



International Covenant on Civil and Political Rights

Distr.: General
24 April 2020

Original: English

Human Rights Committee

Concluding observations in the absence of the initial report of Dominica*

1. In the absence of a report by the State party, the Committee considered the situation of civil and political rights under the Covenant in Dominica at its 3702nd and 3703rd meetings (See CCPR/C/SR.3702 and 3703), held in public sessions on 10 and 11 March 2020. Pursuant to rule 71, paragraph 1, of the Committee's rules of procedure, the failure of a State party to submit its report under article 40 of the Covenant may lead to an examination in a public session of the measures taken by the State party to give effect to the rights recognized in the Covenant and to adopt concluding observations.
2. On 27 March 2020, the Committee adopted the following concluding observations.

A. Introduction

3. The Covenant came into force for Dominica on 17 June 1993. The State party was under an obligation to submit its first periodic report by 16 September 1994. The Committee regrets that the State party has failed to honour its reporting obligations under article 40 of the Covenant and that, despite numerous reminders, the State party has not submitted its first periodic report.
4. The Committee nevertheless expresses appreciation for the opportunity to engage in a constructive dialogue with the State party's delegation on the implementation of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/DMA/RQAR/1) to the list of issues (CCPR/C/DMA/Q/1/Add.1), which were supplemented by the oral responses provided by the delegation, and for the supplementary information provided in writing.
5. In the light of the constructive dialogue that the Committee had with the State party's delegation, the Committee considers the written replies to the Committee's list of issues as the first periodic report of the State party and requests that the State party submit a common core document in order to facilitate future dialogue.

B. Positive aspects

6. The Committee welcomes the following legislative, institutional and policy measures taken by the State party:
 - (a) Programmes to increase equality between men and women, and the appointment of women in high-level positions in the public and private sectors;

* Adopted by the Committee at its 128th session (2–27 March 2020).



(b) Measures to protect women from violence, including the criminalization of marital rape in the 2016 Sexual Offences Act, the development of the 2001 Protection against Domestic Violence Act and programmes to prevent such violence;

(c) Measures to protect people from the effects of climate change, including the enactment of the 2018 Climate Resilience Act, and programmes aimed at mitigation and adaptation;

(d) The initiation of a process of review and reform of national legal provisions in the country.

7. The Committee also welcomes the ratification of, or accession to, the following international instruments by the State party:

(a) International Convention for the Protection of All Persons from Enforced Disappearance on 13 May 2019;

(b) International Convention on the Elimination of All Forms of Racial Discrimination on 13 May 2019;

(c) Convention on the Rights of Persons with Disabilities on 1 October 2012;

(d) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 20 September 2002;

(e) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography on 20 September 2002.

C. Principal matters of concern and recommendations

Domestic implementation and dissemination of the Covenant

8. The Committee is concerned that the Covenant has not yet been given full effect in the domestic legal order and about the absence of information regarding cases in which the Covenant has been referred to by the courts. It is also concerned by the lack of civil society involvement in the process of the State party's reporting. The Committee refers the State party to its obligation under article 2 of the Covenant and draws its attention to the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant. The Committee welcomes the information that the State party is considering ratification of the first Optional Protocol (art. 2).

9. **The State party should:**

(a) **Evaluate and revise, where necessary, domestic legal provisions to ensure further harmonization with the rights guaranteed in the Covenant and ensure that domestic laws are interpreted and applied in conformity with its obligations under the Covenant;**

(b) **Intensify its efforts to raise awareness of the Covenant among members of the general public, civil society representatives, public officials, lawyers and State agents such as judges and prosecutors;**

(c) **Dedicate adequate budgetary resources to the implementation of all rights under the Covenant;**

(d) **Continue consideration of the ratification of the first Optional Protocol to the Covenant, which establishes an individual complaint mechanism.**

National human rights institutions

10. The Committee is concerned at the absence of an independent body compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). While noting the intention of the State party expressed during the constructive dialogue to develop such an institution and acknowledging the capacity challenges confronting the State party, the Committee regrets the absence of specific information about concrete actions or timelines to achieve this. Furthermore, the Committee

is concerned that while the State party has established the position of Parliamentary Commissioner, it remains unfilled (art. 2).

11. The State party should promptly establish a national human rights institution for the promotion and protection of human rights, in line with the Paris Principles. It should take action to ensure the fulfilment of the role of the Parliamentary Commissioner without delay and ensure that the mandate is performed effectively.

