

Corporal punishment of children in Anguilla

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Child population 3,786 (Government of Anguilla, 2001)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings and some day care.

The right of parents to administer “reasonable chastisement” is recognised under English common law, confirmed in article 232 of the Criminal Code 2010. This defence should be repealed, and prohibition should be enacted of all corporal punishment by all persons with authority over children.

Alternative care settings – Prohibition should be enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment is prohibited in early childhood education facilities under education law. Prohibition should now be enacted in relation to all other early childhood care (nurseries, crèches, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Note: Anguilla is a British Overseas Territory. As such, it has its own constitution and domestic laws and substantial responsibility for its internal affairs, including responsibility for the protection and promotion of human rights and a duty to ensure that local law complies with the relevant convention and court judgments and is non-discriminatory. The UK Government has responsibility for international relations, internal security, defence, good governance and the wellbeing of the people.¹

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home under common law. Article 232 of the Criminal Code 2010 punishes ill-treatment of children but also confirms the right of parents, teachers or other persons with lawful custody of a child or young person to administer “reasonable punishment”. Provisions against violence and abuse in the Criminal Code 2010, the Offences Against the Person Act, the Maintenance of Children Ordinance and the Constitution 1982 are not interpreted as prohibiting all corporal punishment in childrearing.

In 2012, the Family Reform Committee under the Ministry of Social Development was planning to consider a number of Bills drafted by the Organisation of Eastern Caribbean States (OECS), including a Children (Care and Adoption Bill) and a Child Justice Bill. As originally drafted in 2007 these Bills did not prohibit all corporal punishment; we have yet to examine the current texts.

In its 2014 state party report to the Committee on the Rights of the Child, the UK Government stated that it “does not condone any violence towards children and has clear laws to deal with it” but “our view is that a mild smack does not constitute violence”.² The UK Government has on three occasions rejected recommendations to prohibit all corporal punishment of children made during the Universal Periodic Review of the UK (see below).

A Domestic Violence Bill is under discussion.³ In its draft form in 2014, it defines domestic violence as “any controlling or abusive behaviour that harms or may harm the health, safety or well-being of a person or a child regardless of gender or sexuality” (art. 1) and puts an obligation on medical and educational professionals to report suspicions that a child is or may have been subjected to domestic violence (art. 35), but it does not prohibit all corporal punishment or repeal the right to administer “reasonable punishment” in the Criminal Code.

The Family Law (Guardianship, Custody and Access to Children) Bill 2015 and the Status of Children Bill 2015 were introduced to the House of Assembly in 2015, and in October 2015 were published for public consultation.⁴ Neither includes prohibition of corporal punishment of children.

¹ [2014], CRC/C/GBR/5, Fifth state party report, annex, para. 2

² [2014], CRC/C/GBR/5, Fifth state party report, annex, para. 11

³ UNICEF/UKAID (2015), *Current state of legislation in the Eastern Caribbean and British Overseas Territories*; see also <http://theanguillian.com/2016/03/witnesses-to-get-protection-under-proposed-legislation/>, dated 14 March 2016, accessed 13 August 2016

⁴ www.gov.ai/documents/hoa/Bills%20Introduced%20to%20the%20Anguilla%20House%20of%20Assembly%20by%20the%20Hon%20Member%20for%20Island%20Harbour%20and%20Foreword.pdf, accessed 13 August 2016

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings. Corporal punishment is lawful under the right to administer “reasonable punishment” in article 232 of the Criminal Code 2010 (see under “Home”).

Day care

Corporal punishment is prohibited in some but not all forms of day care. The Education Act 2012 prohibits corporal punishment in early childhood education facilities (art. 143) but there is no explicit prohibition of corporal punishment in other early childhood care settings and in day care for older children. Corporal punishment is lawful under the right to administer “reasonable punishment” in article 232 of the Criminal Code 2010 (see under “Home”).

