

Inhuman sentencing of children in Barbados

Report prepared for the Child Rights Information Network (www.crin.org), July 2010

Introduction

Capital punishment is unlawful for persons under 18 at the time of the offence, but sentences of life imprisonment and corporal punishment are lawful.

The main laws governing juvenile justice are the Juvenile Offenders Act 1932, the Corporal Punishment Act 1899 and the Magistrate's Courts Act 2001. The Juvenile Offenders Act defines a child as under 14 and a young person as 14 or 15.¹ As amended in 1998, the Act specifies the minimum age of criminal responsibility as 11.² Persons aged 16 and 17 are tried as adults.

Legality of inhuman sentencing

Death penalty

The death penalty is unlawful for persons under 18 at the time of the offence. Article 14 of the Juvenile Offenders Act 1932, as amended 1989, states: "The sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of 18...."

Corporal punishment

Corporal punishment is lawful as a sentence for males. The Magistrate's Courts Act provides for boys aged 8-15 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.³ The Juvenile Offenders Act includes "ordering the offender to be whipped" among the list of available sanctions for children and young people.⁴ The Act also provides for a court to order a boy aged 12-15 to be "privately whipped" in lieu of or in addition to any other punishment.⁵ The Corporal Punishment Act states that whipping or flogging should be administered on a single occasion, up to 12 strokes for persons under 16 or 24 for older persons.⁶ Corporal punishment reportedly may be carried out only after medical examination and under the supervision of a prison official.⁷

Life imprisonment

¹ Article 2

² Article 7; see also Cipriani, D. (2009), *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective*, Farnham: Ashgate Publishing Limited

³ Article 71

⁴ Article 16(f)

⁵ Article 9; see also article 13(2)

⁶ Article 2

⁷ Seetahal, D. S. (2010), *Commonwealth Caribbean Criminal Practice and Procedure*, Third edition, London: Routledge-Cavendish

Persons convicted of offences committed when they were under 18 may be sentenced to life imprisonment.

In prohibiting the death penalty for persons under 18 (see above), article 14 of the Juvenile Offenders Act prescribes in lieu detention “during Her Majesty’s pleasure”. There is no prohibition of life imprisonment. The Act states that no child under 14 may be sentenced to imprisonment and a person aged 14 or 15 can be imprisoned only if there is no other suitable sentence.⁸ However, these restrictions do not apply when the conviction relates to attempted murder, manslaughter or wounding with intent to do serious bodily harm;⁹ under the Offences Against the Person Act 1994, these offences are punishable by life imprisonment.¹⁰ Persons aged 16 and 17 are tried as adults, for whom an even wider range of offences is punishable by life imprisonment.

Inhuman sentencing in practice

We have been unable to obtain statistical information relating to sentencing of children to life imprisonment, detention “during Her Majesty’s pleasure” or corporal punishment. In 2007, the Government stated that although flogging was still on the statute books, it was no longer applied (it is unclear whether this remark referred also to whipping).¹¹

Progress towards prohibition and elimination

Law reform needed

Provisions explicitly authorising corporal punishment for persons under 18 at the time of the offence should be repealed. Explicit prohibition should be enacted of sentences of corporal punishment and life imprisonment for all persons convicted of an offence committed when they were under 18.

Law reforms under way

We are not aware of any law reform in relation to juvenile justice and inhuman sentencing. The Government stated in 2006 and 2007 that it did not view corporal punishment as inhuman or degrading and had no plans to review its legality.¹² The Government rejected the recommendations on corporal punishment made during the Universal Periodic Review.¹³

National campaigns

We are not aware of any national campaigns on the issue.

⁸ Article 13

⁹ Juvenile Offenders Act, article 15

¹⁰ Articles 6, 9 and 16

¹¹ CCPR/C/SR.2440, 5 April 2007, Summary record of 2440th meeting: Third periodic report of Barbados, para.

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¹² CCPR/C/BRB/3, 25 September 2006, Third state party report to the Human Rights Committee, para. 244

¹³ A/HRC/10/73/Add.1, 16 March 2009, Report of the Working Group on the Universal Periodic Review : Barbados, Addendum : Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, para. 21

National and international law conflicting with inhuman sentencing

The Constitution

A number of provisions in the Constitution (1966) protect the physical integrity of all persons, but exemptions are made for cruel punishments prescribed by law.

Article 15, as amended in 2002:

“(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any punishment or the administration of any treatment that was lawful in Barbados immediately before 30th November 1966....”

Article 26:

“(1) Nothing contained in or done under the authority of any written law shall be held to be inconsistent with or in contravention of any provision of sections 12 to 23 to the extent that the law in question–

(a) is a law (in this section referred to as "an existing law") that was enacted or made before 30th November 1966 and has continued to be part of the law of Barbados at all times since that day;

(b) repeals and re-enacts an existing law without alteration; or

(c) alters an existing law and does not thereby render that law inconsistent with any provision of sections 12 to 23 in a manner in which, or to an extent to which, it was not previously so inconsistent.