Anti-discrimination legal framework

12. While recognizing that the Constitution prohibits discrimination, the Committee is concerned about the absence of comprehensive anti-discrimination legislation covering all the grounds prohibited under the Covenant. It also notes, with concern, a lack of information about whether there are plans to develop such legal provisions (arts. 2 and 26).

13. The State party should:

- (a) Provide full and effective protection from discrimination in all spheres, public and private, and prohibit direct and indirect discrimination;**
- (b) Enact legislation containing a comprehensive list of grounds for discrimination in line with the Covenant;**
- (c) Provide a complaints mechanism and effective and accessible remedies for all forms of discrimination and collect disaggregated data on such complaints and their outcomes.**

Discrimination on the basis of sexual orientation and gender identity

14. The Committee is concerned that discrimination on the basis of sexual orientation and gender identity is not prohibited under the Constitution or in the State party's domestic laws and that same-sex relations between consenting adults remain criminalized under the 1998 Sexual Offences Act with penalties including up to 25 years in prison and forced psychiatric treatment. While noting the State party's position that the common law criminalization of same-sex relations between men (sodomy) is not enforced in practice, the Committee is concerned at the current intention to retain the law, and at the continued discriminatory effect of the law on lesbian, gay, bisexual and transgender persons. In this regard, the Committee is concerned that in the 2009 case of *Clem Philbert v. the State*, a murder conviction was quashed because the victim was considered to have made "unnatural advances" towards the accused, leading to a situation of "justifiable homicide" (arts. 2, 6, 7, 17 and 26).

15. The State party should take appropriate steps to:

- (a) Address discriminatory attitudes and stigma towards lesbian, gay, bisexual and transgender persons, including through comprehensive awareness-raising and sensitization activities;**
- (b) Enact comprehensive legislation providing full and effective protection against discrimination in all spheres and containing an exhaustive list of prohibited grounds of discrimination, including sexual orientation and gender identity;**
- (c) Amend all relevant laws, including sections 14 and 16 of the 1998 Sexual Offences Act, in order to decriminalize consensual sexual relations between adults of the same sex;**
- (d) Consider restricting any use of legal defences that are based solely upon a victim's sexuality or gender identity.**

Equality between men and women

16. The Committee notes and commends the measures taken by the State party to promote gender equality, evidence of women in senior positions within both the public and private sectors, access to education at all levels and notable progress in relation to the inclusion of female candidates during the 2019 parliamentary elections. Nevertheless, the Committee is concerned about the lack of comprehensive anti-discrimination legislation that includes gender as grounds for discrimination, and the absence of information about its intention to

develop such provisions. It is also concerned about some persisting female underrepresentation and that there was a lack of information about the steps taken to ensure equal work for equal pay and eradicate stereotypes regarding the role of women and men in the family and in society (arts. 2, 3, 25 and 26).

17. The State party should:

- (a) Enact comprehensive legislation that provides effective protection against discrimination on the basis of gender;**
- (b) Continue and strengthen efforts to ensure women's representation in high-level public and private positions and the national parliament;**
- (c) Strengthen its efforts to eliminate the gender wage gap by addressing differences in pay between men and women for work of equal value;**
- (d) Strengthen education and awareness-raising initiatives for the general public to eliminate gender stereotypes and promote respect for the equal roles and responsibilities of women and men in the family and in society;**
- (e) Collect comprehensive data to monitor the efficacy of initiatives to achieve gender equality.**

Violence against women

18. The Committee notes the positive steps taken by the State party to address violence against women, including the criminalization of marital rape in the 2016 Sexual Offences Act, the 2001 Protection against Domestic Violence Act and a number of programmes to prevent such violence. The Committee is nevertheless concerned by the absence of information about the number of cases of violence against women, the prosecution of perpetrators, the convictions and sanctions imposed, the lack of access to justice and rehabilitation for victims and a continued lack of legal provisions criminalizing sexual harassment (arts. 2, 3, 6, 7, 25 and 26).

