

Inhuman sentencing of children in Guyana

Briefing for the 21st session of the Human Rights Council Universal Periodic Review. Submitted by the Child Rights International Network (CRIN) (www.crin.org), June 2014.

Inhuman sentencing of child offenders in Guyana

1. The UN Convention on the Rights of the Child and other international human rights treaties have been incorporated into the Constitution of Guyana. This should mean that all inhuman sentencing of persons under the age of 18 is prohibited. However, much national legislation is at odds with the Constitution and corporal punishment and life imprisonment remain authorised sentences for child offenders.

2. Children can be held criminally responsible from the age of 10¹ and persons aged 17 are tried as adults.²

Legality of inhuman sentencing

Life imprisonment

3. Child offenders can be sentenced to life imprisonment for offences committed while under the age of 18.

4. In prohibiting the death penalty for persons under 18, the Criminal Law (Procedure) Act prescribes in lieu, detention during the President's pleasure.³ The State has reported that children detained at the President's pleasure would usually be held at the New Opportunity Corps (training school) and transferred at 18 to an appropriate place of detention and that life imprisonment is not enforced.⁴ However, there appears to be no explicit prohibition on 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.⁵ The Government indicated in 2002 that life imprisonment was soon to be explicitly prohibited in law, but we have not been able to identify such a provision.

5. Persons under the age of 17 must be sentenced under the Juvenile Offenders Act and may not be sentenced to imprisonment.⁶ However, these restrictions do not appear to apply when

¹ Juvenile Offenders Act, Section 3.

² Section 2 of the Juvenile Offenders Act defines a child as under 14 and a young person as a person who has attained the age of 14 but is younger than 17. The provisions of the Act in relation to sentencing only apply to these two groups of people.

³ Criminal Law (Procedure) Act, Section 164.

⁴ *Initial report of Guyana to the UN Committee on the Rights of the Child*, CRC/C/8/Add.47, 6 August 2003, para. 390

⁵ *Ibid.* at para. 391.

⁶ Juvenile Offenders Act, Sections 13 and 14.

the conviction relates to attempted murder, manslaughter or wounding with intent to cause grievous bodily harm.⁷ Under the Criminal Law (Offences) Act, murder and manslaughter are punishable by life imprisonment.⁸ Persons aged 17 are tried as adults, for whom a wider range of offences is punishable by life imprisonment.⁹

Corporal punishment

6. Corporal punishment is a lawful sentence for offences committed by males.

7. The Juvenile Offenders (Amendment) Act 2010 repealed the whipping provisions under the Juvenile Offenders Act 1931, but boys aged 17 are tried as adults and so can be sentenced to be flogged under the Criminal Law (Offences) Act 1894¹⁰ and the Summary Jurisdiction (Offences Act 1894.¹¹ The Whipping and Flogging Act 1922 permits flogging of up to 24 strokes and requires that a medical official must be present during the punishment.¹²

8. The Constitution prohibits torture or inhuman or degrading punishment¹³ but states that “[n]othing 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.”

Inhuman sentencing in practice

9. 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.

International human rights mechanisms

10. Guyana was examined under the Universal Periodic Review in May 2010. Recommendations were made to prohibit all corporal punishment of children.¹⁴

11. The Committee on the Rights of the Child recommended in 2013 that the State “take all appropriate measures to explicitly prohibit corporal punishment in all settings”¹⁵ and in 2000 the Human Rights Committee called on the State to take legal and other measures to eliminate

⁷ Juvenile Offenders Act, Section 15.

⁸ Criminal Law (Offences) Act, Sections 95, 104 and 105.

⁹ See the Criminal Law (Offences) Act.

¹⁰ Criminal Law (Offences) Act 1894, Sections 12, 72, 73, 138, 145, 147 and 166.

¹¹ Sections 12, 72, 73, 138, 145, 147 and 166.

¹² Sections 3 and 4.

¹³ Constitution of Guyana, Article 141.

¹⁴ 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).

¹⁵ UN Committee on the Rights of the Child, *Concluding Observations on Guyana’s combined second, third and fourth periodic reports*, CRC/C/GUY/CO/2-4, 18 June 2013, paras. 32 and 33.

corporal punishment.¹⁶ In 2006, the Committee against Torture criticised the legality of whipping and flogging in Guyana under the Prison Act and recommended that the State review all legal provisions which authorise these practices with a view to abolishing them as a matter of priority.¹⁷

The review of Guyana by the members of the Human Rights Council

12. In light of the clear international human rights consensus against the imposition of life imprisonment and corporal punishment of child offenders and the specific recommendations made to Guyana by the UN Committee on the Rights of the Child, the Committee against Torture, the Human Rights Committee, the Committee on the Elimination of Discrimination against Women and during the first cycle of the Universal Periodic Review, we hope that the members of the Human Rights Council will urge the government of Guyana to:

- Explicitly prohibit sentences of corporal punishment and life imprisonment under all systems of justice and without exception to ensure compliance with international standards;
- Raise the minimum age of criminal responsibility;
- Provide disaggregated data about sentences handed down to children by offence committed and date, as well as information about children in detention, including gender, age and length of time spent in pre-trial detention in each case.

¹⁶ UN Human Rights Committee, *Concluding Observations on Guyana's second periodic report*, CCPR/C/79/Add.121, 25 April 2000, para. 12.

¹⁷ UN Committee against Torture, *Concluding Observations on Guyana's initial report*, CAT/C/GUY/CO/1, 7 December 2006, para. 13.