

EXTERNAL

AI Index: AMR 05/01/93
Distrib: PG/SC

Date: 18 February 1993

MEDICAL CONCERN
CORPORAL PUNISHMENT
ENGLISH-SPEAKING CARIBBEAN

Corporal punishment is permitted in several countries within the English-speaking Caribbean. The penalty may consist of whipping, which is generally carried out with a rod, or flogging, normally carried out with a "cat-o'-nine tails", a device consisting of nine knitted cords or hide thongs attached to a handle. In some countries the penalty is in current use, whilst in others it has not been used for a number of years although legislation allowing for its use remains in force. In some cases, however, courts have recently begun to impose sentences of corporal punishment after a period of many years during which it was not invoked. Furthermore, during the last two years some countries have introduced amendments to the law to allow its reinstatement - most notably The Bahamas.

The Bahamas

Although corporal punishment was abolished in The Bahamas in 1984, legislation was introduced in October 1991 by Prime Minister Sir Lynden Pindling to re-instate the punishment. It was approved by the Bahamas House of Assembly three days later and subsequently by the Senate. This change in the criminal code saw the introduction of corporal punishment for rape or certain other sexual offences. The sentence may not exceed 24 strokes in the case of flogging, and 12 in the case of whipping. Flogging is to be carried out with a "cat-o'-nine tails" and whipping with a rod.

Many people appear to have been unhappy with the speed with which corporal punishment was re-introduced. Since re-introduction, no sentences have to date been imposed.

There was a change of government in The Bahamas in 1992 following parliamentary elections in August that year. Although there is at present no indication that legislation will be reversed, the new Prime Minister Hubert Ingraham does appear to be willing to move ahead on human rights issues. His party's manifesto during the elections stated that "We are committed to the promotion and protection of human rights including the social and political rights of all people" and the party also undertook to give "early consideration of the United Nations Human Rights Covenants, with a view to early ratification".

BARBADOS

Corporal punishment is carried out on occasion in Barbados in the form of whipping.

In early 1991, a judge in Barbados called for the revival of flogging using the "cat-o'-nine tails" and five men were subsequently sentenced to lashes with the "cat" in addition to terms of imprisonment. Until this juncture, no sentences specifying the use of the "cat" had been passed since the early 1950s and it may last have been used in 1938. Lawyers for two of the men appealed against the sentences and in a landmark ruling in September 1992, the Barbados Court of Appeal declared that flogging represented "inhuman and degrading punishment" and was thus contrary to the Barbados constitution.

Whipping, however, remains on the statute books and can be imposed as an additional punishment for certain offences against the person. Offenders under 16 may be sentenced to up to 12 strokes with a birch or tamarind rod and other male offenders to up to 24 strokes. The whipping is supervised by a doctor who first determines that the prisoner is physically fit for the punishment. After the first stroke, the doctor again examines the prisoner and the punishment continues on the advice of the doctor. The last sentences of whipping known to Amnesty International to have been carried out in Barbados were in 1991.

There has been past discussion about the abolition of corporal punishment in Barbados. In 1979 a report on penal reform was presented to the Barbados government by Professor Howard Jones, a consultant from the United Kingdom, who concluded: "My recommendation would be to abolish corporal punishment as a judicial punishment. It does not deter, and probably brutalises."

TRINIDAD AND TOBAGO

There have also been moves in the past to abolish the use of corporal punishment in Trinidad and Tobago. During a debate to consider the abolition of corporal punishment as long ago as the forties, a former Attorney General stated: "Corporal punishment is degrading and brutalising, both to the victim and to the person who administers it. If administered to a person of a certain mentality it may do great harm. In fact, it is manifestly a survival of those dark days when the public conscience was less alive to brutality than now and when the cry was essentially a cry for vengeance on the criminal. Few people would now seek to justify corporal punishment as an act of vengeance and it certainly cannot be justified as reformative..."

Similarly, a Commission of Enquiry into prison conditions presented a report in 1980 which concluded: "The Commission is of the view that 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 reformative 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."

