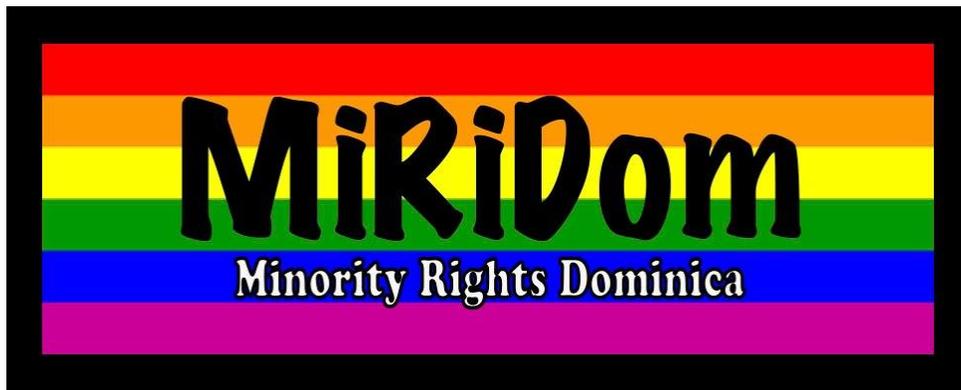


**Stakeholder Submission on Lesbian, Gay, Bisexual and Transgender (LGBT) Rights in  
Dominica  
For the 19<sup>th</sup> Session of the Universal Periodic Review - May 2014**

Presentado por

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**Stakeholder Submission on Lesbian, Gay, Bisexual and Transgender (LGBT) Rights in Dominica  
For the 19<sup>th</sup> Session of the Universal Periodic Review  
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1. This report is submitted by Minority Rights Dominica (MiRiDom)<sup>1</sup> and the Sexual Rights Initiative<sup>2</sup> and outlines the current situation for LGBT people in Dominica in relation to its international obligations as well as its national laws, policies and practices. The purpose of this submission is to encourage the leadership in the Dominican government to take concrete steps to improve the environment for the LGBT populations in Dominica.

### **Introduction**

2. Having gained independence in 1978, Dominica has a written Constitution which is superior to all other laws including international law.<sup>3</sup> 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>4</sup> Dominica has a population of 68,635. There is no survey data in Dominica for the total population of LGBT people.
3. 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”.
4. However, 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 denying them the fully enjoyment of their human rights as citizens.

### **Rights to Equal Protection before the Law**

5. 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

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<sup>1</sup> Minority Rights Dominica is an organization that campaigns for the rights of LGBT people and other minorities in Dominica.

<sup>2</sup> The Sexual Rights Initiative is a coalition of organizations comprised of Action Canada for Population and Development (ACPD), Akahatá – Equipo de Trabajo en Sexualidades y Géneros, Coalition for African Lesbians, Creating Resources for Empowerment in Action (CREA; India), Egyptian Initiative for Personal Rights (EIPR) and Federation for Women and Family Planning (Poland).

<sup>3</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>4</sup> *Ibid.*

authority". The Constitution expressly proscribes discrimination on the basis of "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 other categories of discrimination such as gender, sexual orientation or gender identity.<sup>5</sup>

### **Buggery Laws in Dominica**

6. The Sexual Offences Act<sup>6</sup> defines "sexual intercourse per anum by a male person with a male person or by a male person with a female person"<sup>7</sup> as *buggery* and covers all forms of sexual intercourse per anum. Under its section 16, 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.
7. 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. Offences such as rape<sup>8</sup>, sexual intercourse with a person under fourteen<sup>9</sup> and sexual intercourse with a person between fourteen and sixteen,<sup>10</sup> are defined using the phrase 'sexual intercourse'. Section 2(2) states that "For the purpose of this Act, sexual intercourse shall be deemed complete upon proof of penetration of the vagina, to any extent, by the penis." This subsection has been treated as a definition of "sexual intercourse", which prevents persons accused of non-consensual sexual intercourse per anum from being charged with rape or offences prohibiting sexual intercourse with a minor.
8. 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.

### **Recommendations**

The government of Dominica should:

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

<sup>6</sup> Act No 1 of 1998.

<sup>7</sup> Sec 16(3).

<sup>8</sup> Sec 3.

<sup>9</sup> Sec 7.

<sup>10</sup> Sec 8.

