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15 July 2020

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Dominican Republic: Situation and treatment of sexual and gender minorities by society and authorities, including legislation, state protection and support services (2017-July 2020)

Research Directorate, Immigration and Refugee Board of Canada

1. Legislation

The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World) *State-Sponsored Homophobia 2019: Global Legislation Overview Update* report indicates that same-sex sexual acts between adults in private are not criminalized in the Dominican Republic since the first Criminal Code (*Código Penal*) in 1822 (ILGA World Dec. 2019, 34). The same source further indicates that the most recent criminal code in the Dominican Republic, adopted in 2007, did not criminalize same-sex sexual acts (ILGA World Dec. 2019, 34). However, according to the ILGA

World report, "[a]rticle 210 of the 1966 Police Justice Code (*Código de Justicia de la Policía*) still outlaws sodomy among members of the police forces" (ILGA World Dec. 2019, 34). The 1966 Police Justice Code provides the following:

[translation]

Art. 210.—Sodomy consists of copulation between two persons of the same sex and shall be subject, if officers are involved, to a sentence of six months to two years of correctional imprisonment and, if enlisted personnel are involved, to a sentence of two to six months of correctional imprisonment. (Dominican Republic 1966)

The Amnesty International report on human rights for 2017-2018 indicates that the Dominican Republic does not have hate crime legislation (Amnesty International 2018, 150). Sources report that the Dominican Republic does not have specific legislation against discrimination based on sexual orientation or gender identity (CLGBTTI [2018], 2, 5; CNDH-RD Dec. 2018, 50; ILGA World Dec. 2019, 90, 171). Regarding discrimination, the Dominican Republic's 2015 constitution provides the following:

Article 39: Right to equality

All people are born free and equal before the law, receive the same protection and treatment from institutions, authorities, and other people and enjoy the same rights liberties and opportunities, without any discrimination for reasons of gender, color, age, disability, nationality, family ties, language, religions, political or philosophical opinion, social or personal condition.

...

3. The State should promote judicial and administrative conditions so that equality may be real and effective and shall adopt methods to prevent and combat discrimination, marginalization, vulnerability and exclusion;

... (Dominican Republic 2015)

Sources report that while the Dominican constitution espouses principles of non-discrimination, it does not explicitly include sexual orientation and gender identity (US 11 Mar. 2020, 2; CLGBTTI [2018], 2). A report by Sin Violencia LGBTI, a network of LGBTI rights organizations in Latin America and the Caribbean that has created a database of homicides of LGBTI persons in the region (Sin Violencia LGBTI n.d.), notes that the only legislation in the Dominican Republic that

explicitly prohibits discrimination based on sexual orientation is the General Youth Law: Law 49-00 (*Ley General de Juventud: Ley 49-00*) (Sin Violencia LGBTI Aug. 2019, 21). Similarly, the US Department of State's *Country Reports on Human Rights Practices for 2019* on the Dominican Republic states that "[t]he law prohibits discrimination based on sexual orientation and gender identity only for policies related to youth and youth development" (US 11 Mar. 2020, 22). The General Youth Law provides the following:

[translation]

Article 2. – The purpose of this law is to promote the full development of youth, regardless of gender, religion, politics, race, ethnicity or sexual orientation and nationality.

...

Article 27. – GENDER EQUALITY. – For purposes of this law, all Dominican youth shall not be discriminated against for their sex and/or sexual orientation. Any form of prejudice or discrimination based on gender or that takes into consideration the sexual life of youth is deemed contrary to this law, as this is regarded as pertaining to the privacy of the person. The Dominican State shall provide the resources and mechanisms required to exercise this right. (Dominican Republic 2000)

Sources report that there are no legal protections against discrimination in employment based on sexual orientation (US 11 Mar. 2020, 25; ILGA World Dec. 2019, 103-105, 171) or gender identity (US 11 Mar. 2020, 25). The Astraea Lesbian Foundation for Justice (Astraea), a public foundation based in New York that supports LGBTQI human rights around the world (Astraea n.d.), reports that "[t]here is a dearth of laws and policies to explicitly protect LGBTTT people from discrimination in housing, education, employment, health care, and access to public services" in the Dominican Republic (Astraea Oct. 2017, 4).