(2) In subsection (1)(c), the reference to altering an existing law includes references to repealing it and re-enacting it with modifications or making different provisions in lieu thereof, and to modifying it, and in subsection (1) "written law" includes any instrument having the force of law; and in this subsection and subsection (1) references to the repeal and re-enactment of an existing law shall be construed accordingly.”

International human rights treaties

Barbados has ratified or acceded to the following international treaties:

- Convention on the Elimination of All Forms of Discrimination against Women (in 1980)
- Convention on the Rights of the Child (in 1990)
- International Convention on the Elimination of All Forms of Racial Discrimination (in 1972)
- International Covenant on Civil and Political Rights (in 1973)
- International Covenant on Economic, Social and Cultural Rights (in 1973)
- American Convention on Human Rights (in 1981)

Reservation upon ratification: “In respect of 4(4) the criminal code of Barbados provides for

death by hanging as a penalty for murder and treason. The Government is at present reviewing the whole matter of the death penalty which is only rarely inflicted but wishes to enter a reservation on this point inasmuch as treason in certain circumstances might be regarded as a political offence and falling within the terms of section 4(4).

In respect of 4(5) while the youth or old age of an offender may be matters which the Privy Council, the highest Court of Appeal, might take into account in considering whether the sentence of death should be carried out, persons of 16 years and over or over 70 years of age may be executed under Barbadian law.

In respect of 8(2)(e) Barbadian law does not provide as a minimum guarantee in criminal proceeding any inalienable right to be assisted by counsel provided by the state. Legal aid is provided for certain scheduled offences such as homicide, and rape.”

The Government of Barbados has signed but not ratified the Convention on the Rights of Persons with Disabilities (in 2007). The Government has neither signed nor ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.

Barbados has ratified or acceded to the following complaints/communications mechanisms:

- Optional Protocol to the International Covenant on Civil and Political Rights (in 1973)

The Government recognises the jurisdiction of the Inter-American Court of Human Rights, but not the competence of the Inter-American Commission on Human Rights.

Status of treaties

The legal system in Barbados is based on English common law. Treaties become part of domestic law only when they have been expressly incorporated by legislation.¹⁴ They typically cannot be invoked directly in the courts.

The Constitutional Review Commission has recommended that the Constitution should incorporate Barbados’s international legal obligations.¹⁵

Recommendations from human rights treaty monitoring bodies

Committee on the Rights of the Child

(24 June 1999, CRC/C/15/Add.103, Concluding observations on initial report, paras. 19 and 29)

“The Committee is concerned about legislation and policies that allow the use of flogging of children as a disciplinary measure in prisons and its use as a judicial sentence. In this respect, the Committee welcomes the commitment of the State party to give prompt consideration to the possibility of ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee encourages the State party to conduct a public awareness-raising campaign and to review its legislation and policies in order to eliminate flogging as a judicial sentence and as a disciplinary measure in the prison system.

“The Committee has a number of concerns regarding the administration of juvenile justice. In particular:

¹⁴ UNICEF (2007), *Law Reform and Implementation of the Convention on the Rights of the Child*, Florence: UNICEF Innocenti Research Centre

¹⁵ CCPR/C/BRB/CO/3, 11 May 2007, Concluding observations of the Human Rights Committee on third state party report, para. 5

a) the concern that special provisions for juvenile delinquents do not apply to children over 16 years of age, who are dealt with by adult criminal courts and are grouped with prisoners up to the age of 23. The Committee recommends that the State party consider raising the existing age limit from 16 to 18;

...

e) while welcoming the raising of the age of criminal responsibility, the Committee remains concerned that it has been raised only to 11 years. The Committee encourages the State party to consider the need to raise the age of criminal responsibility further.”

Human Rights Committee

(11 May 2007, CCPR/C/BRB/CO/3, Concluding observations on third report, para. 12)

“The Committee is concerned that corporal punishment is still available as part of judicial sentences and is permitted within the penal and education systems. (arts. 7 and 24)

The State party should take immediate measures to eliminate corporal punishment as a legitimate sanction in its law and to discourage its use in schools. The State party should also take all necessary measures towards the eventual total abolition of corporal punishment.”

Universal Periodic Review

Barbados was examined under the Universal Periodic Review Process in 2008. Recommendations were made to prohibit all corporal punishment of children.¹⁶ Barbados did not accept these recommendations.¹⁷

¹⁶ A/HRC/10/73, 9 January 2009, Report of the Working Group on the Universal Periodic Review: Barbados, para. 77(14)

¹⁷ A/HRC/10/73/Add.1, 16 March 2009, Report of the Working Group on the Universal Periodic Review : Barbados, Addendum : Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, para. 21