

Corporal punishment of children in Antigua and Barbuda: Briefing for the Universal Periodic Review, 25th session, 2016

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Global Initiative to
**End All Corporal Punishment
of Children**

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Antigua and Barbuda, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child and recommendations made during the 1st cycle UPR (rejected by the Government).

We hope the Working Group will note with concern the legality of corporal punishment of children in Antigua and Barbuda. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Antigua and Barbuda clearly prohibit all corporal punishment of children in all settings including the home and as a sentence for crime and explicitly repeal the right “to administer reasonable punishment” in the Juvenile Act 1951.

1 Review of Antigua and Barbuda in the 1st cycle UPR (2011) and progress since

- 1.1 Antigua and Barbuda was reviewed in the first cycle of the Universal Periodic Review in 2011 (session 12). The issue of corporal punishment of children was raised in advance questions,¹ in the compilation of UN information² and the summary of stakeholders’ information.³ The Government rejected recommendations to prohibit all corporal punishment of children.⁴
- 1.2 Antigua and Barbuda ratified the Convention on the Rights of the Child in 1993. Prohibiting and eliminating all corporal punishment of children in all settings including the home – through law reform and other measures – is a key obligation under the Convention on the Rights of the Child and other human rights instruments, though it is one frequently evaded by Governments.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Antigua and Barbuda. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Antigua and Barbuda clearly prohibit all corporal punishment of children in all settings including the home and as a sentence for**

¹ Questions by Slovenia and the Czech Republic

² 25 July 2011, A/HRC/WG.6/12/ATG/2, Compilation of UN information, para. 51

³ 22 July 2011, A/HRC/WG.6/12/ATG/3, Summary of stakeholders’ information, paras. 12, 13, 19, 20, 21 and 22

⁴ 14 December 2011, A/HRC/19/5, Report of the working group, paras. 69(9), 69(10), 69(11), 69(12), 69(13), 69(14) and 69(15)

crime and explicitly repeal the right “to administer reasonable punishment” in the Juvenile Act 1951.

2 Legality of corporal punishment in Antigua and Barbuda

Summary of current law and reforms needed in order to achieve prohibition

Corporal punishment of children in Antigua and Barbuda is lawful in all settings – the home, alternative care, day care, schools, penal institutions and as a sentence for crime. Achieving prohibition requires the enactment of legislation clearly prohibiting corporal punishment in all of these settings and explicitly repealing the right “to administer reasonable punishment” in article 5 of the Juvenile Act 1951. A Child Justice Bill is under discussion which includes explicit prohibition of corporal punishment as a sentence of the courts but currently it does not prohibit it in any other setting.

- 2.1 **Home (lawful):** Article 5 of the Juvenile Act 1951 addresses child cruelty but states: “(6) Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer reasonable punishment to him.” Provisions against violence and abuse in the Childcare and Protection Act 2003, the Offences Against the Person Act 1873 and the Domestic Violence (Summary Proceedings) Act 1999 are not interpreted as prohibiting corporal punishment in childrearing.
- 2.2 As part of an initiative to reform child laws in the region, in 2007 the Organisation of Eastern Caribbean States (OECS) circulated a number of draft laws for consideration by member states, including Antigua and Barbuda. The draft bills included a Children (Care and Adoption) Bill that would protect children from “abuse” but not prohibit corporal punishment. It would define parental responsibility with reference to the duties, authority, rights and obligations “which by any law in force in [Antigua and Barbuda], the parent of a child has in relation to that child” (art. 2). The bill has not been enacted in Antigua and Barbuda, but in reporting to the Committee on the Rights of the Child in 2013, the Government stated that the intention is to adopt the draft legislation designed under the OECS Family Law and Domestic Violence Reform Initiative and that this would harmonise legislation with the CRC and CEDAW.⁵
- 2.3 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings under the right “to administer reasonable punishment” in article 5 of the Juvenile Act 1951.
- 2.4 **Day care (lawful):** Corporal punishment is lawful in alternative care settings under the right “to administer reasonable punishment” in article 5 of the Juvenile Act 1951.
- 2.5 **Schools (lawful):** Article 50 of the Education Act 2008 states that “degrading or injurious punishment shall not be administered” but that corporal punishment may be administered “where no other punishment is considered suitable or effective, and only by the principal, deputy principal or any teacher appointed by the principal for that purpose, in a manner which is in conformity with the guidelines issued in writing by the Director of Education”; the punishment should be recorded in a punishment book. Article 51 provides for the Minister to abolish corporal punishment subject to Parliamentary approval.
- 2.6 **Penal institutions (lawful):** The Corporal Punishment Act 1949 provides for flogging for breaches of prison discipline (art. 4), and the Prison Act 1956 allows up to 12 strokes for persons below the age of 21 years (art. 11). Young people convicted of an offence may be sent to a training school:

⁵ [2013], CRC/C/ATG/2-4, Second-fourth state party report, para. 36

the Training Schools Act 1891 allows for enforcement of regulations “by fine, whipping, imprisonment or other punishment” (art. 5). Article 5 of the Juvenile Act 1951, providing for the right “to administer reasonable punishment”, also applies.

- 2.7 A Child Justice Bill, drafted in 2007 by the OECS, has been considered by the Ministry of Social Transformation and the Ministry of Legal Affairs and circulated to relevant agencies for review. As originally drafted, the Bill did not prohibit corporal punishment in institutions accommodating children in conflict with the law. As at June 2015, the Bill was ready for its first reading in Parliament.⁶ It makes provision for the Minister to make rules for the management of a secure residential facility (art. 10) but it does not specify that corporal punishment should not be used in such institutions. Similarly, it provides for children to be sentenced to imprisonment (art. 69) but does not prohibit corporal punishment in prisons.
- 2.8 **Sentence for crime (lawful):** A number of laws allow whipping as part of, or as an alternative to, the specified punishment only if the offender is under 16, including articles 54 and 62 of the Offences Against the Person Act 1873 (for child stealing and making or possessing gunpowder with intent to commit a crime), article 3(2) of the Criminal Law Amendment Act 1887 (for attempting to have “unlawful carnal knowledge” of a girl under 12), article 3 of the Railways Offences Act 1927 (e.g. for obstructing a railway), and article 105 of the Magistrates Code of Procedure Act 1892 (for unspecified offences). Article 12 of the Juvenile Act 1951 allows for persons under 18 at the time of the offence to be sentenced to whipping.
- 2.9 According to the Corporal Punishment Act 1949 a juvenile may be sentenced by a High Court or a Magistrates Court to be whipped up to 12 strokes (arts. 3, 10 and 15). The Court will determine where the punishment will be carried out; a medical practitioner must be present and must have certified that the person is fit to receive the punishment. 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. Under articles 2 and 5, 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 assault.
- 2.10 The Child Justice Bill under discussion in 2015 would explicitly prohibit corporal punishment as a sentence of the courts (art. 72(1)); the Bill would repeal the Juvenile Act 1951 (art. 88).

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** In 2004, in its concluding observations on the state party’s initial report, the Committee on the Rights of the Child recommended to Antigua and Barbuda that corporal punishment be prohibited in all settings, including the home and as a sentence for crime.⁷

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities.

⁶ UNICEF, correspondence with the Global Initiative, 28 June 2015

⁷ 3 November 2004, CRC/C/15/Add.247, Concluding observations on initial report, paras.35, 36 and 48