Schools

Corporal punishment is prohibited in schools in the Education Act 2012. Article 143 (“Abolition of corporal punishment”) states: (1) No person who—(a) is employed at or in respect of a school; or (b) owns, manages or controls an assisted private school, a private educational institution or an early childhood education facility, shall administer corporal punishment to any student or child enrolled at or attending the school, institution or facility. (2) No person who, on behalf of a school, is supervising or controlling any student or child enrolled at or attending such school shall administer corporal punishment to the student or child. (3) Any person referred to in subsection (1) or (2) who administers corporal punishment to any student or child in contravention of this section commits an offence and is liable on summary conviction to a fine of \$5,000.” Article 144 defines corporal punishment: “(1) Subject to subsection (2), references in section 143 to administering corporal punishment to a student or child are to doing anything that involves the application of physical force to punish or correct the student or child, whether or not there are also other reasons for so doing. (2) For the purposes of section 143, a person shall not be considered as administering corporal punishment by virtue of anything done for reasons that include averting an immediate danger of personal injury to, or an immediate danger to the property of, any person, including the student or child concerned.”

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions, but there is no explicit prohibition. The Prison Regulations 2001 under the Prison Act limit the amount of force used by a prison officer to what is considered “necessary” (s27) and do not include corporal punishment in the list of punishments for disciplinary offences (s33).

Sentence for crime

Corporal punishment is abolished as a sentence for crime in the Abolition of Corporal Punishment Ordinance 1998 and in article 373 of the Criminal Code 2010. Article 6 of the Constitution 1982 states that no person shall be subjected to torture or to inhumane or degrading punishment or other

treatment. There is no provision for judicial corporal punishment in the Juvenile Act,⁵ the Juvenile Courts Act⁶ or the Criminal Procedure Code.⁷ A Child Justice Bill has long been under discussion but we have no detailed information.⁸ As at April 2016, it had not been tabled in Parliament.⁹

Universal Periodic Review of the UK's human rights record

The UK was examined in the first cycle of the Universal Periodic Review in 2008 (session 1). The following recommendations were made:¹⁰

“To consider further measures in order to address the problem of violence against children, including corporal punishment. (Italy)

“To reconsider its position about the continued legality of corporal punishment against children. (Sweden)

“To consider going beyond current legislation and to ban corporal punishment, also in the private sector and in its Overseas Territories. (France)”

The Government rejected the recommendations, stating that it sees no need for law reform since it believes the current law is working well, parents should be allowed to discipline children and surveys show that the use of corporal punishment in childrearing has declined.¹¹ It accepted the recognition to consider going beyond current legislation in relation to protecting children from violence but rejected “the implication that it is failing in this regard through the application of its policy on corporal punishment”.¹²

Examination in the second cycle of the UPR took place in 2012 (session 13). The following recommendations were made:¹³

“Reconsider its position about the continued legality of corporal punishment of children (Sweden);

“Take measures to ensure the freedom of children from physical punishment in accordance with the Convention on the Rights of the Child (Norway);

“Introduce a ban on all corporal punishment of children as recommended by the CRC and other treaty bodies (Finland)”

The Government rejected the recommendations.¹⁴

The UK's third cycle examination took place in 2017 (session 27). The following recommendations were made:¹⁵

⁵ www.gov.uk/laws/J020-00-Juvenile%20Act/, last accessed 13 August 2016

⁶ www.gov.uk/laws/J025-00-Juvenile%20Courts%20Act/, last accessed 13 August 2016

⁷ www.gov.uk/laws/C150-Criminal%20Procedure%20Act/, last accessed 13 August 2016

⁸ UNICEF/UKAID (2015), *Current state of legislation in the Eastern Caribbean and British Overseas Territories*

⁹ <http://theanguillian.com/2016/04/a-welcome-outreach-for-juvenile-offenders/>, accessed 13 August 2016

¹⁰ 23 May 2008, A/HRC/8/25, Report of the working group, paras. 56(2), 56(3), 56(4) and 56(5)