19. The State party should:

- (a) Promptly amend its laws so as to afford adequate protection for women from all forms of violence against them, including sexual harassment;**
- (b) Encourage victims to report crimes and ensure that cases involving violence against women are thoroughly investigated, that the offenders are prosecuted and sentenced and that victims have access to effective remedies;**
- (c) Ensure that victims of domestic or sexual violence receive proper legal, medical and psychological assistance and improve victim support facilities and mechanisms;**
- (d) Collect comprehensive data about the incidence of violence against women.**

Sexual and reproductive rights

20. The Committee notes the State party's explanation that the provisions within section 8 of the 1992 Offences against the Person Act that criminalize voluntary termination of pregnancy are not applied in practice, but is concerned that those provisions remain in force and could be applied in the future. The Committee notes that termination of pregnancy is currently permitted in cases where there is a threat to the mother's life but remains concerned that the restrictions in force could oblige women and girls wanting to undergo an abortion for other legitimate reasons to do so under risky conditions that endanger their life and health (arts. 3, 7 and 26).

21. The State party should consider:

- (a) Amending its legislation to guarantee safe, legal and effective access to abortion when the life or health of the pregnant woman or girl is at risk, or when carrying the pregnancy to term could cause the pregnant woman or girl substantial harm or suffering, most notably in cases where the pregnancy is the result of rape or incest or when it is not viable;**

(b) **Ensuring that women and girls who have recourse to abortion and the physicians who attend to them are not subject to criminal penalties, given that the existence of such penalties obliges women and girls to resort to unsafe abortions.**

Infant mortality

22. The Committee is concerned about the high and increasing level of infant mortality in the State party. It acknowledges the information provided by the State party about the effects of consecutive natural disasters on the health-care infrastructure and about plans for investment in the health system. However, it remains concerned about the severity of the degree of infant mortality and the lack of specific information about the steps taken by the State party to address this (arts. 6 and 24).

23. **In order to protect the right to life of children, the State party should take, without delay, all necessary steps to reduce infant mortality.**

Climate change

24. The Committee welcomes the commitment of the State party, as a small island State particularly vulnerable to climate change, to adaptation and mitigation measures and notes the significant challenges faced in this regard. It commends the State party for the measures taken to date but notes an absence of information on the steps taken to ensure the effective, meaningful and informed participation of the population in projects that affect sustainable development and resilience to climate change (arts. 6 and 25).

25. **The State party should continue and expand its commendable efforts to develop its resilience to climate change through adaptation and mitigation measures. All projects that affect sustainable development and resilience to climate change should be developed with the meaningful and informed participation of the population. In that regard, the Committee draws the State party's attention to paragraph 62 of its general comment No. 36 (2018) on the right to life.**

Death penalty

26. The Committee welcomes the fact that the State party has a de facto moratorium on the use of the death penalty, having not carried out any executions since its ratification of the Covenant in 1993. It further commends the State party for its recent steps showing commitment to a full moratorium, including voting in favour of a resolution in this regard at the seventy-third session of the General Assembly. It is however concerned that section 5 of the Criminal Law and Procedure Act, which allows hanging in cases of murder, remains in effect and that information indicates that many individuals within the State party continue to support this form of punishment. In that regard, the Committee notes that the State party has not yet ratified the Second Optional Protocol to the Covenant aiming at the abolition of the death penalty (art. 6).

27. **In accordance with its general comment No. 36 (2018) on the right to life, in which the Committee reaffirmed that States parties that were not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, de facto and de jure, the State party should consider:**

(a) **Reviewing section 5 of the Criminal Law and Procedure Act, as part of ongoing efforts at national legal review and reform;**

(b) **Continuing efforts to facilitate a social dialogue about the rights enshrined in the Covenant, including the right to life under article 6;**

(c) **Ratifying the second Optional Protocol to the Covenant.**

Excessive use of force

28. The Committee is concerned that section 2 (2) of the Constitution allows for the use of lethal force for the defence of property. It is further concerned about allegations of the excessive use of force against demonstrators, including during protests in Roseau in February and May 2017, when law enforcement officers were accused of using tear gas and firing

warning shots. The Committee regrets the lack of information about any form of investigation, prosecution and punishment of the perpetrators and reparations granted to the victims (arts. 6, 7, 9 and 14).

29. **The State party should:**

(a) **Revise the legislation and policies related to the use of force by law enforcement officials, particularly the provisions that permit the use of lethal force for the protection of property, taking due account of the Committee's general comment No. 36 (2018) on the right to life and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;**

(b) **Provide training for law enforcement officials on their human rights responsibilities and put in place mechanisms to monitor and measure the efficacy of such training and update it accordingly;**

(c) **Ensure that accessible complaints and independent oversight mechanisms are put in place, that all reports of violence are thoroughly investigated and that such investigations, where warranted, lead to proportionate sanctions;**

(d) **Provide adequate remedies to victims of police violence, including compensation and guarantees of non-repetition.**

Pretrial detention

30. While noting the effects of natural disasters on the capacity of the State party, including the judiciary, and the legislative efforts to address the backlog of cases through the Bail Act, the Committee is concerned by the high proportion of detainees held in pretrial detention and the excessive length of such detention in some cases. In this regard, it is also concerned by the absence of information about alternative non-custodial measures (art. 9).

