



**UN HUMAN RIGHTS COUNCIL
UNIVERSAL PERIODIC REVIEW OF GRENADA
35th Session – Jan 2020
Submission from Edmund Rice international**

Edmund Rice International (ERI) is an international non-governmental organization, founded in 2005 and with Special Consultative Status with ECOSOC since 2012. ERI is supported by two Catholic Religious Congregations, the Christian Brothers and the Presentation Brothers. It works with networks of like-minded organizations and in the countries where the two Congregations are present. ERI has a special interest in the rights of the child, the right to education and in eco-justice.

This submission addresses the following issues: a review of non-judicial life sentences in the Grenada legal system, cruel, inhuman and degrading punishment in Grenada and ensuring quality education in Grenada. The information in the submission was provided by the Presentation Brothers, who have been involved in secondary education in Grenada since 1947.

I Review of Non-judicial Life Sentences

1. In 1991 the government of Grenada commuted the mandatory death sentences imposed on 14 persons for the deaths of the former PM Maurice Bishop and others. Each sentence was commuted to imprisonment for the remainder of natural life. At the same time the sentences of eight other persons who were on death row pursuant to mandatory death sentences, and whose criminal appeals against conviction had already been disposed of, were commuted to life imprisonment. In seven cases the commutation was to life imprisonment simpliciter. However, in the case of Rudolph Hall his sentence was commuted to imprisonment for remainder of natural life.

2. In 2002 the Privy Council, the final court of appeal in Grenada, confirmed a decision of the Eastern Caribbean Court of Appeal that the mandatory death sentence was unconstitutionalⁱ. In 2007 the Privy Council ruled that the decision in *Hughes v. Spence* applied to Grenadaⁱⁱ. The Privy Council also ruled that the sentence of imprisonment for the remainder of natural life was unconstitutional. The Privy Council ordered that the 14 aforementioned persons be brought back to Court and resentenced.

3. Since 1991 all persons who were sentenced to the mandatory death sentence have been either released, or resentenced by a Courtⁱⁱⁱ. However, two of the persons, Ronnie Gittens and Rudolph Hall, whose mandatory death sentences were commuted in 1991, still remain in prison. They remain in prison without ever having received a lawful sentence from the court. They are the only persons in Grenada and probably in the Caribbean who are serving life sentences which have not been judicially imposed.

4. In *Reyes v. The Queen*^{iv} the Privy Council held that the existence of executive bodies to review sentences is not a substitute for the requirement under the Constitution for a person convicted of murder to have an appropriate sentence determined by an independent and impartial court.

Recommendations to the State:

It is recommended that Grenada:

(i) take steps to either refer the cases of Ronnie Gittens and Rudolph Hall back to the Court for determination of an appropriate sentence or release them.

II Cruel, Inhuman and Degrading Punishment in Grenada

5. Flogging is provided as a punishment in Grenada for male adults^v. Flogging is available for crime of robbery^{vi} and for certain offences under the Praedial Larceny Act^{vii}. It is also available as a punishment under the Prisons Rules^{viii}. The use of flogging as a punishment has been relatively widespread over the last 10 years with many instances of persons being flogged pursuant to punishments imposed in the Magistrates Court, the High Court and under the Prisons Rules.

6. The punishment of flogging is inflicted by means of a whip usually made by winding together several strands of a trambran branch. The person upon whom the punishment is inflicted is stripped naked, blindfolded and strapped to an instrument like a table, which is referred to as a horse, and then beaten like an animal. Infliction of the punishment leaves the victim of the punishment badly bruised, bleeding and psychologically scarred.

7. It is settled in law that the punishment of flogging constitutes degrading and inhuman punishment or treatment^{ix}. Section 5(1) of the Grenada Constitution protects individuals against inhuman and degrading punishment or treatment. However, under section 5(2) of the Constitution, the punishment of flogging is deemed not to be in breach of section 5 (1) of the Constitution since it predated the coming into existence of the Constitution^x.

8. Besides the self-evident inhumanity of the punishment of flogging, there are other issues with the manner of its use as a punishment in Grenada.