The national report submitted in November 2018 by the Dominican Republic to the UN Human Rights Council Universal Periodic Review (UPR) Working Group indicates that "[a] draft general act on equality and non-discrimination is currently under consideration" (Dominican Republic 7 Nov. 2018, para. 75). Amnesty International's 2019 review of human rights in the Americas reports that "[a] National Human Rights Plan was approved for 2018-2022 which included plans to present

comprehensive anti-discrimination legislation to Congress between October and December 2019. At the end of the year, this commitment was not fulfilled" (Amnesty International Feb. [2020], 44).

The ILGA World report indicates that there is no legal recognition of adoption, marriage or civil unions for same-sex partners in the Dominican Republic (ILGA World Dec. 2019, 140-141, 171). Astraea reports that, "[w]hile there is no explicit law *against* same-sex marriage, Article 55 of the Constitution describes marriage as the union of a man and woman" (Astraea Oct. 2017, 7, italics in original). The Dominican Republic's 2015 constitution provides the following:

Article 55: Rights of the family

...

3. The State shall promote and protect the organization of the family on the basis of the institution of marriage between a man and a woman. The law shall establish the requirements to enter into it, the formalities of its celebration, its personal and patrimonial effects, the causes of separation or dissolution, and the regime of the property, rights, and duties between the spouses.

... (Dominican Republic 2015)

1.1 Transgender Persons

ILGA World's 2017 report on laws and policies for transgender persons notes that, according to an article by the Dominican news portal Más VIP, there was a case of a transgender woman who was allowed to change her name on her identity documents under *Law No. 659 of July 17th 1944 on Acts of Civil Status in the Dominican Republic (Ley No.659 del 17 julio de 1944 sobre actos del estado civil en República Dominicana)* (ILGA World Nov. 2017, 95). The same source further notes that, "[i]n 2014, President Danilo Medina signed Decree 76-14 authorizing 36 trans persons to change their names" (ILGA World Nov. 2017, 95). Gender marker change is, however, not possible in the Dominican Republic according to the ILGA World report (ILGA World Nov. 2017, 95). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

A 2018 report by Trans Siempre Amigas (TRANSSA) [see section 5 of this Response] and the Observatorio de Derechos Humanos para Grupos Vulnerabilizados (ODHGV) [see section 5 of this Response] notes that, while there are specific legal protections for women, they do not apply to transgender women (TRANSSA and ODHGV [2018], 4). The same source also states that there are no policies to protect the rights of transgender persons (TRANSSA and ODHGV [2018], 6).

2. Treatment of Sexual Minorities and Gender Minorities

2.1 Treatment by Society

An Amnesty International report on the treatment of women engaged in sex work in the Dominican Republic states that "[h]omophobia and transphobia [are] widespread in the Dominican Republic" (Amnesty International 2019, 18). Reporting on the human rights situation of LGBT persons in the Dominican Republic, the Fundación Comunidad Esperanza y Justicia Internacional (FUNCEJI), a civil society organization that promotes human rights in the Dominican Republic (FUNCEJI n.d.), and Centro de Estudios Biopsicosociales LGBT (CEB-LGBT), an organization that provides psychosocial services to members of the LGBT community in the Dominican Republic, indicate that LGBT persons face societal stigmatization (FUNCEJI and CEB-LGBT 12 July 2018, 1, 3). Sources report that LGBT individuals face harassment (Astraea Oct. 2017, 5; US 11 Mar. 2020, 22) or discrimination (Freedom House 2019; FUNCEJI and CEB-LGBT 12 July 2018, 3). The Astraea report indicates that intersecting identities including race and socioeconomic status exacerbate the vulnerability of some sexual and gender minorities (Astraea Oct. 2017, 6).