31. **The Committee recommends that the State party take all necessary measures to address the excessive use of pretrial detention. It should reduce the length of pretrial detention, expedite the passing into law of the Bail Act, which sets out procedural standards for the handling of cases, and develop the use of non-custodial alternatives, bearing in mind its obligations under article 9 of the Covenant as interpreted by the Committee in its general comment No. 35 (2014) on liberty and security of person and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).**

Trafficking in persons and child labour

32. The Committee welcomes the State party's efforts to address trafficking in persons, including through the criminalization of such practices in the 2013 Transnational Organized Crime (Prevention and Control) Act and other legislation, and the designation of penalties proportionate to the severity of the crime. It is, however, concerned by the lack of information about investigations, prosecutions and convictions of those engaged in trafficking activities and the support that may be available to victims.

33. In addition, the Committee is concerned by reports of children engaged in labour and information indicating that legislative provisions do not prohibit all forms of child exploitation, including the use of children in prostitution, pornography or illicit activities, including drug trafficking, and are not fully in compliance with International Labour Organization (ILO) standards, including the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182). The Committee notes the information provided by the State party on the positive measures taken to strengthen the overall child protection system, including the development of the status of children bill, the children (care and adoption) bill, the juvenile justice bill, the family court bill and the maintenance of children bill, as well as reform of the main child protection agency and the development of a national action plan on child sexual abuse. It is, however, concerned that the necessary bills have not yet been enacted into law and other measures are still pending (arts. 6, 7, 8 and 24).

34. **The State party should consider:**

- (a) **Stepping up efforts to prevent trafficking and child labour;**
- (b) **Strengthening the legal framework providing protection from all forms of exploitation, including enacting into law the bills designed to strengthen the child protection system, bringing legislation fully into line with the relevant ILO conventions and explicitly prohibiting the use of children in prostitution, pornography or illicit activities, including drug trafficking;**
- (c) **Investigating all cases of trafficking promptly and thoroughly, prosecuting suspected perpetrators and, if convicted, imposing adequate and deterrent sanctions;**
- (d) **Ensuring that victims of all forms of exploitation have access to effective and age-appropriate means of protection and assistance services and to full reparation including rehabilitation and adequate compensation.**

Juvenile justice

35. The Committee is concerned at the low age of criminal responsibility for children, the detention of adults and children together on the same premises, and that children can be sentenced to life imprisonment. The Committee notes that the State party has indicated that it intends to reform the juvenile justice system, including the prohibition of sentencing of children to life imprisonment in the proposed child justice bill, but remains concerned about the current protection gaps for minors in conflict with the law (arts. 9, 10, 14 and 24).

36. **The State party should ensure that its juvenile justice system upholds the rights set forth in the Covenant and other international instruments. It should enact legal reforms, including the revision of provisions allowing for the sentencing of minors to life imprisonment, the establishment of limits on the length of imprisonment to which children can be sentenced and an increase in the age of criminal responsibility. The State party should ensure that children in conflict with the law are treated in a way that promotes their integration into society and should observe the principle that the detention of children should be used only as a measure of last resort and that child detainees should be separated from adult prisoners.**

Refugees, asylum seekers and stateless persons

37. The Committee is concerned that the State party does not have legislation in place to guarantee the rights of non-citizens, including refugees and asylum seekers. It also notes the absence of information about the number of refugees, asylum seekers and stateless persons in the State party. While noting efforts by the State party to address statelessness, the Committee notes that it has not ratified the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (arts. 6, 7, 12 and 13).

38. **The State party should:**

- (a) **Ensure that all persons applying for international protection are given access to a fair and effective refugee determination procedure, regardless of their country of origin, and receive appropriate and fair treatment at all stages in compliance with the Covenant;**
- (b) **Collect and publish data on the situation of refugees, asylum seekers and stateless persons in the State party's territory;**
- (c) **Promptly enact legislation guaranteeing the rights of aliens, including refugees and asylum seekers, in line with its obligations under the Covenant and with the 1951 Convention relating to the Status of Refugees;**
- (d) **Consider acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

Administration of justice and right to a fair trial

39. The Committee acknowledges the significant challenges faced by the State party with regard to the effects of natural disasters on their judicial system. It is, however, concerned

that there continues to be a large number of pending cases and long delays in trials. The Committee welcomes efforts by the State party to provide legal aid but is concerned that the capacity may not be sufficient to provide all defendants with counsel and regrets the lack of information from the State party on this matter. The Committee further regrets the lack of adequate information about the measures taken to further guarantee the independence and impartiality of the judiciary (arts. 2 and 14).

