

Inhuman sentencing of children in Barbados

Briefing for the Committee on the Rights of the Child's 72nd Pre-Sessional Working Group in October 2015. Submitted by the Child Rights International Network (CRIN) (www.crin.org), June 2015.

CRIN's campaign on inhuman sentencing of children

With partners, CRIN is campaigning to end the death penalty, life imprisonment and corporal punishment of children around the world. CRIN has developed detailed country reports on States which still authorise the inhuman sentencing of children and is making submissions about these countries to relevant UN human rights mechanisms. We hope the Committee on the Rights of the Child will consider the information provided below during its review of these States.

Inhuman sentencing of children in Barbados

1. Life imprisonment and detention during Her Majesty's pleasure are lawful sentences for children in Barbados. Corporal punishment is lawful as a sentence for males.
2. In Barbados, no offence is punishable when committed by a child unless the court is of the opinion that the child is older than 11 and has "sufficient capacity to commit crime."¹ Persons aged 16 or over are tried as adults.²

Legality of inhuman sentencing

Life imprisonment and indeterminate sentences

3. Children over the age of 14 may be sentenced to imprisonment³ and life imprisonment is a lawful sentence for a number of offences, including kidnapping⁴ and murder.⁵ The sentence of detention during Her Majesty's pleasure (DHMP) is mandatory for any person under the age of 18 who is convicted of an offence for which the death penalty would be applicable for an adult.⁶ Children under the age of 14 cannot be sentenced to "imprisonment"⁷ but can be sentenced to DHMP, which permits detention "in such place and under such conditions as the Governor-General may direct". This means that children may be detained indefinitely, up to and including for life, though since a Privy Council ruling in 2005, the court now determines when a person serving DHMP is to be released.⁸

¹ Juvenile Offenders Act, sections 7 to 9, available at: http://www.unicef.org/lac/spbarbados/Legal/national/Barbados/National%20Legislation/JuvenileOffenders_1998.pdf.

² The Juvenile Offenders Act applies to children - defined as persons under the age of 14 - and young persons - defined as persons over the age of 14 but under the age of 16 - only.

³ Juvenile Offenders Act, Section 13(1).

⁴ Offences Against the Person Act, Section 30.

⁵ See *Carter v. Attorney-General of Barbados* [2003] Case no. 1982 of 2003. Available at: <http://www.barbadoslawcourts.gov.bb/wp-content/uploads/2014/09/Austin-Anthony-et-al-v-AG.pdf>.

⁶ Juvenile Offenders Act Section 14.

⁷ Juvenile Offenders Act, Section 13(1).

⁸ Juvenile Offenders Act, Section 14 and *Griffith and ors. v. The Queen* [2005] 2 AC 235, [2004] UKPC 58. Summary and full judgment available at: <https://www.crin.org/node/41297>.

Corporal punishment

4. Boys aged eight to 15 can be sentenced to be “privately whipped” at a police station, up to 12 strokes with a “tamarind or other similar rod”, in place of or in addition to any other punishment.⁹ Courts may also sentence children for any offence by “ordering the offender to be whipped”¹⁰ and order a boy aged 12-15 to be “privately whipped” in lieu of or in addition to any other punishment.¹¹ Whipping or flogging should be administered on a single occasion, up to 12 strokes for persons under 16 or 24 for older persons.¹²

Inhuman sentencing in practice

5. No statistics could be located indicating how many people have been sentenced to life imprisonment, DHMP or corporal punishment for offences committed while under the age of 18. However, a small number of judgments could be located in which child offenders have been sentenced to DHMP.¹³

Barbados’ review by the Committee on the Rights of the Child

6. In light of the clear international human rights consensus against the imposition of life imprisonment and corporal punishment of children and the recent report of the UN Special Rapporteur on torture recognising that life imprisonment and lengthy sentences of children are grossly disproportionate and amount to a form of cruel and inhuman punishment,¹⁴ we urge the Committee to recommend that Barbados:

- Enact and enforce legislation explicitly prohibiting corporal punishment and life imprisonment, including detention during Her Majesty’s pleasure, as a penalty for any offence committed while under the age of 18;
- Immediately review the sentence of any person sentenced to life imprisonment for an offence committed while under the age of 18 to ensure that no one serves a life sentence for an offence committed while a child;
- Raise the minimum age of criminal responsibility;
- Collect and provide disaggregated data about sentences handed down to children by offence committed and date, as well as information about children in detention, including gender, age and length of time spent in pretrial detention in each case.

To read CRIN’s detailed report on Inhuman Sentencing of Children in Barbados, visit www.crin.org/en/node/30443.

⁹ Magistrate’s Courts Act, Section 71.

¹⁰ Juvenile Offenders Act, Section 16(f).

¹¹ Juvenile Offenders Act, Section and 13(2).

¹² Corporal Punishment Act, Section 2.

¹³ See *Scantlebury v. the Queen* [2005] Criminal Appeal No. 34 of 2002. Summary and full judgment available at: www.crin.org/en/node/6992.

¹⁴ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 March 2015, A/HRC/28/68, para. 74. Available at: www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_68_E.doc.