Despite such views, however, sentences of flogging and whipping are both still frequently imposed in Trinidad and Tobago. Flogging with the "cat-o'-nine-tails" may be ordered as an additional punishment for male offenders over the age of 16 convicted of offences involving violence, rape, or robbery with violence. Those under the age of 16 may be sentenced to whipping. The law specifies that a sentence of flogging should be carried out as soon as practicable; it will expire after six months, or a judge may impose an alternative sentence of whipping. Again, a doctor is required to be present during the execution of the

punishment and may suspend the flogging or whipping if s/he considers that the prisoner is physically unfit to withstand the punishment.

In addition, corporal punishment is also used in Trinidad and Tobago as a disciplinary measure within prisons. This use is in clear contravention of the UN Standard Minimum Rules for the Treatment of Prisoners which state at Rule 31:

"Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences."

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Other countries in the English-speaking Caribbean whose legislation provides for corporal punishment are: Antigua and Barbuda; Grenada; Guyana; Jamaica; St Christopher and Nevis; St Lucia; St Vincent and the Grenadines, and Turks and Caicos. There are some which have not used it for many years, for example Jamaica, where no sentences have been imposed since the 1970s.

Amnesty International believes judicial corporal punishment to be incompatible with international human rights standards, holding it to constitute cruel, inhuman and degrading treatment. As such, it is prohibited internationally by the United Nations' Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

The constitutions of all the countries cited above prohibit torture and cruel, inhuman or degrading punishment. However, the only country in the English-speaking Caribbean to have abolished corporal punishment in recent years is Montserrat, which on 24 June 1992 repealed the laws permitting its use. In explaining the reasons for thus amending legislation, Montserrat's Attorney General stated: "In keeping with modern trends this Bill now seeks to abolish Judicial Corporal Punishment as one of the methods of dealing with convicted offenders and to keep Montserrat in step with those legal systems which now regard Judicial Corporal Punishment as a form of torture."

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The role of the doctor

It is believed that in most or all of the countries providing for corporal punishment, the law specifies that a doctor must be present while the punishment is carried out. In Guyana, for example, the law specifies that any sentence of whipping or flogging carried out in a prison must be attended by a "medical officer" or "some other duly qualified medical practitioner" who has the authority to intervene to reduce the number of strokes if necessary, or to postpone punishment. Similar provisions are known to be written into the law in Jamaica, St Christopher & Nevis, St Vincent & the Grenadines, Trinidad & Tobago, Turks & Caicos.

The requirements that a doctor certifies a prisoner as fit for corporal punishment and is present while it is carried out are both contrary to medical ethical standards, such as the World Medical Association's Declaration of Tokyo, adopted in 1975, which states:

"The doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures.." (article 1)

"The doctor shall not provide any premises, instruments, substances or knowledge to facilitate the practice of torture or other forms of cruel, inhuman or degrading treatment or to diminish the ability of the victim to resist such treatment." (article 2)

"The doctor shall not be present during any procedure during which torture or other forms of cruel, inhuman or degrading treatment is used or threatened." (article 3)

Similarly, the United Nations' Principles of Medical Ethics state at principle 2 that "It is a gross contravention of medical ethics" for doctors to actively or passively contribute to torture other cruel, inhuman or degrading treatment or punishment, and at principle 3 that "It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not to solely evaluate, protect or improve their physical and mental health.

INTERNAL

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To: Medical professionals
From: Medical Office / Research Department - Americas
Date: 18 February 1993

MEDICAL LETTER WRITING ACTION

Corporal punishment ENGLISH-SPEAKING CARIBBEAN

Keywords

Theme: Corporal punishment/ whipping/ flogging/ medical ethics

Profession/association: Doctors

Summary

Information is given in the attached on corporal punishment and its use in three English-speaking Caribbean countries - The Bahamas, Barbados, and Trinidad and Tobago. Although legislation providing for corporal punishment exists in many English-speaking Caribbean countries, the frequency with which it is imposed varies and public opinion on the use of the punishment appears to be divided. Amnesty International holds corporal punishment to constitute cruel, inhuman and degrading treatment and is calling for an end to the punishment in law. Please see the attached.

