

Inhuman sentencing of children in Barbados

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1. Life imprisonment and corporal punishment remain lawful sentences for offences committed by children. The minimum age of criminal responsibility is 11.¹

Legality of inhuman sentencing

Life imprisonment

2. Persons aged 16 or older are tried as adults. For adults, life imprisonment is lawful as a sentence for a number of offences, including kidnapping² and murder.³

3. The sentence of detention during the court's pleasure (DHCP) is mandatory for any person under the age of 18 who is convicted of an offence for which the death penalty would be applicable for an adult.⁴ This sentence replaced "detention during Her Majesty's pleasure", a change in language that means that courts must make decisions about release from detention rather than the executive. The sentence remains indeterminate, allowing detention for up to the full life of the person sentenced. The law reform was made following a Privy Council decision in 2005.⁵ Children under the age of 14 cannot be sentenced to "imprisonment"⁶ but can be sentenced to DHCP.⁷

Corporal punishment

4. Corporal punishment is lawful as a sentence for males. The Magistrates' Courts Act allows for boys aged eight to 15 to be "privately whipped" at a police station for up to 12 strokes with a "tamarind or other similar rod", in place of or in addition to any other punishment.⁸ The Juvenile Offenders Act includes "ordering the offender to be whipped" among the list of available sanctions for children and young people.⁹ The Act also provides for a court to order a boy aged 12 to 15 to be "privately whipped" in lieu of or in addition to

¹ Juvenile Offenders Act, Sections 7 to 9. Available at: https://www.unicef.org/lac/spbarbados/Legal/national/Barbados/National%20Legislation/JuvenileOffenders_1998.pdf.

² Offences Against the Person Act, Section 30.

³ See Carter v. Attorney-General of Barbados, [2003] Case no. 1982 of 2003. Available at: <http://www.lawcourts.gov.bb/lawlibrary/events.asp?id=720>.

⁴ Juvenile Offenders Act, Section 14, Amended by the Criminal Appeal (Amendment and Miscellaneous Provisions) Act 2009, available at: <http://www.cavehill.uwi.edu/LAWLIBRARY/getattachment/10571998-93ea-46b8-8bfd-859b21121708/JUVENILE-OFFENDERS-ACT.aspx>.

⁵ Juvenile Offenders Act, Section 14 and Griffith and ors. V. The Queen [2005] 2 AC 235, [2004] UKPC 58. Summary and full judgment available at: <https://www.crin.org/en/node/41297>.

⁶ Juvenile Offenders Act, Section 13(1).

⁷ Ibid.

⁸ Magistrates Courts Act, Section 71.

⁹ Juvenile Offenders Act, Section 16(f).

any other punishment.¹⁰ 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 person.¹¹ Corporal punishment reportedly may be carried out only after medical examination and under the supervision of a prison official.¹²

Inhuman sentencing in practice

5. We have been unable to obtain statistical information relating to the sentencing of children to life imprisonment, detention during Her Majesty's pleasure or corporal punishment. In 2007, the Government stated that although flogging was on the statute books, it was no longer applied. It is unclear whether this remark also referred to whipping.¹³

The review of Barbados by the Human Rights Council

6. In light of the clear international human rights consensus against the imposition of life imprisonment and corporal punishment on child offenders and the specific recommendations made to Barbados by the Committee on the Rights of the Child,¹⁴ Human Rights Committee¹⁵ and during previous sessions of the Universal Periodic Review, we urge the members of the Human Rights Council to recommend that Barbados:

- Explicitly prohibit all forms of life imprisonment, including detention during the court's pleasure and corporal punishment of children;
- Amend the sentence of any person currently serving life imprisonment or detention during the court's pleasure for an offence committed while under the age of 18;
- Raise the minimum age of criminal responsibility.

For more information, see CRIN's full report, available at: www.crin.org/node/30443.

¹⁰ Juvenile Offenders Act, Section 9(6). See also, section 13(2).

¹¹ Corporal Punishment Act, Section 2.

¹² Seetahal, *Commonwealth Caribbean Criminal Practice and Procedure (third edition)*, 2010, London: Routledge-Cavendish.

¹³ *Summary record of 2440th meeting of the Human Rights Committee: Third periodic report of Barbados*, CCPR/C/SR.2440, 5 April 2007, para. 13.

¹⁴ Committee on the Rights of the Child, Concluding observations on the initial report of Barbados, CRC/C?15/Add.103, 24 June 1999, paras. 19 and 29.

¹⁵ Human Rights Committee, Concluding Observations on the third periodic report of Barbados, CCPR/C/BRB/CO/3, 11 May 2007, para. 12.