

Inhuman sentencing of children in Dominica

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Introduction

Capital punishment is unlawful for persons under 18 at the time of the offence in the case of murder, but possibly not for other capital offences. Sentences of life imprisonment and corporal punishment are lawful.

The main laws governing juvenile justice are the Children and Young Persons Act 1970, the Magistrate's Code of Procedure Act 1961, the Juvenile Offenders' Punishment Act 1881, and the Corporal Punishment Act 1987. The Corporal Punishment Act defines a juvenile as under 16.¹ The Children and Young Persons Act defines a child as under 14, a juvenile as under 18, and a young person as aged 14-17; the Act specifies the minimum age of criminal responsibility as 12.²

Legality of inhuman sentencing

Death penalty

The death penalty is unlawful for persons convicted of murder who were under 18 at the time of the offence. Under article 2 of the Offences Against the Person Act 1873, any person convicted of murder "shall suffer the penalty of death", but article 3(b) states: "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 eighteen years...." There appears to be no specific exemption in relation to other capital crimes.

Corporal punishment

Corporal punishment is lawful as a sentence for males. The Juvenile Offenders' Punishment Act provides for any High Court Judge to order a boy under 14 who has been convicted of any offence "to be as soon as practicable privately whipped", in lieu of or in addition to any other punishment.³ The whipping shall consist of up to 12 strokes with a tamarind rod, in the presence of a police officer and, if desired, the boy's parent/guardian; a medical practitioner should certify the boy fit to receive the punishment but this requirement can be dispensed with if no medical practitioner is available within 24 hours.⁴

Under the Corporal Punishment Act, a court may sentence a boy under 16, convicted of any offence, to corporal punishment in lieu of or in addition to any other punishment.⁵ If the sentence is passed by a Magistrate's Court, it must be confirmed in the High Court before being carried out.⁶ The High Court may pass a sentence of corporal punishment on any male convicted of rape, sexual intercourse with a girl under 14, or attempting or aiding these offences.⁷ The flogging should

¹ Article 2

² Articles 2 and 3. See also Cipriani, D. (2009), *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective*, Farnham: Ashgate Publishing Limited

³ Article 2

⁴ Article 3

⁵ Article 3

⁶ Article 3

⁷ Articles 4 and 5

generally be carried out as soon as possible, up to 12 strokes on the buttocks for a boy under 16 or 24 strokes for older males, using a tamarind rod for those under 18.⁸ The flogging should be carried out in the prison; for boys under 16, it can also be administered in a police station.⁹ A medical officer must certify that the person is fit to undergo the punishment.¹⁰

The Children and Young Persons Act does not specifically mention corporal punishment as a way of dealing with juvenile offenders but refers to the Magistrate's Code of Procedure Act, which allows a magistrate to order the "private whipping" of a male under 18.¹¹ The Offences Against the Person Act also provides for "private whipping".¹²

Life imprisonment

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 3 of the Offences Against the Person Act prescribes in lieu detention "during the State's pleasure". The Government has stated that such person can be sentenced to life imprisonment without possibility of release.¹³ According to the Magistrate's Code of Procedure Act, a child under 14 cannot be sentenced to prison but 14 to 17 year-olds can be.¹⁴ We have been unable to establish whether or not there are exceptions to this restriction.

Inhuman sentencing in practice

We have been unable to obtain statistical information relating to sentencing of children to life imprisonment, detention "during the State's pleasure" or corporal punishment.

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 for sentences of capital punishment (for all offences), corporal punishment and life imprisonment for all persons convicted of an offence committed when they were under 18.

Law reforms under way

A model Child Justice Bill was drafted in 2007 by the OECS and sent to the Attorney General. The Bill defines a child as a person under 18 and sets the minimum age of criminal responsibility at 12. It does not include corporal or capital punishment among permitted sentences, though does not

⁸ Articles 7 and 8

⁹ Article 9

¹⁰ Article 9

¹¹ Article 100; CRC/C/8/Add.48, 15 October 2003, Initial state party report to the Committee on the Rights of the Child, para. 160

¹² Article 71

¹³ CRC/C/8/Add.48, 15 October 2003, Initial state party report to the Committee on the Rights of the Child, para. 161

¹⁴ Article 90 ; CRC/C/8/Add.48, 15 October 2003, Initial state party report to the Committee on the Rights of the Child, para. 161

explicitly prohibit these. It explicitly prohibits life imprisonment. We have no information on recent progress regarding the Bill in Dominica.

