

Dominica

1. Discrimination in the family

a) Overarching legal framework for marriage

Women and men in Dominica are afforded equal rights to marriage through the provisions of The Marriage Act Chap. 35:01. Forced marriage is prohibited within this act, through declared prohibition of any suit or proceeding held to compel the celebration of a marriage (Marriage Act Chap. 35:01, s. 70). Legislation also prohibits harmful practices to widows, with explicit reference to marriage of the deceased's family within various degrees. This includes, but is not limited to, "his or his father's deceased brother's widow" and "his brother's or sister's deceased son's widow" (The Marriage (Prohibited Degrees of Relationship) Act, Chap. 35:02, s. 3 (1)). Any marriage within the listed prohibited degrees is rendered void in absolute terms.

All customary and religious marriages are legally required to be registered (The Marriage Act Chap. 35:01, S. 57). There is a further requirement that marriage licenses and publication of marriage bans are also to be issued in advance of any ceremony. Discriminatory practices are evident however, with respect to informal partnerships and de-facto unions. Registration is not required, and generally these arrangements are not afforded equal protection under the constitution or through legislation. Instead, there are limited provisions allowed through the following: the Social Security Act, chapter 31:01, the Fatal Accident Act, and the Protection Against Domestic Violence Act (2001) (NGPAP 2014 – 2024). This imbalance of protection is of particular concern, given that the majority of Dominican families are said to exist outside of formal marriage and nuclear family structures (National Gender Policy and Action Plan 2014 – 2024).

Additionally, according to a 2014 report by the Caribbean Development Bank (CDB), it was noted that while all men had absolute freedom to enter into marriage and choose their respective partner, women who reside within the Kalinago Territory were prohibited to marry outside of their ethnicity. The Territory is an official reserve for Dominica's indigenous population. Though this restriction on women is not legally enforceable, it serves as an informal conditionality to remain resident within the reserve. This however contradicts the Carib Reserve Act Chap. 25:90, which states non-Kalinago individuals may be invited to live within the Territory, and if they do so continuously for 12 years, may be given the status of Kalinago with respect to the privileges afforded to the territory's residents (US Department of State 2016).

b) Child marriage

The legal age of marriage for women and men is 18 (The Marriage Act Chap. 35:01, s.30 (2).) There are, however, legal exceptions that allow persons as young as 16 years to be married with parental consent or in absence of such, consent obtained from a judge. Additionally, a father's consent constitutes more authority than a mother's. A woman's consent is only required in the absence of the father or other legal guardian (The Marriage Act Chap. 35:01, s.30 (1) and s. 31).

Child marriage under the age of 16 is void and prohibited, through provisions of the Marriage Act Chap. 35:01, s. 2. Furthermore, any marriage officer who facilitates either this or any other marriage declared void is liable to two years' imprisonment (The Marriage (Amendment 2013) Act s.64). There is presently no available data on child marriage in Dominica, with some reports of incidence being rare (US State Department 2014).

c) Household responsibilities

There is no legislation providing recognition of women and men as head of households, and women are not required by law to obey their husbands. Women and men have the same legal rights and responsibility regarding maintenance of their children who are under the age of 15 years or 18 years if attending a tertiary institution (NGPAP 2014 – 2024).

The law does not afford equal rights between women and with respect to guardianship of their children. In the event of the death of a child's father, sole guardianship is not automatically vested to the mother. A woman is only afforded sole custody, if the child's father had failed to appoint either a sole or joint guardian. Additionally, in absence of such an appointment, the Court has the authority to determine joint guardianship (Guardianship of Infants Act, Chap. 37:04 s.3). On the contrary, a mother is only permitted to appoint a guardian if a Court is satisfied that the child's father is unfit for sole custody. Also, according to the Dominica National Gender Policy 2014 – 2024 (NGPAP), generally custody of children during marriage is with the father, where as mothers assume custody if they are single parents. However, in practice, it is reported that women and men have the same rights in decision making regarding their children, irrespective of marital status.

