

# **Corporal punishment of children in Antigua and Barbuda: Briefing for the Universal Periodic Review, 39<sup>th</sup> session, 2021**

*From the Global Partnership to End Violence Against Children, March 2021*



This submission provides an update on the legality of corporal punishment of children in Antigua and Barbuda since its review in the second cycle UPR in 2016. Corporal punishment prohibition is still to be fully achieved in the home, some alternative care settings, day care, schools and penal institutions. Corporal punishment is unlawful as a sentence for children convicted of an offence but some provisions authorizing it are still to be formally repealed.

**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 still lawful despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, other human rights treaty bodies and during the 2<sup>nd</sup> cycle UPR of Antigua and Barbuda in 2016.**

**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 2021 and make a specific recommendation that Antigua and Barbuda enact legislation to explicitly prohibit corporal punishment of children in all settings and repeal any common law defence allowing its use.**

## **1. Review of Antigua and Barbuda in the 2<sup>nd</sup> cycle UPR (2016) and progress since**

- 1.1 Antigua and Barbuda was examined in the second cycle of the Universal Periodic Review in 2016. Recommendations to prohibit corporal punishment in all settings were made.<sup>1</sup> The Government “noted” stating that that corporal punishment of children is an “issue that

<sup>1</sup> 23 June 2016, A/HRC/33/13, Report of the Working Group, paras. 77(69), 77(70)

appeared in laws and for which time would be required in order to change the views of Antiguan.”<sup>2</sup>

- 1.2 Since the review, no law reform appeared to have been initiated with a view to explicitly prohibit corporal punishment of children in all settings. The Government rejected UPR recommendations to prohibit corporal punishment in the home and other settings during the Universal Periodic Review of Antigua and Barbuda in 2011<sup>3</sup> and 2016.<sup>4</sup>
- 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 2021 and make a specific recommendation that Antigua and Barbuda enact a legislation to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, and repeal the common law defence of its use, as a matter of urgency.**

## 2. Legality of Corporal Punishment in Antigua Barbuda

### Summary of current law and opportunities for achieving prohibition

Corporal punishment of children in Antigua and Barbuda is lawful in the home, alternative care settings, day care, schools and penal institutions. Corporal punishment is lawful as a sentence for children convicted of an offence but some provisions authorising it are still to be formally repealed. The “right” of parents, teachers and others to administer “reasonable” punishment on a child is recognised under common law. The near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment can be considered “reasonable” or acceptable. The common law right to punish children should be explicitly repealed, and prohibition enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have authority over children.

- 2.1 **Home (lawful):** Corporal punishment of children is lawful in the home. The right of parents, teachers and others with the lawful charge of a child “to administer reasonable punishment” had been confirmed in the Juvenile Act 1951 (art. 5). This Act was repealed by the Child Justice Act 2015 (in force 2016). However, while the new Act did not include similar confirmation of the right “to administer punishment”, it did not explicitly repeal it: the right continues to be recognised under common law. 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 do not include clear prohibition of corporal punishment.

<sup>2</sup> 23 June 2016, A/HRC/33/13, Report of the Working Group, paras. 56, 63, 69

<sup>3</sup> 14 December 2011, A/HRC/19/5, Report of the working group, para. 69

<sup>4</sup> 23 June 2016, A/HRC/33/13, Report of the Working Group, paras. 56, 63, 69

2.2 The Children (Care and Adoption) Act 2015 defines parental responsibility with reference to the duties, powers, responsibilities, 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) and protects children from “abuse and neglect” (art. 12): it does not prohibit corporal punishment.

The Domestic Violence Act 2015 protects both adults and children in the home, and includes a duty to report ill-treatment of children (art. 35). It defines domestic violence as “any controlling or abusive behaviour that harms the health, safety or well-being of the applicant or any child in the care of the applicant”, including physical abuse and emotional, verbal or psychological abuse (art. 2). But it does not prohibit all corporal punishment in childrearing nor repeal the common law right “to administer reasonable punishment”.