¹¹ 23 May 2008, A/HRC/8/25, Report of the working group, para. 25

¹² 25 August 2008, A/HRC/8/25/Add.1, Report of the working group: Addendum, paras. 28, 29 and 30

¹³ 6 July 2012, A/HRC/21/9, Report of the working group, paras. 110(78), 10(79) and 110(80)

¹⁴ 17 September 2012, A/HRC/21/9/Add.1, Report of the working group: Addendum, annex

¹⁵ 8 May 2017, A/HRC/WG.6/27/L.7, Draft report of the working group, unedited version, paras. 6(193), 6(194), 6(195), 6(196), 6(197), 6(198) and 6(199)

“In all devolved administrations, overseas territories and Crown dependencies, prohibit all corporal punishment in the family, including through the repeal of all legal defences, such as “reasonable chastisement” (Liechtenstein);

“Ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care (Liechtenstein);

“Prohibit corporal punishment in all settings, including the family (Ireland);

“Reconsider its position on the legality of corporal punishment of children (Mongolia);

“Ban corporal punishment of children to ensure the full protection and freedom from violence for all children (Sweden);

“Consider prohibiting corporal punishment against children and ensure that it is explicitly prohibited in all schools and educational institutions, and all other institutions and forms of alternative care (Croatia);

“Take further actions in protecting the rights of the child by prohibiting all corporal punishment of children as required by the convention of the Rights of Child (Estonia)”

The Government rejected all seven recommendations, stating: “the UK does not condone any violence towards children and has clear laws to deal with it. The ‘reasonable chastisement’ defence in s.58 Children Act 2004 cannot be used when someone is charged with assault causing actual or grievous bodily harm, or with child cruelty. Parents should not be criminalised for giving a child a mild smack in order to control their behaviour. The Crown Dependencies currently follow a similar approach to the UK. The decision on whether to prohibit corporal punishment and in what settings in the Overseas Territories is a decision, ultimately, for Territory governments. The UK Government is keen to support those Territories who wish to move away from the use of corporal punishment and explore alternative measures, including the development of positive parenting strategies and effective behaviour management techniques.”¹⁶

Recommendations by human rights treaty bodies

Note: According to the UK’s 2014 Common Core Document¹⁷, the following treaties apply in Anguilla: the European Convention on Human Rights, the UN Convention against Torture and the UN Convention on the Rights of the Child. The UN Convention on the Elimination of All Forms of Discrimination Against Women was extended to Anguilla in 2016. The European Social Charter does not apply.

Committee on the Rights of the Child

(3 June 2016, CRC/C/GBR/CO/5, Concluding observations on fifth report, para. 40)

“With reference to its general comment No. 8 and its previous recommendations, the Committee urges the State party, in all devolved administrations, Overseas Territories and Crown Dependencies, to:

¹⁶ 7 September 2017, A/HRC/36/9/Add.1, Report of the working group: addendum, para. 3; see also 29 August 2017, Annex to the response to the recommendations received on 4 May 2017

¹⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418207/human-rights-common-core-document.pdf, accessed 19 June 2017

- a) prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as “reasonable chastisement”;
- b) ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care;
- c) strengthen its efforts to promote positive and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, with a view to eliminating the general acceptance of the use of corporal punishment in child-rearing.”

Committee on the Rights of the Child

(20 October 2008, CRC/C/GBR/CO/4, Concluding observations on third/fourth report, paras. 40, 41 and 42)

“The Committee, while noting amendments to legislation in England, Wales, Scotland and Northern Ireland which restrict the application of the defence of ‘reasonable chastisement’, is concerned that this defence has not been removed. The Committee welcomes the commitment of the National Assembly in Wales to prohibiting all corporal punishment in the home, but notes that under the terms of devolution it is not possible for the Assembly to enact the necessary legislation. The Committee is concerned at the failure of State party to explicitly prohibit all corporal punishment in the home and emphasizes its view that the existence of any defence in cases of corporal punishment of children does not comply with the principles and provisions of the Convention, since it would suggest that some forms of corporal punishment are acceptable.