With respect to responsibilities and maintenance, the law is clear that every man, married woman and single woman are to provide reasonable maintenance to their dependents (Maintenance Act Chap. 35:61. s. 3). Women and men are regarded equally with respect to determining where they choose to live. This is enshrined in the Constitution of the Commonwealth of Dominica, s. 12, which guarantees freedom of movement, including the right to move freely through Dominica and the right to reside in any location within.

d) Divorce

Divorce in Dominica is based on a mixed fault regime with the 'irretrievable breakdown' of marriage as the one ground for divorce (according to national gender policy). The law is based on the UK Matrimonial Causes Act 1973 s. 1, in accordance with provisions made through the Eastern Caribbean Supreme Court (Dominica) Act, Chap 4:02. s.11. It states, the jurisdiction vested in the High Court in civil proceedings and probate, divorce and matrimonial causes shall be in conformity with the law and practice administered in the High Court of Justice in England. The grounds for initiation and declaration of decree absolute are equal to women and men. The court takes into consideration a wide range of issues, included but not limited to, a woman's indirect contribution to property if she is neither the sole or joint owner (NGPAP 2014 – 2024). Generally, the national plan recommends modernizing legislation to better address issues such as succession and child custody.

e) **Inheritance**

Surviving female and male spouses of intestates are treated equally in the law with respect to inheritance of land and non-land assets. If the intestate leaves a husband or wife, with or without children, then the surviving husband or wife shall inherit all property and residuary estate (The Intestates Act, Chap. 9:03, s. 4 (1a)). Additionally, sections 4 and 5 of the act note where applicable the equal distribution amongst reverse children of the intestate. The law however is not applicable to all groups of women, noting the exclusion of common law spouses/informal unions. (additionally, according to the national gender policy - OReview legislation to remove all lingering discrimination of children born outside a legal union, and ensure their entitlement to maintenance (including maintenance from overseas) and inheritance from their parents irrespective of the family structure). Disinheritance is not criminalized, however any will is revoked through marriage (Wills Act Chap. 9:01, s. 19).

2. **Restricted Physical integrity**

a) **Violence against women**

Dominica ratified the Convention of Belem do Para though it cannot be applied directly without first being incorporated into Dominican law. There is no specific legislation on violence against women. The two key pieces of legislation addressing the issue are the Protection against Domestic Violence Act 2001 and the Sexual Offences (Amendment) Act 2016. The laws offer both protection for victims, including protection and occupation orders, as well as provisions for investigation and prosecution of perpetrators. The Dominica National Gender Policy and Action Plan 2014 – 2024, supports the implementation and monitoring of these laws and policies aimed at addressing violence against women. The Policy is steered by the Gender of Bureau Affairs.

Recognised as prevalent within Dominica, gender based violence is mostly perpetrated within the family setting, and by men (National Gender Policy and Action Plan 2014 – 2024). Sexual violence is also reported to be quite prevalent (Curry 2016).

b) **Domestic violence**

Domestic violence is defined in law, as any act of physical, mental or sexual violence, and any attempted such violence, as well as the forcible restriction of individual freedom and of privacy, carried out against individuals who have or have had family or kinship ties or cohabit or dwell in the same home (Protection Against Domestic Violence Act s. 3). The law also extends to former spouses.

A Central Registry within the Bureau of Gender Affairs was established in 2011 to function as a national domestic violence surveillance system involving multiple other agencies, including technical support from the Central Statistics Office, though thorough data collection is reported to remain a challenge. The highest reported incidences of domestic violence occur in rural areas, particularly within the Kalinago Territory (NGPAP 2014- 2024).

The National Policy also reports that presently, shelters for victims of domestic violence are not provided through Government. However, an NGO, the Dominica National Council of Women (DNCW) operates a facility that provides limited shelter for affected women and their children. Additionally, the Welfare Division receives reports of domestic violence and offers counselling services, with specialized health care provided at public health facilities.