Mollie J. Cohen, an assistant professor in the Department of International Affairs at the University of Georgia, indicates that while previous surveys conducted by the Latin American Public Opinion Project (LAPOP), an academic institution that conducts public opinion surveys in the Americas (LAPOP n.d.), have shown [translation] "weak" support for LGBT rights in the Dominican Republic, LAPOP's 2019 data demonstrates "a positive change in attitudes about" LGBT rights (Cohen Nov. 2019, 215). Cohen states that according to the LAPOP data, in 2014, 17.9 percent of Dominicans surveyed approved of the right of same-sex couples to get married, this increased to 23.4 percent in 2016, and has remained steady since 2016

with 23.1 percent in 2019 (Cohen Nov. 2019, 217). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2.1.1 Treatment of Transgender Persons

The TRANSSA and ODHGV report notes that transgender persons in the Dominican Republic experience a [translation] "high level" of discrimination and exclusion, which can be exacerbated by other factors such as being of African descent (TRANSSA and ODHGV [2018], 6). The Amnesty International report on the treatment of women engaged in sex work in the Dominican Republic notes that trans women face a "significant risk" of murder (Amnesty International 2019, 11). Transrespect versus Transphobia Worldwide (TvT), a comparative research project by the advocacy network Transgender Europe (TGEU) that collects and analyzes information on "reported killings of gender-diverse/trans people worldwide" (TGEU n.d.), reports that, between January 2008 and September 2018, there were 42 reported murders of transgender and gender-diverse people in the Dominican Republic (TGEU 2018). Amnesty International indicates that, according to TRANSSA, 47 transgender women have been killed since 2006 in the Dominican Republic (Amnesty International 2019, 6).

2.1.2 Violence

Sources report that LGBT persons in the Dominican Republic encounter violence (Freedom House 2019, Sec. F4; FUNCEJI and CEB-LGBT 12 July 2018, 3). A 2018 report, which was presented to the UN Human Rights Committee by the LGBTTI coalition of the Dominican Republic (CLGBTTI) [1], indicates that LGBT persons face physical violence and psychological abuse in the family sphere (CLGBTTI [2018], 2). The FUNCEJI and CEB-LGBT report indicates that LGBT Dominicans face hate crimes (FUNCEJI and CEB-LGBT 12 July 2018, 3).

According to the report by Sin Violencia LGBTI, there were 28 reported homicides of LGBTI persons in the Dominican Republic from 2014 to June 2019 (Sin Violencia LGBTI Aug. 2019, 23). The same source specifies that there were 7 LGBTI homicides in 2017, there were 5 in 2018, and there were 2 in 2019 (Sin Violencia LGBTI Aug. 2019, 23).

2.2 Treatment by Authorities

Sources report that LGBT persons in the Dominican Republic experience police abuse (Bertelsmann Stiftung 2020, 12; CLGBTTI [2018], 2; US 11 Mar. 2020, 22). *US Country Reports 2019* states that NGOs reported "police abuse, including arbitrary arrest, police violence, and extortion against LGBTI persons" (US 11 Mar. 2020, 22). According to the CLGBTTI report, LGBT persons have reported being victims of arbitrary arrests (CLGBTTI [2018], 3). The TRANSSA and ODHGV report indicates that LGBT persons experience discrimination when interacting with state authorities (TRANSSA and ODHGV [2018], 4). According to the same report, restrictions on access to basic rights for LGBT people, including healthcare and access to justice, are [translation] "influenced and/or condoned by authorities" (TRANSSA and ODHGV [2018], 4).

The TRANSSA and ODHGV report indicates that authorities are [translation] "unable" to protect transgender women's access to justice (TRANSSA and ODHGV [2018], 5). The same source notes that police, doctors, and state officials have bias and disregard LGBT human rights (TRANSSA and ODHGV [2018], 5). The Amnesty International report on the treatment of women engaged in sex work states that the interviews with 22 sex workers who identified as transgender suggest that there is "a deeply engrained culture of machismo and transphobia within the Dominican police" (Amnesty International 2019, 28). The TRANSSA and ODHGV report indicates that authorities ignore complaints made by transgender women (TRANSSA and ODHGV [2018], 6). According to the same source, many cases of discrimination in the workplace against transgender women are not reported to the authorities because transgender women distrust the authorities and are concerned about retaliation by authorities and an increase in the discrimination that they already face (TRANSSA and ODHGV [2018], 7).

