

Inhuman sentencing of children in Antigua and Barbuda

Briefing for the 25th session of the Human Rights Council Universal Periodic Review in April 2016, submitted by the Child Rights International Network (www.crin.org), September 2015.

Inhuman sentencing of child offenders in Antigua and Barbuda

1. Life imprisonment, including detention during Her Majesty's pleasure, and corporal punishment are both lawful penalties for offences committed while under the age of 18.
2. The main laws governing juvenile justice are the Magistrate's Code of Procedure Act 1892, the Juvenile Act 1951, the Juvenile Court Act 1948 and the Corporal Punishment Act 1949. The Juvenile Act defines a child as under 14, a juvenile as under 16 and a young person as 14 or 15.¹ The Magistrate's Code of Procedure Act, as amended in 2004, defines a child as under 14 for criminal matters and under 18 for quasi-criminal and civil matters.² Persons aged between 14 and 18 are designated "young persons".³
3. Children can be held criminally responsible from the age of 8.⁴

Legality of inhuman sentencing

Life imprisonment

4. Persons convicted of offences committed while they were under 18 may be sentenced to life imprisonment. The Treason Act specifies life imprisonment as a punishment for treason⁵ and the Government has stated that this applies to any person, including someone under the age of 18.⁶
5. In prohibiting the death penalty for persons convicted of murder committed while under the age of 18, article 3 of the Offences Against the Person Act prescribes in lieu detention "during Her Majesty's pleasure". There are no limits placed on the duration of detention and the Government has stated that this allows for the possibility of life imprisonment for children.⁷

Corporal punishment

6. Corporal punishment is lawful as a sentence under the criminal law. A number of laws allow whipping as part of, or as an alternative to, punishment only if the offenders under the age of 16, including the Offences Against the Person Act (for child stealing and making or

¹ Juvenile Act, Section 2. Available at: <http://www.laws.gov.ag/acts/chapters/cap-229.pdf>.

² Magistrate's Code of Procedure, Section 2. Available at: <http://www.laws.gov.ag/acts/chapters/cap-255.pdf>. Magistrate's Code of Procedure (Amendment) Act 2004, Section 2. Available at: <http://www.laws.gov.ag/acts/2004/a2004-13.pdf>.

³ Magistrate's Code of Procedure, Section 2 (as amended by the Magistrate's Code of Procedure (Amendment) Act 2004, Section 2).

⁴ Juvenile Act, Sections 2 and 3.

⁵ The Treason Act, Section 8. Available at: <http://www.laws.gov.ag/acts/chapters/cap-439.pdf>.

⁶ *Initial state party report by Antigua and Barbuda to the Committee on the Rights of the Child*, CRC/C/28/Add.22, 9 December 2003, para. 89.

⁷ *Initial state party report by Antigua and Barbuda to the Committee on the Rights of the Child*, CRC/C/28/Add.22, 9 December 2003, para. 88.

possessing gunpowder with intent to commit a crime),⁸ the Railway Offences Act 1927 (e.g. obstructing a railway),⁹ and the Magistrate's Code of Procedure (for unspecified offences).¹⁰ The Juvenile Act, referring to the Magistrate's Court Act, also allows for persons under 18 at the time of the offence to be sentenced to whipping.¹¹

7. According to the Corporal Punishment Act, as amended in 1967, a juvenile may be sentenced by a High Court or a Magistrate's Court to be whipped with up to 12 strokes. Persons under 18 can be whipped but not flogged, using a tamarind rod applied to the buttocks. Females cannot be sentenced to be whipped or flogged.¹² The Act states that corporal punishment may be ordered in addition to other punishment on any person convicted of certain offences of grievous bodily harm, being armed, robbery and assault¹³

Inhuman sentencing in practice

8. 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.

Life imprisonment

9. In the Case of *The Queen v. Avie Howell and Kaniel Martin* in sentencing the defendant who had recently turned 18, the court found his age to be "a critical consideration" in deciding to impose a life sentence and contrasted the situation to crimes committed by persons under the age of 18.¹⁴

Corporal punishment

10. In 2013, the Government stated that no whipping of juveniles had been carried out in the last three decades at least, though it remains a possible punishment prescribed in law.¹⁵ There are several reports of children being whipped in the mid to late 1990s.¹⁶

Law reforms under way

11. A model Child Justice Bill was drafted in 2007 by the Organisation of Eastern Caribbean States and has been seen by the Ministry of Social Transformation and the Ministry of Legal Affairs.¹⁷ The Bill defines a child as a person under 18 and sets the minimum age of criminal responsibility at 12. The Bill does not include corporal or capital punishment among

⁸ Offences Against the Person Act, Sections 54 and 62.

⁹ The Railway Offences Act 1927, Section 3.

¹⁰ The Magistrate's Code of Procedure, Section 105.

¹¹ The Juveniles Act, Section 12.

¹² The Corporal Punishment Act, Sections 3, 10 and 15.

¹³ The Corporal Punishment Act, Sections 2 and 5.

¹⁴ Criminal Case Nos. 29 and 30 of 2010 of Antigua and Barbuda.

¹⁵ *Second, third and fourth state party report by Antigua and Barbuda to the Committee on the Rights of the Child*, CRC/C/ATG/2-4, 2013, para. 281

¹⁶ See *Grays Farm Boy to be Whipped*, Court News, 3 February 1995 ("Corporal Punishment may be coming back into fashion, after a sixteen year old Grays Farm boy was ordered to receive 6 strokes of the whip and was put on probation for 2 years when he appeared in the St. John's Magistrates Court on Wednesday where the youngster pleaded guilty to larceny...."); *Sixteen Year Old to be Flogged for Slapping Teacher*, Court News, 5 February 1997 ("A 16 year old student at the Villa Primary School has been sentenced by Chief Magistrate Ducille to receive six strokes for the charge of battery....")

¹⁷ Draft Child Justice Bill. Available at: <http://www.oecs.org/publications/projects/family-law-and-domestic-violence-reform/332-child-justice-bill/file>.

permitted sentences, though nor does it explicitly prohibit such sentences. The Bill would explicitly prohibit life imprisonment. The Bill was circulated to relevant agencies for review but this review was put on hold.

The review of Antigua and Barbuda by the Human Rights Council

12. In light of the clear international human rights consensus against the imposition of life imprisonment and corporal punishment of children and the recent report of the UN Special Rapporteur on torture recognising that life imprisonment and lengthy sentences of children are grossly disproportionate and amount to a form of cruel and inhuman punishment,¹⁸ we urge States to recommend that Antigua and Barbuda:

- Enact and enforce legislation explicitly prohibiting corporal punishment and life imprisonment, including detention during Her Majesty's pleasure, as a penalty for any offence committed while under the age of 18;
- Immediately review the sentence of any person sentenced to life imprisonment for an offence committed while under the age of 18 to ensure that no one serves a life sentence for an offence committed while a child;
- Raise the minimum age of criminal responsibility;

To read CRIN's detailed report on the inhuman sentencing of children in Antigua and Barbuda, visit www.crin.org/node/30492.

¹⁸ *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 5 March 2015, A/HRC/28/68, para. 74. Available at: www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_68_E.doc.