

Inhuman sentencing of children in Guyana

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Introduction

The UN Convention on the Rights of the Child and other international human rights treaties have been incorporated into the Constitution of Guyana (see below). This should mean that all inhuman sentencing of persons under the age of 18 – including capital punishment, corporal punishment, and life imprisonment without the possibility of release – is unlawful. However, much national legislation is at odds with the Constitution. While capital punishment has been prohibited in law, judicial corporal punishment is still on the statute books and it appears that life imprisonment for under 18s is still lawful.

The main laws governing juvenile justice are the Juvenile Offenders Act 1931, the Criminal Law (Offences) Act 1894 and the Summary Jurisdiction (Offences) Act 1894. The Juvenile Offenders Act defines a child as under 14, a juvenile as under 17 and a young person as aged 14-16.¹ The Act sets a minimum age of criminal responsibility at 10.² Persons aged 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 138(1A) of the Constitution states: “No person who was under the age of eighteen years at the time when he or she committed an offence, for which that person has pleaded or was found guilty, shall be subject to capital punishment for the commission of that offence.”

Article 164 of the Criminal Law (Procedure) Act 1894, as amended 1953, provides for sentence of death but states: “Provided that 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....”

Corporal punishment

Corporal punishment is lawful as a sentence for males aged 17 and over. The Juvenile Offenders (Amendment) Act was passed in Fall 2010 to revoke provisions for whipping juvenile offenders as a sentence. However, whilst whipping of all females is forbidden, male juveniles are defined in legislation as under 17.

Life imprisonment

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

¹ Article 2

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

In prohibiting the death penalty for persons under 18 (see above), article 164 of the Criminal Law (Procedure) Act prescribes in lieu detention “during the President’s pleasure”. The Government has said that a juvenile detained at the President’s pleasure would normally be sent to the New Opportunity Corps (training school) and transferred at 18 to an appropriate place of detention, and that life imprisonment is not enforced.³ But there appears to be no explicit prohibition of life imprisonment, and it is not clear that the Government’s remarks would apply in the case of an adult convicted of a murder committed as a child or young person. The Government indicated in 2002 that life imprisonment was soon to be explicitly prohibited in law, but we have not identified such a provision.⁴

The Juvenile Offenders Act states that no person under 17 may be sentenced to imprisonment and that such persons must be sentenced under this Act.⁵ These restrictions appear not to apply when the conviction relates to attempted murder, manslaughter or wounding with intent to cause grievous bodily harm⁶ – under the Criminal Law (Offences) Act, murder and manslaughter are punishable by life imprisonment.⁷ Persons aged 17 are tried as adults, for whom a wider range of offences is punishable by life imprisonment.

Inhuman sentencing in practice

We have been unable to obtain statistical information relating to sentencing to life imprisonment, detention “during President’s pleasure” and corporal punishment of persons convicted of offences committed when under the age of 18.

Progress towards prohibition and elimination

Law reform needed

Legal provisions authorising judicial corporal punishment (whipping and flogging) for males convicted of offences committed when they were over 16 should be repealed. Life imprisonment for such persons should also be explicitly prohibited.

Law reform under way

The Juvenile Offenders (Amendment) Act was passed in Fall 2010; we are not aware of any other pending law reform.

National campaigns

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

National and international law conflicting with inhuman sentencing

The Constitution

³ Initial report to CRC, 2002, para. 390

⁴ Initial report to CRC, 2002, para. 391

⁵ Articles 13 and 14

⁶ Article 15

⁷ Articles 95, 104 and 105

A number of provisions in the Constitution (1980) protect the physical integrity of all persons, although exemptions are made for cruel punishments prescribed by law.

Article 8:

“This Constitution is the supreme law of Guyana and, if any other law is inconsistent with it, that other law shall, to the extent of the inconsistency, be void.”

Article 38B:

“The best interest of the child shall be the primary consideration in all judicial proceedings and decisions and in all matters concerning children, whether undertaken by public or private social welfare institutions, administrative authorities or legislative bodies.”