According to the most recent Caribbean Development Bank gender report, survivors of domestic violence reported sexual abuse as the most perpetrated form of abuse, followed by physical abuse.

c) Rape

Dominica is amongst the Caribbean countries in which the rate of rape is above the global average (Curry 2016). Legislated as a criminal offence, rape is defined as “any person who has sexual intercourse with another— (a) without the consent of the other person; or (b) without believing that the other person consents to such intercourse or is reckless as to whether the other person consents or not” (Sexual Offences (Amendment) Act 2016, s.3 (1)). Persons found guilty of such an offence are liable on conviction of up to twenty-five years imprisonment. Residents and victims have reportedly expressed dissatisfaction with the length of sentences however. Furthermore, the most recent US State Department report states that most offenders often receive between five to seven years. The report further notes that the police were generally responsive and utilized female officers when possible. Marital rape is also included under the amended act, and applies “mutatis mutandis”, noting that either a husband or wife may be charged with rape. A husband or wife who is guilty of the offence of rape is liable on conviction to imprisonment for fourteen years (Sexual Offences (Amendment) Act 2016, s. 3(5)). Though the law is based on lack of consent, evidence of physical force, penetration or resistance is not required.

d) Sexual harassment

The legal framework does not provide explicit legal protection against sexual harassment. However, the NGPAP 2014 - 2024 notes that a worker can seek redress under section 20 of the Protection of Employment Act, chapter 89:02, which affords an employee the right to terminate his employment due to serious misconduct by their employer. The NGPAP also notes that agricultural and domestic workers are particularly susceptible to harassment.

e) Female genital mutilation

There is no evidence to suggest that female genital mutilation is practiced in Dominica.

f) Abortion

Abortion is illegal with liability of imprisonment of up to ten years, for self procurement, and up to two years for persons facilitating or assisting (Offences Against the Person Act, Chap. 10:31, s.56-57). The National Policy and Action Plan notes that in certain life threatening situations a doctor may use his/her discretion to do a termination of pregnancy, with the patient’s consent.

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

The key pieces of legislation regarding land and non-land assets are the Real Property Act Chap. 54:02, Married Woman's Property Act Chap. 35:60 and within the context of divorce, the United Kingdom Matrimonial Causes Act 1973, s.24. Generally speaking, the law affords equal access. "Women have the same rights as men to own, acquire, manage and dispose of property. A husband's declaration of bankruptcy does not affect his wife" (NGPAP 2014 – 2024). However, there are limitations, as noted in the 2014 Caribbean Development Bank report, which highlights women in marriages not being regarded equally if they have not made financial contributions towards the acquisition of assets or have not ensured that properties acquired during marriage were registered jointly. It is also well documented that land is a primary economic factor in Dominica's agricultural based economy. Men however, generally own larger parcels of land, are involved in larger scale agricultural production for export, and the rearing of large livestock. Evidence to corroborate these practices, such as sex-disaggregated data on land titling and farm ownership, also remain a challenge (Caribbean Development Bank, 2016). Also, though the constitution provides women with the same legal rights as men, property ownership continued to be deeded to heads of households, who were usually men.

b) Secure access to formal financial resources

There is no evidence to suggest legal restrictions regarding access to financial services, including opening of bank accounts or registering a business. However, as it has been reported that women own less land and property, this would serve to limit their access to credit on an equal basis. The National Policy and Action Plan further notes, that while women have unequal access through mainstream financial institutions, they have greater access to micro enterprise and credit unions (NGPAP 2014 – 2024).

c) Workplace rights

There is nothing within legislation to prevent or restrict women's participation in the labour force or within specific sectors, according to the most recent NGPAP. Regarding discrimination, the key legislation appears to be the Labour Contracts Act Chap. 89:04. Section 10 stipulates equal wages for equal work, and prohibits any differentiation on the basis of the sex of the employee. However, it is important to note that the act excludes home assistants and agricultural workers from its provisions. Additionally in spite of these legal provisions, in practice, challenges remain including the enforcement of minimum wage, and equal pay for work of equal value (NGPAP). Whilst marital status does not affect job security by law, there has been a practice by some private institutions to dismiss unmarried women who become pregnant. Issued by the Government, up to 12 weeks' paid maternity leave is afforded through the Labour Standards Act Chap. 89:05 and Labour Contracts Act Chap. 89:04.

