

Corporal punishment of children in Antigua and Barbuda

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Child population 27,000 (UNICEF, 2015)



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, day care, schools and penal institutions. Corporal punishment is unlawful as a sentence for children convicted of an offence but some provisions authorising it are still to be formally repealed.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 The common law right to punish children should be explicitly repealed, and prohibition enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have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.

Alternative care settings – Corporal punishment should be explicitly prohibited in all alternative care settings (formal foster care, institutions, children’s homes, orphanages, places of safety, emergency care, etc).

Day care – Legislation should clearly prohibit corporal punishment in all formal early childhood care (nurseries, crèches, family centres, etc) and all formal day care for older children (after-school childcare, childminding, day centres, etc).

Schools – Provisions for corporal punishment in the Education Act 2008 should be repealed, and prohibition enacted in legislation applicable to all educational settings, public and private.

Penal institutions – Provisions for “disciplinary” corporal punishment in the Corporal Punishment Act 1949 and the Prison Act 1956 should be repealed and corporal punishment prohibited as a disciplinary measure in all institutions accommodating children in conflict with the law.

Sentence – Provisions authorising 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Offences Act 1927, the Magistrates Code of Procedure Act 1949 and the Corporal Punishment Act 1949 – should be formally repealed.

Current legality of corporal punishment

Home

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.

The Government rejected recommendations to prohibit corporal punishment in the home and other settings during the Universal Periodic Review of Antigua and Barbuda in 2011.¹ In reporting to the Committee on the Rights of the Child in 2013, the Government stated that the intention is, in the context of the OECS Family Law and Domestic Violence Reform Initiative of the Organisation of Eastern Caribbean States (OECS) – to harmonise legislation with the CRC and CEDAW.² However, legislation subsequently adopted did not include prohibition of corporal punishment. In 2016, the Government again did not support recommendations to prohibit all corporal punishment of children made during the Universal Periodic Review, stating “time would be required in order to change the views of Antiguans.”³

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”.

Alternative care settings

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.

¹ 14 December 2011, A/HRC/19/5, Report of the working group, para. 69

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

³ 23 June 2016, A/HRC/33/13, Report of the Working Group, paras. 69, 77

Day care

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.

Schools

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.

In reporting to the Committee on the Rights of the Child in 2013, the Government drew attention to the UNICEF “Child-Friendly School Initiative”, stating that the Ministry of Education intended to introduce it to all primary schools by the 2014-2015 school year. But the Government also confirmed that corporal punishment remains lawful and widely used in schools.⁴ However, in 2017 the Government declared that “use of corporal punishment by teachers on a wide unsupervised scale is not ‘legal’ and is largely not practiced in public schools” as the Education Act 2008 only allows the Principal, Deputy Principal, or a teacher designated by them to administer corporal punishment to students. It further stated that it was anticipated the legislation authorising corporal punishment would be “removed in due course”.⁵

Penal institutions

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. The Training Schools Act 1891, which provided for whipping, was repealed by the new Child Justice Act. However, the new Act does not repeal or amend the provisions for flogging for breach of prison discipline, including of persons under 21, in the Corporal Punishment Act 1949 (art. 4) and the Prison Act 1956 (art. 11).

⁴ [2013], CRC/C/ATG/2-4, Second-fourth state party report, paras. 89 and 90

⁵ 16 May 2017, CRC/C/ATG/Q/2-4/Add.1, Reply to list of issues, para. 4

Diversion options must meet minimum standards specified in the Child Justice Act, including to “promote the dignity and well-being of the child” and not to be “exploitative, harmful or hazardous to the physical or mental health of the child” (art. 44), but there is no requirement for the child not to be subjected to corporal punishment.

Sentence for crime

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.)

The Child Justice Act 2015 repeals the Juvenile Act 1951, which had provided for whipping (art. 12), but it appears that other provisions for judicial corporal punishment of children are still to be formally repealed – including those in the Offences Against the Persons Act 1873 (arts. 54 and 62), the Criminal Law Amendment Act 1887 (art. 3(2)), the Railways Offences Act 1927 (art. 3), the Magistrates Code of Procedure Act 1949 (art. 105) and the Corporal Punishment Act 1949 (arts. 3, 10 and 15).

