and non-State actors.
 - Devote resources to assessing and combatting the problems faced by LGBTQ+ individuals in Dominica, including social stigma and violence.
 - Train police and judicial personnel on issues related to sexual orientation, and/or gender identity or expression.

- Establish an independent tribunal or body with an express mandate to investigate claims that police have failed to act on reports of violence against LGBTQ+ individuals in Dominica, and train police to properly investigate allegations of abuse and violence directed at LGBTQ+ individuals.
- Approve and introduce medications such as PrEP to reduce the spread of HIV and address the stigma of living with HIV/AIDS.
- Address societal prejudice and discrimination by State and non-State actors against the LGBTQ+ community, so as to help them feel included in the wider Dominican community.
- Collaborate with civil society to increase publicly accessible reports on issues pertaining to LGBTQ+ people.

¹ Dominica, Sexual Offences Act 1998, § 14.

² Dominica, Sexual Offences Act 1998, § 16.

³ Human Rights Council, *Report of the Working Group the Universal Periodic Review: Dominica* (July 9, 2018), U.N. Doc. A/HRC/42/9. ¶ 104.35 Strengthen specific legislation to combat discrimination based on disabilities, sexual orientation, gender identity or social status (Honduras); ¶ 104.51 Protect lesbian, gay, bisexual, transgender and intersex persons against violence and discrimination, in line with Sustainable Development Goal 10, by amending sections 14 and 16 of the Sexual Offences Act to decriminalize consensual same-sex conduct (Netherlands); ¶ 104.34 Consider adopting legislation to strengthen the principle of non-discrimination, and which affords particular protection to persons belonging to vulnerable groups (Peru); ¶ 104.40 Take measures to reduce the societal stigma faced by lesbian, gay, bisexual, transgender and intersex persons, including repealing provisions in national law that criminalize same-sex relations, including in the Sexual Offences Act (Australia); ¶ 104.42 Decriminalize homosexual relations and fight discrimination against lesbian, gay, bisexual, transgender and intersex persons (France); ¶ 104.43 Repeal all legislation and provisions that criminalize same-sex relations, including article 16 of the Sexual Offences Act, and implement measures to effectively prevent discrimination and social stigmatization of individuals based on sexual orientation and gender identity (Germany); ¶ 104.44 Decriminalize same-sex acts (Iceland); ¶ 104.46 Amend anti-discrimination laws to include discrimination based on sexual orientation, gender identity and sex characteristics (Iceland); ¶ 104.47 Adopt concrete measures to combat discrimination based on sexual orientation and gender identity, including by repealing article 16 of the Sexual Offences Act 1998, to decriminalize consensual same-sex relations (Ireland); ¶ 104.53 Repeal all legal provisions which discriminate against persons on the grounds of their sexual orientation and gender identity, including relevant language in the Sexual Offences Act (United Kingdom of Great Britain and Northern Ireland); ¶ 104.54 End criminalization of consensual same-sex sexual activity between adults (United States of America); ¶ 104.48 Reinforce the anti-discriminatory legal framework in order to provide for a strengthened protection of the rights of the lesbian, gay, bisexual, transgender and intersex community (Italy); ¶ 104.49 Promote a legal framework that protects persons from all forms of violence and discrimination based on sexual orientation and gender identity, and review the Sexual Offences Act 1998, which criminalizes consensual same-sex relations between adults (Mexico); ¶ 104.45 Take all measures to protect lesbian, gay, bisexual, transgender and intersex individuals, investigate all acts of violence motivated by the sexual orientation or gender identity of the victim, and bring the perpetrators to justice (Iceland).

⁴ Human Rights Council, *Report of the Working Group the Universal Periodic Review: Dominica* (July 9, 2018), U.N. Doc. A/HRC/42/9/Add.1/.

⁵ Dominica, Sexual Offences Act 1998, § 14.

⁶ Dominica, Sexual Offences Act 1998, § 14.

⁷ Dominica, Sexual Offences Act 1998, § 16.

⁸ Dominica, Sexual Offences Act 1998, § 16.

⁹ Human Rights Watch, *“They Can Harass Us Because of the Laws” Violence and Discrimination against LGBT People in Saint Vincent and the Grenadines* (July 20, 2023). Also available online at <https://www.hrw.org/report/2023/07/20/they-can-harass-us-because-laws/violence-and-discrimination-against-lgbt-people>.

¹⁰ Dominica News Online, *Dominica has ‘the most stringent and comprehensive Sexual Offences Act’ in CARICOM*

and the OECS says DPP (July 19, 2022). Also available online at <https://dominicanewsonline.com/news/homepage/news/dominica-has-the-most-stringent-and-comprehensive-sexual-offences-act-in-caricom-and-the-oeecs-dpp/>.

¹¹ Dominica News Online, *Dominica has ‘the most stringent and comprehensive Sexual Offences Act’ in CARICOM and the OECS says DPP* (July 19, 2022). Also available online at <https://dominicanewsonline.com/news/homepage/news/dominica-has-the-most-stringent-and-comprehensive-sexual-offences-act-in-caricom-and-the-oeecs-dpp/>.