The Amnesty International report indicates that "[m]ost of the transgender women [sex workers, interviewed by Amnesty International] had been subjected to discriminatory and violent actions by the police that could amount to torture or other ill-treatment, typically focused on their gender-identity or expression" (Amnesty International 2019, 7). TRANSSA and ODHGV report that the police carry out [translation] "so-called 'raid operations'" on transgender women and, while they are detained, their rights are not respected, and they are robbed, raped and placed in cells with cisgender men (TRANSSA and ODHGV [2018], 10). The same source

reports that raids on transgender women occur daily in different parts of Santo Domingo and other provinces in the country (TRANSSA and ODHGV [2018], 10). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2.2.1 Freedom of Assembly

Bertelsmann Stiftung's Transformation Index (BTI) 2020, which "assesses the transformation toward democracy and a market economy as well as the quality of governance in 137 countries," indicates that the Dominican constitution provides the rights of freedom of association and assembly, and that while these rights are usually protected by the government, "the state may interfere" with groups promoting the rights of gays and lesbians "if pressured by the Catholic Church" (Bertelsmann Stiftung 2020, 2, 9). According to *Hoy*, a Dominican newspaper, the 12th annual Santo Domingo National Pride Caravan, which included around 10,000 people and more than 300 vehicles, took place without interruption on 7 July 2019 (*Hoy* 11 July 2019).

3. Access to Employment, Education and Healthcare

Sources report that LGBT persons experience discrimination in access to employment, education, and healthcare (CNDH-RD Dec. 2018, 50; TRANSSA and ODHGV [2018], 4; FUNCEJI and CEB-LGBT 12 July 2018, 4). *US Country Reports 2019* states that "NGOs reported widespread discrimination against LGBTI persons, particularly transgender individuals and lesbians, in health care, education, justice, and employment" (US 11 Mar. 2020, 22).

3.1 Access to Employment

Corresponsales Clave, a group of community-based correspondents from 40 countries that provides information about HIV/AIDS and tuberculosis and is partly funded by UNAIDS (Corresponsales Clave n.d.), reports that the rights of gay men and transgender women are infringed upon in the workplace in the Dominican Republic (Corresponsales Clave 22 Aug. 2018). Freedom House reports that LGBT persons "are still barred from working in certain public sectors, such as the police

and armed forces. An antidiscrimination bill remained stalled in 2018 despite renewed calls from civil society to bring it into effect" (Freedom House 2019, Sec. F4). According to the Astraea report, "[t]he DR [Dominican Republic]'s labor laws do not include sexual orientation or gender identity as grounds for protection from discrimination and, unlike the constitution, do not include other categories under which LGBTTT individuals might seek redress" (Astraea Oct. 2017, 7).

The Amnesty International report on the treatment of women engaged in sex work notes that, while the law forbids employers in the Dominican Republic from using HIV testing to screen employees, some employers "still seem to" continue this practice (Amnesty International 2019, 20). Similarly, Project SOAR, which "conducts HIV operations research around the world to identify practical solutions to improve HIV prevention, care, and treatment services" and is partly funded by the US Agency for International Development (USAID) (Project SOAR n.d.), reports that, in the Dominican Republic, 8 percent of the 891 participants living with HIV they surveyed between November 2018 and January 2019, out of which 154 were men who have sex with men, reported being forced to get tested for HIV or to disclose their HIV status in applying for a job or pension (Project SOAR Nov. 2019, 2, 8).