Recent policy affords a man to claim five to ten days' paternity leave twice within a five-year period, according to the NGPAP 2014 -2024. Once limited only to married men, men living in de facto unions are now included as beneficiaries. Some large-scale private sector institutions have also included paternity leave arrangements.

There is evidence of discriminatory practices however, in legislation that restricts women from working certain hours at night (Employment of Women, Young Persons and Children Act, Chap. 90:06, s. 10). This would consequently restrict access to certain professional fields. Additionally, though some women occupied managerial or high-level positions, discrimination in employment opportunities is reported (US State Department 2016). The human rights report also notes that Kalinago women in particular, experienced discrimination, and unemployment rates within the Territory were higher than the national figures. No government programmes were in place to address these issues (US State Department 2016)

4. Restricted Civil liberties

a) Citizenship rights

Women and men have equal rights to acquire, retain and change their nationality, as prescribed in the Constitution of the Commonwealth of Dominica 1978, which states that every person born in Dominica shall be entitled to citizenship. Section 13 of the constitution further prohibits discrimination on the grounds of race, place of origin, political opinions, colour, creed or sex. It does not recognize intersectional discrimination. Citizenship may also be attained through marriage or through residency. Citizenship is also acquired through descent, and according to the 2016 US State Department Report, birth certificates were provided to parents on a timely basis. Additionally, delayed registration of birth is possible up to 12 months, and is the equal responsibility of both mother and father (Registration of Births and Deaths Act Chap. 35:30 s. 16). Policy allows for the entitlement of all citizens to apply for passports.

Women and men enjoy equal freedom to travel within and outside of the country through provisions of the Constitution, which enacts the right to enter Dominica, the right to leave Dominica and immunity from expulsion from Dominica (Constitution of the Commonwealth of Dominica 1978, s. 12). Married women cannot apply for passports in the same way as married men (Passport application form, n.d.). The most recent human rights report by the US State Department concludes that these rights were generally observed and respected. It further notes restrictions within the Kalinago territory which, as previously mentioned, is managed by the Kalinago Council who determine a person's right to reside.

Additionally, it was reported that following the 2015 passage of Tropical Storm Erika, government resettlement policies were not gender sensitive, which further exacerbated vulnerable women and children (US Department of State, 2016).

b) Voting

All Dominican citizens and residents are equally afforded the right to vote, as enshrined in the Registration of Electors Act Chap 2:03. s. 5. Additionally, there was no evidence to suggest that this was an area of concern regarding discrimination. Regional Observers of the 2014 general election and previous years, have determined them to be free and fair, with full participation of women (US State Department 2016).

c) Political voice

Women and men are legally entitled to hold public office at every level including the Legislative, Executive and the Judiciary. There are however no quotas or special temporary measures in place to address the issue. In 1980 Dominica elected the Caribbean's first female Prime Minister. However, according to reports and the NGP 2014 – 2024, women in recent years have been under represented in political and public leadership. Some of this has been attributed to cultural practices, including poor representation by the media. It was also reported that there is still a perception of politics being “a man's space”, including the realities of women's unequal burden of household and family responsibilities. To this end, policy recommendations have been made for gender sensitisation and leadership training programmes for women in decision making positions.

d) Access to justice

Women and men appear to have equal rights to sue and be sued. In the specific context of marriage, Married Woman's Property Act, Chap. 35:60 s.3 (2) states "a married woman shall be capable of entering into, and rendering herself liable in respect of and to the extent of her separate property on, any contract, and of suing and being sued..." Though not enshrined in legislation, Legal Aid is provided by the Government, and specifically aims at attracting low income residents, targeting women, senior citizens and persons with disabilities. Services include, but are not limited to, criminal matters, family/maintenance matters, housing/land matters, employment, wills/probates, summary advice, and legal education, and probation and protection orders.

The availability of legal aid services is reported to have alleviated previous restrictions to access. Attempts to include the Magistrate Court as a partner agency with the National registry for Domestic Violence, however, was cited as ongoing challenge (NGPAP 2014 – 2024). Also, while the legal system does not overtly discriminate against women, legislation is often written without considering gender; consequently, its application could be discriminatory (US State Department 2016).

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