

Human Rights of LGBTQ+ People in Dominica



Human rights are universal. Every person is equally entitled to benefit from these rights, regardless of their race, religion, language, nationality, sex, gender, sexual orientation, disability, ethnic origin, or any other status.

Every person is born with human rights. We have these rights simply by virtue of being human beings – they are not granted by the state.

Human rights can also be referred to as fundamental rights and freedoms.

MiRiDom
MINORITY RIGHTS DOMINICA



Some examples of human rights include:

- The right to life
- The right to education
- The right to food
- Freedom of expression
- Freedom of religion

Published in October 2024

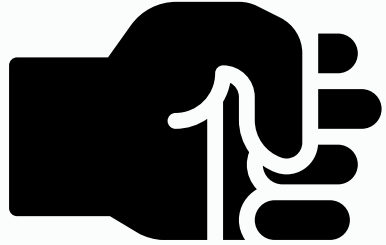
All people have human rights and all people are equal. Equality goes hand in hand with the principle of non-discrimination.

Discrimination means to treat people differently from others, in an unfair manner, based on certain protected personal characteristics. This can include a person's race, religion, gender, age, or sexual orientation, among other things.

States have obligations under international law to respect, protect, and fulfill the human rights of their citizens. This means:

- The state must not violate or interfere with a person's human rights.
- The state must protect individuals from having their human rights abused by others.
- The state must take positive actions to help individuals enjoy their basic human rights.

HUMAN RIGHTS



Human rights are inalienable. This means that they should not be taken away randomly or arbitrarily. There are some cases where rights can be restricted by the state if certain conditions or requirements are met.



The Constitution of Dominica

In Dominica, human rights are found in the Constitution. The Constitution is the core legal document that sets out the fundamental principles and ideals of the Dominican state. How constitutional principles are interpreted and applied can change over time as the attitudes and beliefs of Dominican society evolve.

The Constitution of Dominica protects many human rights, including:

- The right to life (section 2);
- The right to personal liberty (section 3);
- Protection from inhuman treatment (section 5);
- Protection from arbitrary search or entry (section 7).



In democracies like Dominica, courts and judges have an important role to play in interpreting laws and in making sure that laws do not violate the Constitution.

The Constitution is the supreme law of the country. If a law goes against the Constitution, judges can decide that the law must be changed or overturned. If a judge decides that a law is unconstitutional, that will mean that the law is invalid and it will no longer apply.

Dominican citizens can apply to the courts to challenge a law if they think that it goes against the Constitution or if they feel that their human rights are being violated by the government.

Criminalization of homosexuality in Dominica

In Dominica, there is a law that was adopted by Parliament in 1998 known as **the *Sexual Offences Act* (“SOA”), which up until recently was used to criminalize homosexuality.**

Section 14 of the SOA criminalized “gross indecency” and section 16 criminalized “buggery.” These criminal offences could be used to target consensual sex between two men or between two women. If someone was found guilty of one of these offences, they could face years in prison or be sent to a psychiatric hospital against their will.

This law had a harsh impact and created a hostile environment for members of the LGBTQ+ community in Dominica. People could face prison for loving who they love and for having consensual sex with other adults.

This law also sent a harmful message to society that LGBTQ+ people were not equal to other citizens, and that they could be discriminated against, persecuted, and killed without consequences.

In many cases, police did not take the concerns of LGBTQ+ people seriously and refused to act when they reported that they were the victims of crime.

As a result of this law, **LGBTQ+ persons in Dominica were excluded from society** and were prevented from living and expressing themselves freely and in dignity.

Legal challenge and court decision

In July 2019, a local organization called Minority Rights Dominica (MiRiDom) supported an anonymous claimant in filing a legal case in the High Court of Justice of Dominica. The claimant was a gay man from Dominica who was challenging the constitutionality of sections 14 and 16 of the SOA.



The claimant argued that these sections of the SOA violated his human rights, protected under the Dominican Constitution, and promoted threats, harassment, and violence against LGBTQ+ persons. The legal claim also argued that these laws fueled stigma and discrimination, which prevent some LGBTQ+ persons from freely getting healthcare services, specifically for HIV and AIDS.

The case was heard by the High Court in September 2022.

Both the claimant and the government presented their arguments. In this court hearing, the government lawyers even recognized that these sections of the SOA violated certain parts of the Constitution.

In April 2024, Judge Kimberly Cenac-Phulgence of the Eastern Caribbean Supreme Court gave her judgement in the legal challenge.