The TRANSSA and ODHGV report indicates that transgender women often experience physical, verbal, and psychological abuse in the workplace (TRANSSA and ODHGV [2018], 6). The same source states that civil society organizations report cases of discrimination against transgender persons in the workplace (TRANSSA and ODHGV [2018], 6). The Amnesty International report on the treatment of women engaged in sex work states that, "[f]or transgender women, job opportunities in the private and government sector are almost non-existent due to institutional discrimination, and the only alternatives to sex work are low paid jobs such as cleaning" (Amnesty International 2019, 20). Similarly, according to the TRANSSA and ODHGV report, transgender women are excluded from the formal labour market and from decision-making positions (TRANSSA and ODHGV [2018], 7). TRANSSA and ODHGV report that sex work is not prohibited in the Dominican Republic, but that it does not have the same protection and regulations the formal job market has, increasing the vulnerability of those employed in this sector (TRANSSA and ODHGV [2018], 7). The Amnesty International report notes that transgender women who engage in sex work face violence related to their gender identity (Amnesty International 2019, 7).

3.2 Access to Education

In a 2019 report on sexual and reproductive health and rights in the Dominican Republic, Human Rights Watch (HRW) notes that, based on interviews with five LGBT children and young adults, LGBT youth report experiencing bullying and discrimination at school because of their sexual orientation (HRW June 2019, 24). Similarly, the TRANSSA and ODHGV report indicates that transgender women experience bullying in school by their peers and by teachers (TRANSSA and ODHGV [2018], 8). The TRANSSA and ODHGV report also indicates there are circumstances in which students with same-sex partners have been reprimanded and sometimes expelled (TRANSSA and ODHGV [2018], 9). The same source notes that there are no protections against bullying related to sexual orientation and gender identity in schools (TRANSSA and ODHGV [2018], 8). The Amnesty International report on the treatment of women engaged in sex work indicates that many of the transgender women they interviewed reported having to leave school due to bullying and discrimination that they experienced (Amnesty International 2019, 18).

3.3 Access to Healthcare

The FUNCEJI and CEB-LGBT report indicates that LGBT persons in the Dominican Republic experience discrimination in accessing healthcare (FUNCEJI and CEB-LGBT 12 July 2018, 4). Corresponsales Clave reports that LGBT persons are refused care or treated [translation] "poorly" in health service centers (Corresponsales Clave 22 Aug. 2018). According to the TRANSSA and ODHGV report, there is the view in the Dominican Republic that all persons who are LGBT have HIV and, as a result, doctors and nurses will refuse to treat LGBT people (TRANSSA and ODHGV [2018], 9). The FUNCEJI and CEB-LGBT report notes that many LGBT persons, particularly transgender persons, do not go to health centers or hospitals due to previous experiences with stigmatization by health care providers (FUNCEJI and CEB-LGBT 2018, 4).

The TRANSSA and ODHGV report states that transgender persons in the Dominican Republic face humiliation by doctors and that doctors lack knowledge about how to care for transgender individuals (TRANSSA and ODHGV [2018], 9). TRANSSA and ODHGV also indicate that hormone therapy and gender-affirming treatment is not available for transgender persons in the Dominican Republic

(TRANSSA and ODHGV [2018], 9). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4. State Protection

The Code of Criminal Procedure (*Código Procesal Penal*) provides the following regarding equality:

[translation]

Art. 11. - Equality under the Law. All persons are equal under the law and must be treated with the same rules. Judges and the Public Prosecutor's Office must take into consideration the particular conditions of persons and cases, and may not base their decisions on nationality, gender, race, creed or religion, political ideas, sexual orientation, economic status or other conditions with discriminatory implications. (Dominican Republic 2002)

The *BTI 2020* reports that "[m]ost cases of violence against LGBTQ people are not addressed by the authorities" (Bertelsmann Stiftung 2020, 12). Similarly, the FUNCEJI and CEB-LGBT report indicates that LGBT Dominicans lack access to justice and that there is impunity for those who violate the rights of LGBT persons (FUNCEJI and CEB-LGBT 2018, 3). According to TRANSSA and ODHGV, most murders of and physical attacks on transgender persons are not given attention by authorities because there is no legislation on hate crimes based on sexual orientation or gender identity (TRANSSA and ODHGV [2018], 8). Astraea states that confidence in the justice system by LGBT persons in the Dominican Republic is low and that few cases involving LGBTT persons are "properly documented or investigated" (Astraea Oct. 2017, 9). TRANSSA and ODHGV report that police officers and prosecutors lack education and training to deal with cases related to transgender persons (TRANSSA and ODHGV [2018], 9).

