

Inhuman sentencing of children in St Vincent and the Grenadines

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Introduction

It appears that persons convicted of an offence committed under the age of 18 cannot be sentenced to capital punishment. They may be sentenced to corporal punishment and life imprisonment.

The main laws governing juvenile justice are the Juveniles Act, the Probation of Offenders Act, the Corporal Punishment of Juveniles Act, the Criminal Code and the Criminal Procedure Code.¹ The Juveniles Act and the Criminal Code set the minimum age of criminal responsibility at 8.² The Juveniles Act defines a juvenile as under 16 and a young person as 14-15; persons aged 16-17 are tried as adults.³

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 Vincent and the Grenadines. This is discussed further below.

Legality of inhuman sentencing

Death penalty

We have been unable to confirm whether capital punishment is abolished for child offenders. The prohibition of the death penalty for persons under 16 at the time of the offence, in article 24 of the Criminal Code, was reportedly extended to persons under 18 by Act 27 of 1993.⁴ In 2001, however, the Government reported that 16 and 17 year-olds could still be executed, leaving the prohibition of capital punishment for older children in doubt.⁵

Corporal punishment

Corporal punishment is lawful as a sentence. The Corporal Punishment of Juveniles Act permits a male under 16 to be caned up to 12 strokes on the buttocks using a light rod. It is reportedly inflicted on the bare buttocks, usually by a policeman at a police station.⁶ We have no information

¹ We have been unable to obtain full texts of these or other laws; this report relies on secondary sources only.

² Articles 3 and 12 respectively (Cipriani, D. (2009), *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective*, Farnham: Ashgate Publishing Limited)

³ CRC/C/28/Add.18, 10 October 2001, Initial state party report to the Committee on the Rights of the Child, para. 355

⁴ Human Rights Association (2002), *NGO Initial Report on Saint Vincent and the Grenadines submitted to the United National Committee on the Rights of the Child*, p. 6

⁵ CRC/C/28/Add.18, 10 October 2001, Initial state party report to the Committee on the Rights of the Child, paras. 128 and 373 ; see also CCPR/C/VCT/Q/3, 6 December 2005, List of issues prepared in the absence of the second periodic report of Saint Vincent and the Grenadines, due on 31 October 1991, Q5

⁶ Human Rights Association (2002), *NGO Initial Report on Saint Vincent and the Grenadines submitted to the United National Committee on the Rights of the Child*, p. 27; see also CCPR/C/VCT/Q/3, 6 December 2005, List of issues prepared in the absence of the second periodic report of Saint Vincent and the Grenadines, due on 31 October 1991, Q9

on judicial corporal punishment for 16-17 year olds. Corporal punishment may be carried out only after medical examination and under the supervision of a prison official.⁷

Life imprisonment

The law provides for life imprisonment of juvenile offenders.⁸ The Government has stated that in lieu of the death penalty, a person under 16 at the time of the offence may be detained for life.⁹ Persons aged 16-17 are tried as adults, and liable to life imprisonment for a number of offences.

Inhuman sentencing in practice

We have been unable to obtain statistical information relating to sentencing of children to life imprisonment 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. Life imprisonment – and, if necessary, capital punishment – 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 it does not explicitly prohibit these. It explicitly prohibits life imprisonment. We have no information on further progress regarding law reform.

National and international law conflicting with inhuman sentencing

The Constitution

A number of provisions in the Constitution (1979) protect the physical integrity of all persons, although exemptions are made for cruel punishments prescribed by law.

Article 1:

Where every person in Saint Vincent is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, color, 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

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

⁸ Hood, R. & Hoyle, C. (2008), *The Death Penalty: A Worldwide Perspective*, Oxford: Oxford University Press, p.399

⁹ CRC/C/28/Add.18, 10 October 2001, Initial state party report to the Committee on the Rights of the Child, para. 128

a. life, liberty, security of the person and the protection of the law

...

Article 2:

(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under any law of which he has been convicted

...

Article 5:

No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

International human rights treaties

St Vincent has ratified or acceded to the following international treaties:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in 2001)
- Convention on the Elimination of All Forms of Discrimination Against Women (in 1981)
- Convention on the Rights of the Child (in 1993)
- International Covenant on Civil and Political Rights (in 1981)
- International Convention on the Elimination of All Forms of Racial Discrimination (in 1981)
- International Covenant on Economic, Social and Cultural Rights (in 1981)

St Vincent has not ratified the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty, the Convention on the Rights of Persons with Disabilities or the American Convention on Human Rights.

