

£TRINIDAD AND TOBAGO

@Corporal punishment: 11-year-old whipped

Introduction

On 23 April 1993 a Magistrate in the Port of Spain Juvenile Court imposed a sentence of flogging on an 11-year-old boy (referred to as AA from now on). He had pleaded guilty to charges of being in possession of cocaine. The Magistrate ordered the sentence to be carried out immediately and her order was put into practice by the police. The magistrate further ordered the boy to be confined and that he should receive no visitors. This sentence violated international human rights standards which prohibit torture and cruel, inhuman or degrading punishment to which Trinidad and Tobago is a Party.

Amnesty International wrote to the Minister of Legal Affairs on 12 May expressing its grave concern about the case. The organization urged the government to introduce legislation to end the use of corporal punishment both as a sentence of a court of justice and as a punishment for disciplinary offences in prison.

Whipped for TT\$5.00

On 22 April 1993 AA was charged with having "in his possession a Dangerous Drug namely Cocaine for the purpose of Trafficking". He was reportedly carrying the drugs for an adult who had given him a very small sum of money to do this (allegedly TT\$ 5.00)¹. According to a lawyer representing him, AA had not been involved in criminal activity before.

On 23 April, AA appeared before a Magistrate at the 9th Magistrate Court in Port of Spain and pleaded guilty to the charge. The Magistrate sentenced him to receive 20 strokes. She ordered the sentence to be carried out immediately and further ordered that AA should be confined with no right to receive visitors, not even his parents, until 30 April when she would determine further sentencing.

On 30 April the boy was remanded in the care of his parents. Both parents were given a fine of TT\$4.000 (£470.00; US\$740.00) each or six months with hard labour.

¹£1 = TT\$8.5; US\$1 =TT\$5.4 (exchange rate as of mid May 1993)

A constitutional motion was filed on 11 May on behalf of AA, applying for redress for contravention of rights and freedom guaranteed in Trinidad and Tobago's Constitution. A hearing was to take place on 26 May 1993.

Wrong Sentence Imposed

According to the law, the offences punishable by flogging involve acts of violence eg robbery with violence, rape. It would appear therefore that, in the first place, the charges did not justify the sentence imposed on AA.

The Corporal Punishment (Offenders not over Sixteen) Act (1941) clearly specifies the number of strokes that can be imposed considering the age of the offender. Article 3(1) states:

"In every sentence of whipping the Court shall specify the number of strokes to be inflicted which shall not exceed six when the offender is not above the age of twelve years...".

The sentence imposed by the Magistrate to AA ie 20 strokes, which amounted to over three times the prescribed maximum, was therefore even beyond the legal provision of six strokes. Twenty strokes is the number prescribed in law for offenders over 16 years of age for crimes involving violence.

The law instructs that the instrument to be used will be "a rod of tamarind, birch or other switches...". However, AA was whipped with the leather belt of the policeman who carried out the sentence.

The right of appeal denied in practice

The right of appeal against a conviction or sentence is an inalienable right of any person accused of committing an offence. This is established in international standards to which Trinidad and Tobago is a Party, such as the ICCPR, Article 14(5) and ACHR, Article 8(2)(h).

The Corporal Punishment (Offenders not over Sixteen) Act, Section 6(1) states that "... a sentence of whipping shall be carried out as soon as may be practicable and, in cases in which an appeal lies from conviction or sentence, without waiting for the expiration of the period allowed by law for lodging the appeal...".

Therefore, although it could be argued that the right of appeal is contemplated in the Act, this is of no use if the sentence is carried out prior to the hearing and determination of the appeal.

The right to receive visits

The Magistrate also stipulated that the boy should not be allowed to receive visits and indeed reportedly he was not allowed visits, not even from his parents, for several days. Furthermore, he did not receive medical attention after the whipping took place and on 11 May reportedly he still had blisters on his buttocks caused by the whipping.

The Convention on the Rights of the Child ratified on 5 December 1991 by Trinidad and Tobago states in Article 37(a):

"No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment..."

and Article 37(c):

"Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person...and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances".

None of these rights were respected in this case and, furthermore, national laws were also breached.

International instruments will only be effective if those countries which have committed themselves to the obligations acquired on ratification actually fulfil them. Trinidad and Tobago is violating human rights instruments to which it has made a commitment before the international community.

General Background

The use of corporal punishment contravenes a number of international human rights standards:

Article 7 of the International Covenant on Civil and Political Rights (ICCPR)

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment...."; and

Article 5(2) of the American Convention on Human Rights

"No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person"

The United Nations Human Rights Committee, in its authoritative "general comment" on Article 7 of the ICCPR, emphasized that the absolute prohibition of cruel, inhuman or degrading punishment "must extend to corporal punishment".

It is also prohibited under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states:

"No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstances whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment"

Principle 7 of the same Body of Principles enjoins that

"States should prohibit by law any act contrary to the rights and duties contained in these Principles..."

Trinidad and Tobago's law provide for the use of corporal punishment as sentences imposed by courts of justice and also as a means of prison discipline. Flogging sentences are regularly imposed in Trinidad and Tobago.

A report presented in 1980 by the Commission of Enquiry into prison conditions² concluded:

"The Commission is of the view that it cannot be conclusively said that either the abolition or retention of corporal punishment *per se*, contributes to the reduction or increase in crimes of a certain type. Rather, it is largely the disruptive changes in the social and economic conditions in the society that cause the increase in the crimes of violence.

Corporal punishment does not have a deterrent effect on the commission of crimes for which it is ordered. Moreover, as a general rule, the infliction of corporal punishment at the beginning of a sentence of detention tends to make the offender less amenable to reformatory influences and thus diminishes the chance of effective rehabilitation.

Corporal punishment is barbarous, dehumanising and revengeful and is therefore unsuitable for this day and age. We accordingly recommend its abolition as a sentence, either by the Courts, by the Prison authorities or by those responsible for the Youth Training Centre."

Corporal punishment is allowed in the law of several countries in the English-speaking Caribbean. In some countries it has not been used for many years; in Montserrat it was abolished in 1991; in Barbados it was declared unconstitutional by the Court of Appeal as it represented "inhuman and degrading punishment" and was thus contrary to the Barbados constitution.

Amnesty International believes that the use of corporal punishment constitutes cruel, inhuman and degrading punishment. Amnesty International opposes torture or other cruel, inhuman or degrading treatment or punishment of all prisoners without exception.

² The Commission was appointed in September 1972 by the President of Trinidad and Tobago and submitted its report in February 1980.

Conclusions and Recommendations

The use of corporal punishment constitutes cruel, inhuman and degrading punishment. The imposition of a flogging or whipping sentence on a child is outrageous and unacceptable. Amnesty International believes that this punishment should be abolished immediately.

Recommendations

1. The government of Trinidad and Tobago should take immediate steps to abolish the use of corporal punishment for children under 18 years of age.
2. Trinidad and Tobago should amend its laws to reflect the obligations contained in international standards to which it is a Party, by abolishing the use of corporal punishment in all cases, including its use in prisons for disciplinary offences.
3. All those involved in the judicial process, such as magistrates, should be provided with appropriate training and the relevant laws necessary for the proper discharge of their duties.
4. The government should publicize all the international standards to which Trinidad and Tobago is a Party, such as the International Covenant on Civil and Political Rights, the American Convention on Human Rights and the Convention on the Rights of the Child. It should give clear guidelines that these should be adhered to, especially by those involved in the judicial process.
5. AA should be entitled to obtain fair and adequate redress for the state, including financial compensation.