9. Repeal those legal provisions on sexual offences which criminalize sexual relations between consenting adults of the same sex and decriminalize sexual activities between consenting adults of the same sex immediately.
10. Take all necessary measures to enact new legislation in order to protect and guarantee the enjoyment of fundamental human rights to LGBT people in all the spheres of their lives, according to international standards.

### **Rights to Marry and Establish Family**

11. In addition to laws criminalising sexual activities between same sex-couples, Dominica does not recognise stable civil unions between same-sex couples, and there are laws that deprive unmarried same sex couples of same benefits awarded to persons in opposite sex relationships, even if unmarried. This circumstance prevent for same-sex couples enjoying a whole range of marriage benefits and rights.
12. Although nothing in the Marriage Act Cap 35:01 specifically denies homosexuals the right to marry, the fact that its sections are phrased in heterosexual terms.
13. Dominica does not recognise stable civil unions between homosexuals, and although nothing in the Marriage Act Cap 35:01 specifically denies homosexuals the right to marry, the fact that its sections are phrased in heterosexual terms.

### **Recommendations**

The government of Dominica should:

14. Amend the Marriage Act allowing same-sex marriage or domestic partnerships laws in Dominica in order to protect the rights to marry and to found families for LGBT people.

### **Right of Freedom of Expression and Association**

15. Because of existing criminal laws above mentioned, many LGBT persons choose not to express their orientation and are forced by social pressures to disguise their orientation by entering into relationships with members of the opposite sex. This causes significant mental and physical distress that is not being addressed by the health and social services due to the discriminatory laws.
16. There are a few cross dressers living in Dominica who were born male but dress regularly as females and vice versa. Male cross dresses are referred to with the suffix "maco" attached to the end of his name, like a surname. This is a derogatory term used to refer to an effeminate man. These cross dressers often suffer abuse. 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>11</sup>
17. Additionally, LGBT human rights defender groups in Dominica are forced to operate underground because of fear that their members will be victimised. Those who are openly gay complain of acts of physical abuse, and are often victims of vandalism

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<sup>11</sup> Honychurch, Lennox, *Our Island Culture* (Dominica National Cultural Council 1988) 68

committed against their positions, as well as being ejected from house and home. Reports made to the police are not taken seriously and the victims are sometimes ridiculed. 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.

### **Recommendations**

The government of Dominica should:

18. Establish anti-discrimination laws and regulations to ensure that LGBT individuals and other populations, such as people living with HIV, enjoy equal rights.
19. Implement legislation and policies to address the needs of LGBT people living in the Dominican community -like a gender policy and an employment policy- in terms of equality and following the international standards.
20. Ensure that legal assistance and psychological support are provided to LGBT individuals, who have encountered stigma, discrimination and various types of bullying.
21. Ensure training for the law enforcement officers to be sensitized to the fact that LGBT people are to be treated with dignity and are due their equal rights.
22. Undertake an investigation on the status of the LGBT community in Dominica, to assess their situation in relation to fundamental human rights and to improve, where necessary, their current situation on the island; bringing together LGBT organizations and NGOs.
23. Establish policies and regulations for LGBT rights defender groups and NGOs that protect them from discrimination and persecution

### **Right to Health**

24. According to article 12 of the ICESCR, the state parties should recognize and protect everyone's right to health. However, the current policy framework cannot fully guarantee the rights of health to LGBT people.
25. The State has not implemented any HIV/AIDS prevention programme specifically aimed at men who have sex with men despite the AIDS epidemic plaguing the Caribbean. Discrimination only serves to exclude individuals and promote risky behavior<sup>12</sup>. Research shows that men who have sex with men are more likely to contract HIV than any other group<sup>13</sup>.

### **Recommendations**

The government of Dominica should:

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<sup>12</sup> *Toonen v. Australia*, Communication no. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

<sup>13</sup> 'More on AIDS, Homosexuality and the Buggery Law in Dominica', *Dominica Weekly* (December 17th 2008) <http://www.dominica-weekly.com/?s=dr+carissa+eitiienne> Accessed August 18th 2010.

26. Develop a sexual health programme educating men who have sex with men on ways in which they can protect themselves from contracting HIV and others STDs.
27. Ensure the enjoyment of the right to health to LGBT people by enacting adequate legislation and by the implementation of a national health plan taking care of all the health needs of this community.
28. Implement strategies and programs to change health care providers' attitudes toward men who have sex with men and LGBT patients, especially in public health centres, and to train them in non-discrimination skills.