“The Committee is further concerned that corporal punishment is lawful in the home, schools and alternative care settings in virtually all overseas territories and crown dependencies.

“The Committee, reiterating its previous recommendations (CRC/C/15/Add.188, para. 35), in the light of its general comment No. 8 on ‘the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment’, as well as noting similar recommendations made by the Human Rights Committee; the Committee on the Elimination of Discrimination Against Women; and the Committee on Economic, Social and Cultural Rights, recommends that the State party:

- a) prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, in England and Wales, Scotland, and Northern Ireland, and in all Overseas Territories and Crown Dependencies;
- b) ensure that corporal punishment is explicitly prohibited in schools and all other institutions and forms of alternative care throughout the United Kingdom and in the overseas territories and crown dependencies;
- c) actively promote positive and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, with a view to raising public awareness of children’s right to protection from all corporal punishment and to decreasing public acceptance of its use in childrearing;
- d) provide parental education and professional training in positive child-rearing.”

Committee on the Rights of the Child

(16 October 2000, CRC/C/15/Add.135, Concluding observations on initial report on Overseas Territories and Crown Dependencies, paras. 35, 36, 55 and 57)

“The Committee expresses grave concern that corporal punishment is still widely practised in many of the Overseas Territories and that domestic legislation generally does not prohibit and eliminate its use in schools, care institutions and homes. It also notes with concern that the British Virgin Islands is the only remaining Territory that has not yet prohibited by law the use of judicial corporal punishment.

“The Committee recommends that all appropriate measures, including of a legislative nature, be taken to prohibit and eliminate all forms of corporal punishment within the school, juvenile justice and alternative care systems and in the home. The Committee further suggests that awareness raising and education campaigns be conducted to change public attitudes and ensure that alternative forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention, especially articles 19 and 28.2.

“The Committee notes that legislation relating to juvenile justice has been enacted in all of the Overseas Territories. While the Committee appreciates that the legal abolition of judicial corporal punishment in most of the Overseas Territories, it is concerned that the bill to abolish it in the British Virgin Islands has not yet been enacted....

“The Committee further recommends that the British Virgin Islands reinforce efforts to enact the bill introduced into the Legislative Council to abolish the use of judicial corporal punishment in the islands.”

Committee Against Torture

(24 June 2013, CAT/C/GBR/CO/5, Concluding observations on fifth report, para. 29)

“The Committee takes note of amendments to legislation in England, Wales, Scotland and Northern Ireland, which limit the application of the defence of “reasonable punishment” (or “justifiable assault” in Scotland), but remains concerned that some forms of corporal punishment are still legally permissible in the home by parents and those in *loco parentis*. In addition, it is concerned that some forms of corporal punishment are lawful in the home, schools and alternative care settings in almost all overseas territories and Crown dependencies.

The Committee recommends that the State party prohibits corporal punishment of children in all settings in the Metropolitan territory, Crown dependencies and overseas territories, repealing all legal defences currently in place, and further promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment.”

Committee Against Torture

(17 November 1998, A/54/44, Concluding observations on third report, para. 74)

“Positive aspects:

d) the removal of corporal punishment as a penalty in several of the Dependent Territories.”

Committee Against Torture

(9 July 1996, A/51/44, Concluding observations on second report, para. 65)

“The Committee recommends that the Government of the United Kingdom take the following measures:

i) reconsidering corporal punishment with a view to determining if it should be abolished in those dependencies that still retain it.”

Committee Against Torture

(26 June 1993, A/48/44, Concluding observations on initial report, para. 283)

“... The territories appeared to be governed in accordance with the obligations on the Convention and the Committee congratulated the Government of the United Kingdom in this respect. The Committee was, however, interested in receiving more detail pertaining to cases of corporal punishment in the territories retaining it. The nature and incidence of such punishment, together with details of the crime and the characteristics of the offender, should be forwarded to the Committee when the information is gathered...”

Prevalence/attitudinal research in the last ten years

None identified.