The court's decision was long and detailed. Judge Cenac-Phulgence concluded that sections 14 and 16 of the

SOA were unconstitutional because they violated several rights protected by the Constitution of Dominica:

- **The right to liberty** (section 1a of the Constitution);
 - The judge recognized that liberty includes the right of LGBTQ+ persons to choose to enter private, intimate sexual relationships with people of the same sex.
- **The right to freedom of expression** (sections 1b and 10(1) of the Constitution);
 - The judge determined that freedom of expression includes how a person expresses intimacy and the choice to have sex with other consenting adults.
- **The right to privacy** (section 1c of the Constitution).
 - The judge found that a person's sexual identity and their sexual orientation, including the sex that they choose to have in private with consenting partners, are fundamental personal decisions that are protected by the right to privacy.

In some cases, violating human rights can be justified by the state if it is done to achieve important goals that are in the public interest. This can include objectives like protecting public safety, public health, morality, or public order.

In this case, **the judge agreed with both the claimant and the Government of Dominica that sections 14 and 16 of the SOA did not pursue any of these legitimate objectives.** The judge also stated that the law had harmful effects on the physical and mental health and well-being of LGBTQ+ persons.

As a result of these human rights violations, **the judge concluded that sections 14 and 16 of the SOA were partially void.**

Sections 14 and 16 of the SOA were not struck down altogether. The judge decided that these sections had to be qualified so that they no longer apply in certain cases.

Specifically, because of this decision, **sections 14 and 16 of the SOA no longer criminalize private consensual same-sex sexual relations for people over the age of 16 in Dominica.**

The claimant did make some legal arguments that were rejected by the judge. The claimant had argued that sections 14 and 16 of the SOA violated the right to security of the person, the right to be free from inhumane and degrading treatment or punishment, the right to protection from discrimination, and the freedom of assembly and association. The judge did not find that sections 14 and 16 violated any of these rights.

Importantly, the judge concluded that the Constitution of Dominica does not prohibit discrimination based on a person's "sexual orientation."



What has changed / What has not changed

Before this legal challenge, all cases that could qualify as gross indecency or buggery were criminalized in a blanket fashion.

As a result of this judgement, people in Dominica over the age of 16 no longer face the risk of being arrested, prosecuted, or convicted for having consensual same-sex sexual relations in private.

Under sections 14 and 16 of the SOA, gross indecency and buggery are still criminal offences in Dominica ONLY: in cases where either there was no consent, the sexual activity happened in public, or if it involved an **individual under the age of 16**.

Otherwise, consenting adult couples (male-male, female-female, male-female) are allowed to engage in gross indecency or buggery in private.

Criminal offences like rape, pedophilia, indecent exposure, and sexual abuse remain illegal and punishable under the law in Dominica.

The legal challenge did not have anything to do with same-sex unions or marriages. Same-sex unions and marriages are not legal in Dominica at this time.

In Dominica, the important principle of separation between church and state applies. People in Dominica are allowed to have their religious beliefs. However, those religious views are not the civil laws of the state.

The civil law and the Constitution in Dominica apply to everyone. All Dominicans are equal and should have their human rights respected.

Religious beliefs cannot be used to justify criminalizing or discriminating against LGBTQ+ people. Religious beliefs should not be used as an excuse for hate, harassment, abuse, or violence against LGBTQ+ people.

This court victory is a major step in the path towards equality, dignity, and freedom for the LGBTQ+ community and for all Dominicans, but it is not the end of the road – legal victories do not change social attitudes overnight. Full equality and acceptance are still a work in progress. Deeply ingrained prejudice and homophobia will take time to dismantle.

Dominica still does not have any legal protections against discrimination for members of the LGBTQ+ community. That means that LGBTQ+ people can still be denied jobs, housing, education, healthcare, and goods and services in Dominica, without any legal recourse available to them.

Caribbean context

The tides of justice are turning in the Caribbean. Dominica is part of a wave of Caribbean countries (including Belize, Trinidad and Tobago, Antigua and Barbuda, St. Kitts and Nevis, and Barbados) where homosexuality has been decriminalized in the past few years. This is also part of a growing trend in other “Global South” countries – in Latin America, Africa, Asia, and Oceania – where courts have decriminalized homosexuality in the name of human rights.

This clear pattern shows that countries everywhere are coming to the conclusion that LGBTQ+ persons should be protected and have their human rights upheld. These ideas are not being imposed by foreigners or by the West – courts in all regions are saying that decriminalizing homosexuality is necessary and aligned with local values.

However, as of October 2024, there are still several countries (Jamaica, Guyana, Grenada, St. Vincent and the Grenadines, and St. Lucia) in the region where people still face criminalization for their sexual orientation. There remains much work to be done to protect the rights and dignity of LGBTQ+ people across the Caribbean.