Article 39:

“(1) It is the duty of Parliament, the Government, the courts and all other public agencies to be guided in the discharge of their functions by the principles set out in this Chapter, and Parliament may provide for any of those principles to be enforceable in any court or tribunal.

(2) In the interpretation of the fundamental rights provisions in this Constitution a court shall pay due regard to international law, international conventions, covenants and charters bearing on human rights.”

Article 40:

“(1) Every person in Guyana is entitled to the basic right to a happy, creative and productive life, free from hunger, ignorance and want. That right includes the fundamental rights and freedoms of the individual.

(2) The provisions of Title 1 of Part 2 shall have effect for the purpose of affording protection to the aforesaid fundamental rights and freedoms of the individual 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 individual does not prejudice the rights and freedoms of others or the public interest.”

Article 139:

“(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say

(a) in execution of the sentence or order of a court, whether established for Guyana or some other country, in respect of a criminal offence of which he has been convicted;

...

(f) in the case of a person who has not attained the age of eighteen years, under the order of a court or with the consent of his parent or guardian, for the purpose of his education or welfare;”

Article 141:

“(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 article to the extent that the law in question

authorises the infliction of any punishment or the administration of any treatment that was lawful in Guyana immediately before the commencement of this Constitution.”

Article 149:

“(1) Subject to the provisions of this article (a) no law shall make any provision that is discriminatory either of itself or in its effect; and (b) no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(2) In this article the expression ‘discriminatory’ means affording different treatment to different persons attributable wholly or mainly to their or their parents’ or guardians’ respective descriptions by race, place of origin, political opinion, colour, creed, age, disability, marital status, sex, gender, language, birth, social class, pregnancy, religion, conscience, belief or culture whereby persons of one such description are subjected to disabilities or restrictions to which other persons of the same or another such description are not made subject or are accorded privileges or advantages which are not afforded to other persons of the same or another such description....”

Article 152:

“(1) Except in proceedings commenced before the expiration of a period of six months from the commencement of this Constitution, with respect to a law made under the Guyana Independence Order 1966 and the Constitution annexed thereto, 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 articles 138 to 149 (inclusive) to the extent that the law in question(a) is a law (in this article referred to as ‘an existing law’) that had effect as part of the law of Guyana immediately before the commencement of this Constitution, and has continued to have effect as part of the law of Guyana at all times since that day; (b) repeals and reenacts an existing law without alteration; or (c) alters an existing law and does not thereby render that law inconsistent with any provision of the said articles 138 to 149 in a manner in which, or to an extent to which, it was not previously so inconsistent.

(2) In subparagraph (c) of the preceding paragraph the reference to altering an existing law includes references to repealing it and reenacting it with modifications or making different provisions in lieu thereof, and to modifying it; and in the preceding paragraph ‘written law’ includes any instrument having the force of law and in this and the preceding paragraph references to the repeal and reenactment of an existing law shall be construed accordingly....”

All international human rights treaties are incorporated into the Constitution⁸ (see below).

International human rights treaties

Guyana has ratified or acceded to the following international treaties:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in 1988)
- Convention on the Elimination of All Forms of Discrimination Against Women (in 1980)
- Convention on the Rights of the Child (in 1991)

⁸ Article 154A

- International Covenant on Civil and Political Rights (in 1977)
- International Convention on the Elimination of All Forms of Racial Discrimination (in 1977)
Reservation: “The Government of the Republic of Guyana do not interpret the provisions of this Convention as imposing upon them any obligation going beyond the limits set by the Constitution of Guyana or imposing upon them any obligation requiring the introduction of judicial processes going beyond those provided under the same Constitution.”
- International Covenant on Economic, Social and Cultural Rights (in 1977)

The Government of Guyana has signed but not ratified the Convention on the Rights of Persons with Disabilities (in 2007). The Government has neither signed nor ratified the Second Optional Protocol on the ICCPR aiming at the abolition of the death penalty or the American Convention on Human Rights.