40. The Committee recommends that the State party effectively implement its plans to increase the capacity of the judicial system and that it step up measures aimed at reducing the number of cases pending before the courts and prosecution services and the waiting times in each case. The State party should also increase the capacity of the legal aid service and take all necessary measures to guarantee the independence and impartiality of the judiciary.

Freedom of expression and assembly

41. The Committee notes information from the State party that the criminalization of defamation has not been applied in practice recently and that such provisions are to be reviewed during national legal reform efforts. It is nevertheless concerned that defamation is still criminalized in the 1979 Libel and Slander Act with punishments of up to two years in prison or a fine. It is further concerned that such disproportionately punitive provisions and the threat of lawsuits may have a chilling effect on the exercise of freedom of expression by the general public, political parties and the media. The Committee is concerned that in relation to peaceful assembly, the State party has a system that requires prior authorization and that there are reports that assemblies related to the activities of opposition parties have been denied permission to assemble peacefully (arts. 2, 9, 19 and 21).

42. In light of the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression, the State party should ensure that legislation is brought into full conformity with article 19 of the Covenant and in the meantime it should continue to ensure that no one is imprisoned for defamation. The Committee further recommends that the State party consider amending the 1954 Public Order Act to, at most, require advance notification of peaceful assembly.

Rights of the child

43. The Committee is concerned that corporal punishment is not yet explicitly prohibited in the home, in day care and alternative care settings and in penal institutions (arts. 7 and 24).

44. The State party should prohibit corporal punishment in all settings.

Participation in public affairs

45. While the Committee notes the information provided by the State party indicating that election monitors concluded that the 2019 general elections reflected the will of the people, it is concerned by significant disparities between the sizes of electoral constituencies. It acknowledges the information provided by the State party regarding proposed reforms to voter identification and voter list rationalization and that the Constituency Boundaries Commission report recommending a reduction in the number of constituencies is under consideration. It is further concerned by reports of the frequency of criminal charges against members of opposition parties for what seem to be activities related to their participation in public affairs (arts. 19 and 25).

46. The State party should adopt an electoral system that guarantees equal enjoyment of the rights of all citizens, in compliance with the Covenant, including article 25, by, inter alia, ensuring fully transparent elections and a pluralistic political order, refraining from using criminal law provisions to constrain the right of opposition parties to participate in public affairs and investigating any allegations of wrongdoing.

Indigenous peoples

47. The Committee welcomes the efforts made to promote the rights of indigenous peoples, including the designation of a dedicated ministry, education and housing

programmes and support for indigenous businesses. However, it notes the absence of detailed information about policy and legal frameworks governing the ownership and use of indigenous land and measures taken to consistently uphold the right of indigenous peoples to free, informed and prior consultation in relation to programmes impacting them (arts. 2 and 27).

48. **The State party should consider:**

(a) **Continuing and expanding measures to promote the rights of indigenous peoples;**

(b) **Adopting comprehensive anti-discrimination legislation that provides protection against discrimination on the basis of indigenous status;**

(c) **Ensuring that meaningful consultations are held with the indigenous peoples concerned with a view to obtaining their free, prior and informed consent relating to the adoption or application of any measure that may have a substantial impact on their way of life and culture.**

D. Dissemination and follow-up

49. **The State party should widely disseminate the Covenant, its Optional Protocols, its initial report and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into its official language.**

50. **In accordance with rule 75, paragraph 1, of the Committee's rules of procedure, the State party is requested to provide, by 27 March 2022, information on the implementation of the recommendations made by the Committee in paragraphs 23 (infant mortality), 31 (pretrial detention) and 46 (participation in public affairs) above.**

51. **In line with the Committee's predictable review cycle, the State party will receive in 2026 the Committee's list of issues prior to the submission of the report and will be expected to submit within one year its replies to the list of issues, which will constitute its second periodic report. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. The next constructive dialogue with the State party will take place in 2028 in Geneva.**