- The fact that men are still flogged but not women is discriminatory. Section 16 of the Constitution prohibits gender based discrimination.
- The punishment is inflicted immediately after its imposition. This has the effect of denying an effective appeal. This is contrary to law^{xi}.
- When the punishment is imposed by the ordinary courts, it is often carried out without the presence of a doctor^{xii}.
- It is arbitrary in that there is no regulation as to the amount of force to be used in inflicting the punishment.
- It is abused. There have been cases in which the punishment has been imposed for traffic offences^{xiii}.
- It is mandatory in some circumstances^{xiv}.

9. At the most recent UPR, Grenada accepted recommendations made by a number of states (Guatemala, Denmark, Paraguay, Algeria, Chile, UK, Sierra Leone, France, Uruguay) to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment . It has not yet done so.

Recommendations to the State

It is recommended that Grenada:

(i) abolish flogging as a punishment .

(ii) ratify the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

III Ensuring Quality Education in Grenada

10. The present impasse between the Government of Grenada and the Grenada Union of Teachers regarding pension and gratuity payments, is adversely affecting students of both primary and secondary schools in the tri-island state. This is evident by the cancellation of the National Primary and Secondary School Games 2019. The success of these games depends to a large extent on the volunteerism and goodwill of the teachers. However in the present climate, many refuse to work beyond normal school hours. This has also affected extracurricular activities, many of which did not take place since the latter part of 2018.

11. In the previous UPR cycle, Grenada accepted recommendations from Cuba and China to improve the quality of education in the country. In the present climate, the nation's children are being denied a holistic education which mitigates against providing high quality human resources for Grenada's social and economic development.

Recommendations to the State

It is recommended that Grenada:

(i) prioritise reaching a settlement with the Grenada Union of Teachers regarding pension and gratuity payments so that the children of Grenada may go to schools that develop, challenge and energize the variety of talents and gifts they all possess.

ⁱ Hughes v. The Queen, [2002] UKPC 12

ⁱⁱ Bernard Coard and others v. The Attorney General of Grenada [2007] UKPC 7

ⁱⁱⁱ In a series of cases from 2009 or thereabout, starting with Rudolph Baptiste v. The Queen, the Privy Council quashed the mandatory death sentence of persons who receive that sentence in Grenada post 1991 and ordered that they be resentenced by the High Court.

^{iv} [2002] UKPC 11

^v This is the combined effect of sections 70 and 75(2) of the Criminal Code Cap. 72 A of the Laws of Grenada and Section 64 of the Juvenile Justice Act, Act 24 of 2012

^{vi} Section 276(2) Criminal Code

^{vii} Section 16 of the Praedial Larceny Act, Cap. 250 of the Laws of Grenada

^{viii} Section 35 of the Prisons Act, Cap. 254 of the Laws of Grenada

^{ix} Pinder v. The Queen, Privy Council Appeal No. 40 of 2001, [2002] UKPC 46; Inter American Court on Human Rights, Report No79/07 in the Petition of Pinder v. The Commonwealth of Bahamas,; and *Tyrer v UK (1978) 2 EHHR 1*, where the European Court of Human Rights declared that the practice of whipping juveniles amounted to inhuman and degrading punishment.

^x The Constitution came into force on 7th February 1974 upon Grenada's attainment of independence. Flogging was a punishment since the days of slavery.

^{xi} Section 50 of the West Indies Associated States Supreme Court (Grenada) Act, Cap. 336 of the Laws of Grenada, provides for an automatic stay of 14 days on the execution of the punishment of flogging and if an appeal is filed within those 14 days for a stay until the appeal is determined.

^{xii} The situation is different where flogging is imposed as a punishment under the Prisons Rules. Rule 89 of the Prison Rules, SRO 14 of 1980, provides that before a person is flogged he must be examined by a doctor. The doctor must certify him fit to undergo the punishment of flogging. A doctor must be present at the flogging. And the doctor has the authority to stop the flogging if he is of the view that the infliction or further infliction would endanger the health of the prisoner.

^{xiii} One Magistrate, Mr. Jerry Seales, is known to have imposed flogging for traffic offences.

^{xiv} Under section 16 of the Praedial Larceny Act flogging is mandatory for some offences.