2.3 **Alternative Care Settings (lawful):** Corporal punishment is lawful in alternative care settings under the common law right to administer “reasonable punishment”. The Children (Care and Adoption) Act 2015 states that a person authorised to provide care for a child shall “correct and manage the behaviour of the child” (art. 29(c)) and authorises the Minister to make regulations for “the management and discipline of an approved child care service” (art. 139(2)(m)) but it does not prohibit corporal punishment.

2.4 **Day Care (lawful):** Corporal punishment is lawful in day care settings under the common law right to administer “reasonable punishment”. The Children (Care and Adoption) Act 2015 states that a person authorised to provide care for a child shall “correct and manage the behaviour of the child” (art. 29(c)) and authorises the Minister to make regulations for “the management and discipline of an approved child care service” (art. 139(2)(m)) but it does not prohibit corporal punishment.

2.5 **Schools (lawful):** Corporal punishment is lawful in schools. 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):** Corporal punishment is lawful as a disciplinary measure in penal institutions. The Child Justice Act 2015 (in force 2016) does not prohibit corporal punishment in institutions accommodating children in conflict with the law. Under the Act, children may be referred to a secure residential facility (art. 68): the Minister may make rules for the management of a secure residential facility (art. 10) but there is no specification that this excludes the imposition of corporal punishment. Similarly, the Act provides for children over 14 to be sentenced to imprisonment (art. 69) but does not prohibit corporal punishment in prisons.

While the Act specifies that a sentence of corporal punishment cannot be imposed on a child (art. 72), it does not prohibit the use of corporal punishment as a disciplinary measure in penal institutions accommodating children who have been convicted of an offence.

- 2.7 **Sentence for crime (unlawful):** Corporal punishment is prohibited as a sentence for crime in article 72 of the Child Justice Act 2015: “(1) Subject to subsection (2), a sentence of life imprisonment or capital punishment or any form of corporal punishment shall not be imposed on a child.” (Paragraph (2) concerns the death sentence and imprisonment.) However, provisions authorizing judicial corporal punishment for persons under 18 - in the Offences Against the Persons Act 1873, the Criminal Law Amendment Act 1887, the Railways Offences Act 1927, the Magistrates Code of Procedure Act 1949 and the Corporal Punishment Act 1949 - should be formally repealed.

### 3. Recommendations by human rights treaty bodies

- 3.1 **CRC:** The Committee on the Rights of the Child has twice expressed concern at corporal punishment of children in Antigua and Barbuda, and recommended it be explicitly prohibited in all settings – in its concluding observations on the state party’s initial report in 2004<sup>5</sup> and on the state party’s second to fourth report in 2017.<sup>6</sup>
- 3.2 **CAT:** The Committee Against Torture recommended that corporal punishment is explicitly prohibited in all settings– in its concluding observations made in the absence of a report in 2017.<sup>7</sup>
- 3.3 **CEDAW:** The Committee on the Elimination of Discrimination Against Women recommended that corporal punishment is explicitly prohibited in schools– in its concluding observations on the state party’s fourth to seventh report in 2019.<sup>8</sup>

*Briefing prepared by End Corporal Punishment on behalf of the Global Partnership to End Violence Against Children*

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<sup>5</sup> 3 November 2004, CRC/C/15/Add.247, Concluding observations on initial report, paras. 35, 36 and 48

<sup>6</sup> 30 June 2017, CRC/C/ATG/CO/2-4, Concluding observations on second/fourth report, paras. 28 and 29

<sup>7</sup> [August 2017], CAT/C/ATG/CO/1, Concluding observations in absence of report, Advance unedited version, paras. 7, 39 and 40

<sup>8</sup> 14 March 2019, CEDAW/C/ATG/CO/4-7, Concluding observations on fourth/seventh report, paras. 34 and 35