National campaigns

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

National and international law conflicting with inhuman sentencing

The Constitution

A number of provisions in the Constitution (1978) protect the physical integrity of all persons, although exemptions are made for cruel punishments prescribed by law.

Article 1:

“Whereas every person in Dominica is entitled to the fundamental rights and freedoms, that is to say, the rights whatever his race, place of origins, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely

- a. life, liberty, security of the person and the protection of the law;
- b. freedom of conscience, of expression and of assembly and association; and
- c. protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others of the public interest.”

Article 2:

“(1) A person shall not be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Dominica of which he has been convicted....”

Article 5:

“No person shall be subject to torture or to inhuman or degrading punishment or other treatment.”

International human rights treaties

Dominica 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 1991)
- International Covenant on Civil and Political Rights (in 1993)
- International Covenant on Economic, Social and Cultural Rights (in 1993)

- American Convention on Human Rights (1993)
Reservations: Re article 5 (Right to humane treatment) “This should not be read as prohibiting corporal punishment administered in accordance with the Corporal Punishment Act of Dominica or the Juvenile Offenders Punishment Act.” Re article 4.4 (Prohibition of capital punishment for political offences or related common crimes) “Reservation is made in respect of the words ‘or related common crimes’.”

The Government 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, the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty, or the International Convention on the Elimination of All Forms of Racial Discrimination.

Dominica has not ratified or acceded to any complaints/communications mechanisms, and does not recognise the jurisdiction of the Inter-American Court of Human Rights or the competence of the Inter-American Commission on Human Rights.

Status of treaties

The legal system in Dominica is based on English common law. Treaties become part of domestic law only when they have been expressly incorporated by legislation.¹⁵ They typically cannot be invoked directly in the courts.

Recommendations from human rights treaty monitoring bodies

Committee on the Rights of the Child

(30 June 2004, CRC/C/15/Add.238, Concluding observations on initial report, paras.28, 29, 46, 47 and 48)

“The Committee is deeply concerned at the wide use of corporal punishment in the State party. It also notes with concern that corporal punishment is mentioned in the Education Act of 1997 and that the Magistrate Code of Procedure allows the whipping of a male child or a young person.

“The Committee recommends that the State party:

- a) remove all provisions from laws that allow corporal punishment and explicitly prohibit corporal punishment by law in the family, schools and other institutions;
- b) continue the constructive dialogue with political leaders and the judiciary with the aim of abolishing corporal punishment....

“The Committee is concerned at the lack of juvenile courts and at the fact that children may be sentenced to a penalty at the ‘President’s pleasure’, to life imprisonment and to whipping in private.

“The Committee recommends that the State party:

- a) ensure the full implementation of juvenile justice standards and in particular articles 37, 39 and 40 of the Convention, as well the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), and in the light of the Committee's 1995 day of general discussion on the administration of juvenile justice (CRC/C/69)....

¹⁵ UNICEF (2007), *Law Reform and Implementation of the Convention on the Rights of the Child*, Florence: UNICEF Innocenti Research Centre

“The Committee also recommends that the State party:

a) review the sentencing of children at the "President's pleasure" so that the decision is in the hands of the judge;

b) abolish the sentences of whipping and life imprisonment....”

Universal Periodic Review

Dominica was examined under the Universal Periodic Review process in 2009. The Government supported the recommendations that were made to consider a moratorium on the death penalty and to set up a juvenile justice system which adheres to international human rights standards.¹⁶ The Government did not support the recommendation to abolish the death penalty.¹⁷ As at July 2010, its responses to the recommendations to prohibit all corporal punishment of children and to ratify the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty are not available.¹⁸

¹⁶ A/HRC/13/12, 4 January 2010, Report of the Working Group on the Universal Periodic Review: Dominica, paras. 70(36), 70(37) and 70(39)

¹⁷ *ibid.*, para. 72(2)

¹⁸ *ibid.*, paras. 71(1) and 71(4)