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

- Optional Protocol to the International Covenant on Civil and Political Rights (in 1999)
Reservation: “Guyana re-accedes to the Optional Protocol to the International Covenant on Civil and Political Rights with a Reservation to article 6 thereof with the result that the Human Rights Committee shall not be competent to receive and consider communications from any person who is under sentence of death for the offences of murder and treason in respect of any matter relating to his prosecution, detention, trial, conviction, sentence or execution of the death sentence and any matter connected therewith....”

Status of treaties

In 2003, international human rights treaties were incorporated into the Constitution through the addition of article 154A by the Constitution (Amendment) (No. 2) Act 2003. Treaties can be invoked in domestic courts and administrative authorities pursuant to article 154A(1) of the Constitution.⁹ The Constitution takes precedence over all other laws.¹⁰

Article 154A of the Constitution (Protection of human rights) states:

“(1) Subject to paragraphs (3) and (6), every person, as contemplated by the respective international treaties set out in the Fourth Schedule to which Guyana has acceded is entitled to the human rights enshrined in the said international treaties, and such rights shall be respected and upheld by the executive, legislature, judiciary and all organs and agencies of Government and, where applicable to them, by all natural and legal persons and shall be enforceable in the manner hereinafter prescribed.

(2) The rights referred to in paragraph (1) do not include any fundamental right under this Constitution.

(3) The State shall, having regard to the sociocultural level of development of the society, take reasonable legislative and other measures within its available resources to achieve the progressive realisation of the rights provided for in paragraph (1).

(4) If any person alleges that any of the rights referred to in paragraph (1), has been, is being or is about to be contravened in relation to him or her, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to

⁹ CAT/C/GUY/1, 14 July 2006, Initial state party report to the Committee Against Torture, paras. 38 and 40
¹⁰ Article 8

the Human Rights Commission in such manner as the Commission may prescribe, for redress.

(5) Nothing contained in this article shall be construed so as to abrogate any human right, not enumerated herein, which a person had at the time of the commencement of this Article.

(6) The State may divest itself or otherwise limit the extent of its obligation under any of the treaties listed in the Fourth Schedule, provided that two-thirds of the elected members of the National Assembly have voted in favour of such divestment or limitation.”

The Fourth Schedule lists the following Conventions in respect of article 154A: Convention on the Rights of the Child; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Elimination of All Forms of Racial Discrimination; Convention Against Torture and Other Inhuman or Degrading Treatment or Punishment; Covenant on Economic, Social and Cultural Rights; Covenant on Civil and Political Rights; InterAmerican Convention on the Prevention, Punishment and Eradication of Violence against Women.

Recommendations from human rights treaty monitoring bodies

Committee on the Rights of the Child

(26 February 2004, CRC/C/15/Add.224, Concluding observations on initial report, paras. 55 and 56)

“While recognizing the efforts made by the State party in this domain, the Committee remains concerned at the incompatibility of the juvenile system with the provisions and principles of the Convention. It is especially concerned at the fact that the age of criminal responsibility, fixed at 10 years, is too low and that 17-years-olds are tried as adults....

“The Committee recommends that the State party:

- a) raise the age of criminal responsibility and ensure that 17-years-olds are given adequate special protection so that they may not be tried as adults;
- b) ensure that the amendment to the Juvenile Offenders Act reflects the international juvenile justice standards, in particular articles 37, 39 and 40 of the Convention, as well as 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), in the light of the Committee’s 1995 day of general discussion on the administration of juvenile justice....”

Human Rights Committee

(25 April 2000, CCPR/C/79/Add.121, Concluding observations on second report, para.12)

“The Committee is concerned that corporal punishment is still resorted to in the State party and regrets the lack of specific information on this issue.

The State party should take legal and other measures to eliminate this practice (art.7).”

Universal Periodic Review

Guyana was examined under the Universal Periodic Review process in May 2010. Recommendations were made to prohibit all corporal punishment of children, abolish capital punishment and ratify the Second protocol to the ICCPR.¹¹

¹¹ A/HRC/WG.6/8/L.13, 14 May 2010, Report of the Working Group on the Universal Periodic Review: Guyana, paras. 70(9), 70(23)-(35) and 70(36)-(42)