Universal Periodic Review of Antigua and Barbuda’s human rights record

Antigua and Barbuda was examined in the first cycle of the Universal Periodic Review in 2011 (session 12). The following recommendations were made:⁶

“Prohibit corporal punishment of children in all settings (Slovenia);

“Criminalize the corporal punishment of children in all circumstances and places (Uruguay);

“Prohibit all forms of corporal punishment of children in any setting including the home and as a sentence of the courts (Uruguay);

“Introduce a legal prohibition of corporal punishment as a punitive and corrective measure in the school system and in the family (Spain);

“Consider taking necessary measures aimed at prohibiting all forms of corporal punishment (Brazil);

“Consider the elimination of corporal punishment of children under 18 and ensure the compliance of its legal system with the Convention on the Rights of the Child (Chile);

“Enact legislation, which prohibits all corporal punishment of children in all settings, including as a sentence in the courts and ensure that positive and non-violent forms of discipline are promoted through awareness raising campaigns about the impact of corporal punishment on children (Hungary)”

The Government stated that the Corporal Punishment Act should be repealed⁷ but rejected the above recommendations.

⁶ 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)

⁷ 14 December 2011, A/HRC/19/5, Report of the working group, para. 19

Antigua and Barbuda was examined in the second cycle of the Universal Periodic Review in 2016 (session 25). The following recommendations were made:⁸

“Prohibit and criminalize the corporal punishment of children (Honduras);

“Prohibit corporal punishment of children in all settings, as previously recommended (Slovenia)”

The recommendations did not enjoy the support of Antigua and Barbuda and were thus “noted”.⁹ During the dialogue, Sierra Leone also stated that the Government should consider abolishing corporal punishment as a sentence, and Uruguay was concerned that the legal framework authorized the use of corporal punishment and invited the Government to review this legislation. The Government stated that corporal punishment of children is an “issue that appeared in laws and for which time would be required in order to change the views of Antiguan.”¹⁰

Examination in the third cycle of the Universal Periodic Review is scheduled for 2021.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(30 June 2017, CRC/C/ATG/CO/2-4, Concluding observations on second/fourth report, paras. 28 and 29)

“The Committee remains deeply concerned that corporal punishment is widespread and administered systematically in schools, in the home, in alternative care and day care settings and other institutions and that it continues to be widely accepted in society as a means of disciplining children. It is particularly concerned that certain provisions of the Education Act (2008) allow the principal, deputy principal or a teacher of a school to administer corporal punishment.

“The Committee urges the State party to:

(a) End all forms of corporal punishment in all settings, in particular in schools, in the home and in private and public institutions;

(b) Expeditiously repeal the relevant provisions of the Education Act (2008);

(c) Undertake awareness-raising programmes, including education campaigns, to change public attitudes and provide training and information on alternative forms of non-violent discipline, ensuring that they are consistent with the child’s human dignity;

(d) Train and raise the awareness of educators and other professionals working with and for children on positive behavioural management with a view to promoting safer and more protective schooling environments.”

Committee on the Rights of the Child

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

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

⁹ 23 June 2016, A/HRC/33/13, Report of the Working Group, para. 77

¹⁰ 23 June 2016, A/HRC/33/13, Report of the Working Group, paras. 56, 63, 69

“The Committee is seriously concerned about the Corporal Punishment Act and the 1973 Education Act which provides for corporal punishment, which is in clear contravention of article 19 of the Convention. The Committee is concerned that corporal punishment is still widely practised in the family, in schools and in other institutions.

“The Committee recommends that the State party:

- a) consider the immediate repeal of, or amendment to, the Corporal Punishment Act and the Education Act;
- b) expressly prohibit corporal punishment by law in the family, schools and other institutions;
- c) conduct awareness-raising campaigns to inform the public about the negative impact of corporal punishment on children and actively involve children and the media in the process; and
- d) ensure that positive, participatory, non-violent forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention, especially article 28, paragraph 2, as an alternative to corporal punishment at all levels of society.

“The Committee recommends that the State party take the necessary measures to prevent child abuse and neglect by, inter alia:

- a) carrying out public education campaigns that raise awareness of the consequences of ill-treatment of children and alternative measures of disciplining children, addressing sociocultural barriers that inhibit victims from seeking assistance....”

Committee Against Torture

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

“The Committee also welcomes the following legislative measures taken by the State party to give effect to the Convention, in particular: ... (d) The Child Justice Act, No. 23 of 2015.”

“The Committee is concerned that provisions in the Corporal Punishment Act 1949 and the Prison Act 1956 permit flogging for breach of prison discipline. While noting that corporal punishment of children is prohibited as a sentence of crime under the Child Justice Act 2015, the Committee regrets that corporal punishment is lawfully administered at home and in schools, day care settings and penal institutions (art. 16).

“The Committee calls on the State party to explicitly prohibit corporal punishment in all settings and repeal all the provisions in domestic legislations that permit corporal punishment in any setting.”

Prevalence/attitudinal research in the last ten years

None identified.