

Inhuman sentencing of children in St Kitts and Nevis

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Introduction

It appears persons convicted of an offence committed under the age of 18 cannot be sentenced to capital punishment, though this has yet to be confirmed in all cases. They may be sentenced to corporal punishment and possibly life imprisonment.

The main laws governing juvenile justice are the Juvenile Act, the Magistrate's Code of Procedure 1961 and the Corporal Punishment Act 1967. The Juvenile Act sets the minimum age of criminal responsibility at 8.¹ It defines a juvenile as under 18 and a young person as 14-17.²

The Organisation of Eastern Caribbean States (OECS) has initiated a process of juvenile justice reform in the region and has circulated model bills which if adopted would reform the law in St Kitts and Nevis. This is discussed further below.

Legality of inhuman sentencing

Death penalty

Capital punishment is unlawful for child offenders convicted of murder. Article 3(1) of the Offences against the Person Act 1873 prescribes the death sentence for murder 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 the offence was committed he was under the age of eighteen years."³

The death penalty is also the lawful punishment for treason.⁴ Legislation does not explicitly exempt child offenders in such cases.

Corporal punishment

Corporal punishment is lawful as a sentence for crime. The Magistrate's Code of Procedure allows a magistrate to order the private whipping of a child (under 14) or young person (under 16) by a policeman, in the presence of certain officials and the child's parent or guardian.⁵ The Corporal Punishment Act also applies, but we have no details of its provisions. Corporal punishment may be carried out only after medical examination and under the supervision of a prison official.⁶

Life imprisonment

¹ Article 3 (Cipriani, D. (2009), *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective*, Farnham: Ashgate Publishing Limited

² CRC/C/3/Add.51, 5 May 1997, Initial state party report to the Committee on the Rights of the Child, para. 12

³ Quoted in *Greene Browne v The Queen*, Privy Council Appeal No. 3 of 1998

⁴ Constitution, article 4

⁵ Article 100

⁶ Seetahal, D. S. (2010), *Commonwealth Caribbean Criminal Practice and Procedure*, Third edition, London: Routledge-Cavendish

There is no explicit prohibition of life imprisonment for juvenile offenders. In prohibiting the death penalty for persons convicted of murder when they were under 18, article 3(1) of the Offences Against the Person Act prescribes in lieu detention “during the Governor-General’s pleasure”. In an appeal case involving the sentencing of a person convicted of a murder when under 18, the Privy Council in 1999 ruled that this provision was unconstitutional and it should read “during the Court’s pleasure”. The Council stated that the detention is wholly discretionary, is not a form of mandatory life sentence, and is expected to be periodically reviewed, but did not rule out the possibility of life imprisonment.⁷

We have no information relating to other laws.

Inhuman sentencing in practice

We have been unable to obtain statistical information relating to sentencing of child offenders to life imprisonment, detention “during the Court’s pleasure”, or corporal punishment.

Progress towards prohibition and elimination

Law reform needed

All legal provisions authorising judicial corporal punishment for crimes committed when the offender was under 18 should be repealed. Capital punishment (for all offences) and life imprisonment for offenders under 18 should be explicitly prohibited.

Law reform 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 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 explicitly prohibit these. It explicitly prohibits life imprisonment. We have no information on further progress regarding law reform.

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 (1983) protect the physical integrity of all persons, although exemptions are made for cruel punishments prescribed by law.

Article 3:

Whereas every person in Saint Christopher and Nevis is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, birth, political

⁷ *Greene Browne v The Queen*, Privy Council Appeal No. 3 of 1998

opinions, colors, 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, equality before the law and the protection of the law

...

Article 4:

(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 of treason or murder under any law of which he has been convicted.

...

Article 7:

A person shall not be subjected to torture or to inhuman or degrading punishment or other like treatment.

International human rights treaties

St Kitts and Nevis has ratified or acceded to the following international treaties:

- Convention on the Elimination of All Forms of Discrimination Against Women (in 1985)
- Convention on the Rights of the Child (in 1990)
- International Convention on the Elimination of All Forms of Racial Discrimination (in 2006)

St Kitts has not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Second Optional Protocol on the ICCPR aiming at the abolition of the death penalty, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Persons with Disabilities, or the American Convention on Human Rights.

St Kitts has ratified the following complaints/communications mechanisms:

- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (in 2006).

Status of treaties

The legal system in St Kitts is based on English common law. Treaties become part of domestic law only when they have been expressly incorporated by legislation.⁸ They cannot be invoked directly in the courts.⁹

⁸ UNICEF (2007), *Law Reform and Implementation of the Convention on the Rights of the Child*, Florence: UNICEF Innocenti Research Centre

⁹ See, e.g. A/57/38, 2002, Concluding observations of the Committee on the Elimination of Discrimination Against Women on the state party's initial to fourth periodic reports, para. 93 ("The Committee is concerned that the provisions of the Convention cannot be invoked in the courts", and CRC/C/3/Add.51, 1997, Initial state party report to the Committee on the Rights of the Child, para. 7 ("There is a need...to enact national legislation...to give effect to certain aspects of the convention..."))

Recommendations from human rights treaty monitoring bodies

Committee on the Rights of the Child

(24 August 1999, CRC/C/15/Add.104, Concluding observations on initial report, paras. 20, 31 and 32)

“The Committee remains gravely concerned that corporal punishment is still widely practised within the State party and that domestic legislation does not prohibit its use. In this regard, the Committee recommends that the State party take all appropriate measures, including of a legislative nature, to prohibit corporal punishment within school, the family, the juvenile justice and alternative care systems and generally within the society. It further suggests that awareness-raising campaigns be conducted to ensure that alternative forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention, especially article 28.2.

“While the Committee notes that the State party has in place domestic legislation relating to juvenile justice, it is still concerned about:

a) the general situation of the administration of juvenile justice and in particular its compatibility with the Convention, as well as other relevant United Nations standards

...

The Committee recommends that the State party:

a) take additional steps to reform the system of juvenile justice in the spirit of the Convention, in particular articles 37, 40 and 39, and of other United Nations standards in this field, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty;

b) consider deprivation of liberty only as a measure of last resort and for the shortest possible period of time; protect the rights of children deprived of their liberty, including the right to privacy; and ensure that children remain in contact with their families while in the juvenile justice system;

c) introduce training programmes on relevant international standards for all those professionals involved with the system of juvenile justice;

d) consider seeking technical assistance from, inter alia, the Office of the High Commissioner for Human Rights, the Centre for International Crime Prevention, the International Network on Juvenile Justice and UNICEF, through the Coordination Panel on Technical Advice in Juvenile Justice.

“While the Committee notes the establishment of a national committee to regulate the use of corporal punishment within the juvenile justice system, it remains gravely concerned that the Corporal Punishment Act (1967) continues to allow the corporal punishment of a male juvenile convicted of an offence and to empower the magistrate’s court to order a juvenile convicted of an offence to be “whipped”. The Committee recommends that the State party take all necessary measures to prohibit the use of corporal punishment within the juvenile justice system, including the repeal of the Corporal Punishment Act (1967).”

Universal Periodic Review

St Kitts and Nevis is due to be examined under the Universal Periodic Review process in 2011.