Recommended Actions

Letters are requested from medical professionals to the addresses given below:

THE BAHAMAS

expressing concern at the reintroduction of corporal punishment in October 1991, and arguing that it is a punishment which is contrary to international human rights standards

noting the stated commitment of the government of the Bahamas to promote and protect human rights

noting that no sentences have been passed since its reintroduction and urging that the punishment is abolished in law

Addresses

The Honourable Hubert Ingraham
Prime Minister
Office of the Prime Minister
Churchill Building
PO Box N-7147
Nassau
The Bahamas

The Honourable Orville Turnquest
Deputy Prime Minister, Attorney General and
Minister of Justice & Foreign Affairs
Ministry of Foreign Affairs
PO Box N 3746
Nassau
The Bahamas

Some letters could also be sent to the Medical Association of The Bahamas

stating that you have written to the government about the reintroduction of judicial corporal punishment in 1991

noting that you are aware that no sentences have yet been passed since its reintroduction, but stating your belief that the punishment should be abolished in law

asking whether the law as it stands requires the involvement of doctors in the punishment and seeking the support of the Medical Association in calling for the abolition of corporal punishment

The Secretary
 Medical Association of the Bahamas
 PO Box N3125
 Nassau
 Bahamas

BARBADOS

state that you are writing about the issue of judicial corporal punishment; welcome the 1992 ruling of the Supreme Court against reintroduction of the use of the "cat-o'-nine tails" as inhuman and contrary to the constitution

expressing the view that whipping should also be considered as inhuman and urging that legislation is amended to end the use of any form of corporal punishment

Addresses

The Right Honourable
 L. Erskine Sandiford
 Prime Minister
 Office of the Prime Minister
 Government Headquarters
 Bay Street
 Saint Michael
 Barbados

The Honourable
 N. Keith Simmons
 Minister of Justice and Public Safety
 Marine House
 Hastings
 Christchurch
 Barbados

Some letters should also be sent to the Medical Association of Barbados

stating that you have written to the government about the issue of corporal punishment in Barbados, expressing the view that any form of corporal punishment should be outlawed

expressing the view that the requirements that a doctor examine a prisoner to determine fitness for the punishment and that a doctor is present during its infliction are contrary to medical ethics, and urging the medical association to make clear that it opposes medical involvement in corporal punishment

urging the association to support calls for the abolition of any form of corporal punishment in Barbados

General Secretary
 Barbados Association of Medical Practitioners
 Avondale No 16 George St
 Belleville, Barbados

TRINIDAD AND TOBAGO

expressing concern at the use of corporal punishment as a judicial penalty in Trinidad and Tobago

arguing that international human rights standards appear to prohibit this punishment

stating your disquiet at the role of doctors in certifying prisoners fit for whipping and flogging and at their presence during infliction of the punishment which is, in your view, incompatible with medical ethics

urging that whippings and floggings are suspended while appropriate legal measures are adopted to abolish corporal punishment in law

further raising the issue of the use of whipping as a disciplinary measure in prison, which is contrary to the United Nations' Standard Minimum Rules for the Treatment for Prisoners, and urging that the practice end forthwith

Addresses

The Honourable Patrick Manning
Prime Minister
Office of the Prime Minister
Whitehall
Queen's Park West
Port-of-Spain
Trinidad and Tobago

The Honourable Keith Sobion
Attorney General
Ministry of Legal Affairs
Red House, St Vincent Street
Port-of-Spain
Trinidad & Tobago

Some letters could also be sent to the Medical Association of Trinidad and Tobago

expressing your concern at the court-imposed whippings and floggings which are reported to take place in Trinidad and Tobago

noting that, according to law, each person sentenced to corporal punishment must be certified as fit for punishment by a doctor and that a doctor must be present at the infliction of the punishment

expressing the view that such a role for a doctor is contrary to medical ethics and urging that the medical association make clear that it opposes medical involvement in corporal punishment

urging the Association to communicate this opposition both to the government and to doctors in Trinidad and Tobago, as well as to the general public

Honorary Secretary
Trinidad & Tobago Medical Association
115 Abercromby Street
Port-of-Spain
Trinidad