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

- Optional Protocol to the International Covenant on Civil and Political Rights (in 1981)

Status of treaties

The legal system in St Vincent is based on English common law. Treaties become part of domestic law only when they have been expressly incorporated by legislation.¹⁰ They typically cannot be invoked directly in the courts.

Recommendations from human rights treaty monitoring bodies

Committee on the Rights of the Child

(13 June 2002, CRC/C/15/Add.184, Concluding observations on initial report, paras. 4, 28, 29, 52 and 53)

¹⁰ UNICEF (2007), *Law Reform and Implementation of the Convention on the Rights of the Child*, Florence: UNICEF Innocenti Research Centre

“The Committee welcomes:

a) the State party’s abolition of the death penalty for all persons below age 18;

...

“The Committee is deeply concerned that corporal punishment is widely practised in schools, in the administration of justice, in other institutions and within the family, and that it is regulated by law and used against children from an early age.

“The Committee recommends that the State party urgently:

a) prohibit through legislative and administrative provisions the use of corporal punishment in all contexts, including in schools, in the administration of justice, in other institutions and within the family;

b) make use of information and education campaigns to sensitize parents, professionals working with children and the public in general to the harm caused by corporal punishment and to the importance of alternative, non-violent, forms of discipline, as provided for in article 28.2 of the Convention.

“While recognizing the State party’s efforts in this domain the Committee remains concerned that:

a) the age of criminal responsibility, fixed at 8 years of age, is too low and that juvenile justice protections are not afforded to all persons under the age of 18;

...

d) Juveniles are not usually deprived of their liberty as a “last resort” and, because legislation does not provide a sufficient range of sentencing alternatives to deprivation of liberty, juveniles and young people, especially from 16 years upwards, are sometimes sent to prison when a lesser punishment could have been applied;

...

f) children who are charged jointly with adults are tried in regular courts;

g) there is no institution used exclusively for children where children purging *[sic]* a prison sentence can be sent, that the “Approved Schools” provided for in the Juvenile Act do not exist and that, as a consequence, convicted children over 16 are sent to adult prison;

h) The Corporal Punishment of Juveniles Act allows for the caning of juveniles who have been found guilty of crime.

“The Committee recommends that the State party:

a) significantly raise the age of criminal responsibility and ensure that all children under the age of 18 benefit from the special protection measures recognized by juvenile justice standards; ...

...

c) ensure that deprivation of liberty is used only as a last resort and that provision is made for adequate alternatives to deprivation of liberty, such as community service orders;

...

f) urgently prohibit the corporal punishment of children in the context of the juvenile justice system;

g) in this regard and in the light of the Committee’s day of discussion on juvenile justice, develop mechanisms and provide adequate resources to ensure the full implementation of juvenile justice standards, in particular articles 37, 40 and 39 of the Convention, 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);

h) seek 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 and Assistance on Juvenile Justice.”

Human Rights Committee

(24 April 2008, CCPR/C/VCT/CO/2, Concluding observations in the absence of a report, paras. 6 and 11)

“The Committee regrets the State party’s denunciation of the Optional Protocol (arts. 6, 7). In light of the continued existence of the death penalty,

The Committee recommends that:

a) in relation to all persons accused of capital offences, the State party should ensure that every requirement of article 6 is strictly complied with;

b) the assistance of counsel should be ensured, through legal aid as necessary, immediately on arrest and throughout all subsequent proceedings to persons accused of serious crimes, in particular in cases of offences carrying the death penalty.

c) the Committee notes that, following a decision of the Eastern Caribbean Court of Appeal, confirmed by the Judicial Committee of the Privy Council, in the case of *Hughes and Spencer v The Queen*, the death penalty, where applicable, is no longer applied in a mandatory fashion but is subject to a separate sentencing hearing at which the judge is required to consider the circumstances of the case and of the person convicted. With this welcome development in mind, and noting that in fact there have been no executions in the past 10 years, the Committee now invites the State party to consider the final abolition of the death penalty.

“While noting the delegation’s statement that judicial corporal punishment is not resorted to in practice, the Committee is concerned that the Corporal Punishment of Juveniles Act still permits caning, in violation of the prohibition of cruel, inhuman and degrading punishment contained in article 7.

The State party should immediately amend or repeal the Corporal Punishment of Juveniles Act so as to prohibit caning. It should also consider whether it is any longer necessary, or consistent with its obligations under the Covenant, to maintain in force the relevant savings clause of section 10 of the Second Schedule to the Constitution of the State Party.”

Universal Periodic Review

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