TRANSSA and ODHGV indicate that the police are [translation] "unable" to deliver justice in cases involving transgender persons in the Dominican Republic (TRANSSA and ODHGV [2018], 9). TRANSSA and ODHGV state that, if a transgender woman is assaulted by her partner, the case is not treated as gender violence or, if they live together, as domestic violence (TRANSSA and ODHGV [2018], 8). The Amnesty International report on the treatment of women engaged in

sex work indicates that most of the transgender sex workers the organization interviewed do not report incidents of violence because they do not trust that their complaints will be considered as a result of discrimination (Amnesty International 2019, 35). Sources report that, of the 47 cases of transgender women who have been killed since 2006, there have only been five judicial processes (Agencia EFE 18 May 2019) or five convictions (Amnesty International 2019, 11).

The national report submitted to the UPR Working Group notes that guidelines were disseminated to prosecutors in the Dominican Republic in order to increase understanding of and sensitivity to the way LGBT persons should be treated (Dominican Republic 7 Nov. 2018, para. 76). The same report indicates that, since 2015, the Human Rights Unit of the Attorney General's Office has prepared training workshops on stigmatization, prejudice, and discrimination for the Dominican Republic's National Police (Policía Nacional) (Dominican Republic 7 Nov. 2018, para. 72). According to the Office of the Attorney General (Procuraduría General de la República, PGR) of the Dominican Republic, the Office of the Public Prosecutor of the Santiago judicial district held a training day for members of the National Police on [translation] "Awareness of Human Rights and Hate Crimes for the LGBTI Community" in November 2017 (Dominican Republic 29 Nov. 2017). According to the National Police, a meeting was held in May 2019 between representatives of sex workers, the LGBT community, and the police to raise awareness and reduce mistreatment (Dominican Republic 24 May 2019).

5. Examples of Non-Governmental Support Services

Trans Siempre Amigas (TRANSSA), an organization that promotes the respect and equity of transgender persons in the Dominican Republic (TRANSSA and ODHGV [2018], 2), is based in Santo Domingo (TRANSSA n.d.a). Among other activities, the organization provides workshops on human rights, support groups, legal advice, psychological services, and other health services support to transgender persons (TRANSSA n.d.b).

The Human Rights Observatory for Transgender Persons (Observatorio de Derechos Humanos de Personas Trans, ODHPT), which is part of TRANSSA, provides advisory, psychological, and legal services to transgender persons

(TRANSSA n.d.c). The organization also documents and monitors human rights violations and provides legal advice and assistance for transgender persons in the Dominican Republic (TRANSSA n.d.c).

The Human Rights Observatory for Vulnerabilized Groups (Observatorio de Derechos Humanos para Grupos Vulnerabilizados, ODHGV), a Santo Domingo-based platform for civil society organizations that catalogs complaints and monitors human rights violations against vulnerable groups, including LGBT groups (ODHGV n.d.), provides legal support services for LGBT persons in the Dominican Republic (TRANSSA n.d.c; Amnesty International 2019, 40).

Diversidad Dominicana is an NGO based in Santo Domingo that promotes the rights of LGBT persons and advocates for LGBT rights in the Dominican Republic (Diversidad Dominicana n.d.).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Note

[1] The following organizations contributed information to this report: Diversidad Dominicana, Coordinadora Lésbica y de Hombres Trans (COLEHT), Gente Activa y Participativa (GAY), Fundación Comunidad Esperanza y Justicia Internacional (FUNCEJI), Comunidad de Lesbianas Inclusivas Dominicanas (COLESDOM), and the Centro de Estudios Biopsicosociales LGBT (CEB-LGBT) (CLGBTTI [2018], 1).

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