¹² Reuters, *Laws banning gay sex under challenge in tiny Caribbean nation* (July 19, 2019). Also available online at <https://www.reuters.com/article/us-dominica-lgbt-rights/laws-banning-gay-sex-under-challenge-in-tiny-caribbean-nation-idUSKCN1UE2HG/?edition-redirect=uk>.

¹³ Reuters, *Laws banning gay sex under challenge in tiny Caribbean nation* (July 19, 2019). Also available online at <https://www.reuters.com/article/us-dominica-lgbt-rights/laws-banning-gay-sex-under-challenge-in-tiny-caribbean-nation-idUSKCN1UE2HG/?edition-redirect=uk>. “Dominica’s 1978 Constitution guarantees the rights to privacy, protection from discrimination, liberty, security of the person, freedom from inhuman or degrading punishment, freedom of expression, and freedom of assembly and association. Sections 14 and 16 of the SOA violate these rights in numerous ways.” HIV Legal Network, *Media Statement: Dominica to Hear Constitutional Challenge on LGBT Rights* (Sept. 28, 2022). Also available online at <https://www.hivlegalnetwork.ca/site/media-statement-dominica-to-hear-constitutional-challenge-on-lgbt-rights/?lang=en>.

¹⁴ Reuters, *Laws banning gay sex under challenge in tiny Caribbean nation* (July 19, 2019). Also available online at <https://www.reuters.com/article/us-dominica-lgbt-rights/laws-banning-gay-sex-under-challenge-in-tiny-caribbean-nation-idUSKCN1UE2HG/?edition-redirect=uk>.

¹⁵ Reuters, *Laws banning gay sex under challenge in tiny Caribbean nation* (July 19, 2019). Also available online at <https://www.reuters.com/article/us-dominica-lgbt-rights/laws-banning-gay-sex-under-challenge-in-tiny-caribbean-nation-idUSKCN1UE2HG/?edition-redirect=uk>.

¹⁶ Dominica News Online, *Challenge to Dominica’s buggery laws filed in Dominica High Court* (July 20, 2019). Also available online at <https://dominicanewsonline.com/news/homepage/news/challenge-to-dominicas-buggery-laws-filed-in-dominica-high-court/>.

¹⁷ Dominica News Online, *Challenge to Dominica’s buggery laws filed in Dominica High Court* (July 20, 2019). Also available online at <https://dominicanewsonline.com/news/homepage/news/challenge-to-dominicas-buggery-laws-filed-in-dominica-high-court/>.

¹⁸ Telephone Interview with Dominican Partner Organization, Coordinator, Minneapolis, MN, Dec. 29, 2023.

¹⁹ Telephone Interview with Dominican Partner Organization, Coordinator, Minneapolis, MN, Dec. 29, 2023.

²⁰ Telephone Interview with Dominican Partner Organization, Coordinator, Minneapolis, MN, Dec. 29, 2023.

²¹ ILGA World, *Our Identities Under Arrest: A global overview on the enforcement of laws criminalising consensual same-sex sexual acts between adults and diverse gender expressions, 2nd Edition*, by Kellyn Botha (Geneva: ILGA, Nov. 2023), 145-146.

²² Dominica News Online, *Challenge to Dominica’s buggery laws filed in Dominica High Court* (July 20, 2019). Also available online at <https://dominicanewsonline.com/news/homepage/news/challenge-to-dominicas-buggery-laws-filed-in-dominica-high-court/>.

²³ Dominica News Online, *Challenge to Dominica’s buggery laws filed in Dominica High Court* (July 20, 2019). Also available online at <https://dominicanewsonline.com/news/homepage/news/challenge-to-dominicas-buggery-laws-filed-in-dominica-high-court/>.

²⁴ Human Rights Council, *Report of the Working Group the Universal Periodic Review: Dominica* (July 9, 2018), U.N. Doc. A/HRC/42/9. ¶104.50.

²⁵ U.S. Department of State, *2020 Country Reports on Human Rights Practices: Dominica, by the Bureau of Democracy, Human Rights and Labor*, (Mar. 30, 2021) 12.

²⁶ Human Rights Watch, “*I Have to Leave to Be Me*” *Discriminatory Laws against LGBT People in the Eastern*

Caribbean, Mar. 21. 2018, <https://www.hrw.org/report/2018/03/21/i-have-leave-be-me/discriminatory-laws-against-lgbt-people-eastern-caribbean>.

²⁷ Confidential source on file with the authors.

²⁸ Human Rights Watch, *Paradise Lost: The Plight of LGBT People in the Eastern Caribbean*, [hrw.org/video-photos/interactive/2018/03/21/paradise-lost](https://www.hrw.org/video-photos/interactive/2018/03/21/paradise-lost).

²⁹ Reuters, *Laws banning gay sex under challenge in tiny Caribbean nation* (July 19, 2019). Also available online at <https://www.reuters.com/article/us-dominica-lgbt-rights/laws-banning-gay-sex-under-challenge-in-tiny-caribbean-nation-idUSKCN1UE2HG/?edition-redirect=uk>.

³⁰ Dominica, Sexual Offences Act 1998, § 16

³¹ Telephone Interview with Dominican Partner Organization, Coordinator, Minneapolis, MN, Dec. 29, 2023.