

Inhuman sentencing of child offenders in Antigua and Barbuda

Briefing for the 12th session of the Human Rights Council Universal Periodic Review in October 2011, submitted by the Child Rights Information Network (www.crin.org, info@crin.org), March 2011

Children's right not to be sentenced to capital punishment, corporal punishment and imprisonment for life

Sentencing child offenders – persons under 18 years of age at the time of the offence – to capital punishment, corporal punishment and life imprisonment has been consistently denounced by UN Treaty Bodies and Special Procedures and by regional human rights mechanisms as a violation of fundamental human rights to life and to protection from cruel, inhuman or degrading treatment or punishment. These rights are stated in the Universal Declaration on Human Rights, the UN International Covenant on Civil and Political Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the UN International Covenant on Civil and Political Rights and its Second Protocol aiming at the abolition of the death penalty, and the UN Convention on the Rights of the Child. Successive resolutions of the Human Rights Council and the General Assembly have called for an end to executions of children and life imprisonment without parole. Capital punishment for children is explicitly prohibited in the Geneva Conventions.¹

Article 37 of the UN Convention on the Rights of the Child

States Parties shall ensure that:

- a. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- b. No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

The Child Rights Information Network (CRIN) is campaigning to end the legality and practice of inhuman sentencing of children in States which have yet to comply with their human rights obligations, including in Antigua and Barbuda.

¹ Further information on international and regional human rights standards in relation to these forms of sentencing is available at: <http://www.crin.org/violence/campaigns/sentencing/>.

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In Antigua and Barbuda, child offenders may not be sentenced to death, but they may be sentenced to life imprisonment and to corporal punishment.

The death penalty

Article 3 of the Offences Against the Person Act 1873 prescribes the death penalty for murder, but also states that “sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the Court that at the time when the offence was committed he was under the age of eighteen years”. The Government has stated² that this prohibition also applies to the offence of treason under the Treason Act 1984, although this is not explicitly stated in that Act.

Corporal punishment

There are many laws which authorise male juvenile offenders to be sentenced to whipping, including the Offences Against the Person Act 1873, the Criminal Law Amendment Act 1887, the Railways Offences Act 1927, the Magistrates Code of Procedure Act 1892 and the Juvenile Act 1951. According to the Corporal punishment Act 1949, a juvenile may be sentenced to be whipped up to 12 strokes at a location determined by the court, in the presence of a medical practitioner who has certified that he is fit to receive the punishment; and males under 18 can be whipped but not flogged, with a tamarind rod applied to the buttocks. The Act states that corporal punishment may be ordered in addition to other punishment on any person convicted of certain specified offences.

Official figures on the number of child offenders sentenced to corporal punishment appear to be unavailable. In 2003, it was reported that no whipping had been carried out for many years,³ but there were several reports of children being whipped as a sentence in the mid- to late 1990s⁴ and whipping remains on the statute books.

Life imprisonment

Child offenders may be sentenced to life imprisonment. The Treason Act prescribes life imprisonment as the punishment for treason, and the Government has stated that this applies to any person, including someone under 18 years of age.⁵ Furthermore, in prohibiting the death penalty for child offenders convicted of murder (see above), the Offences Against the Person Act prescribes in lieu detention “during Her Majesty’s pleasure”: no limits are placed on the duration of detention and the Government has confirmed that imprisonment for life is possible.⁶

We have no information regarding the numbers of child offenders sentenced to life imprisonment or to detention “during Her Majesty’s pleasure”.

² CRC/C/28/Add.22, 9 December 2003, Initial state party report to the Committee on the Rights of the Child, para. 89.

³ CRC/C/28/Add.22, 9 December 2003, Initial state party report to the Committee on the Rights of the Child, para. 91.

⁴ For example, see “Grays Farm Boy to be Whipped”, Court News, 3 February 1995; “Sixteen Year Old to be Flogged for Slapping Teacher”, Court News, 5 February 1997.

⁵ CRC/C/28/Add.22, 9 December 2003, Initial state party report to the Committee on the Rights of the Child, para. 89.

⁶ CRC/C/28/Add.22, 9 December 2003, Initial state party report to the Committee on the Rights of the Child, para. 88.

Moves towards reform

A model Child Justice Bill was drafted in 2007 by the Organisation of Eastern Caribbean States (OECS) and has been seen by the Ministry of Social Transformation and the Ministry of Legal Affairs. The Bill does not include corporal or capital punishment among permitted sentences, yet still does not explicitly prohibit these; it explicitly prohibits life imprisonment. The Bill was circulated to relevant agencies for review but this review was put on hold and as of April 2010 has not been resumed.

Recommendations by international treaty monitoring bodies

Antigua and Barbuda's initial report to the Committee on the Rights of the Child was examined in 2004. The Committee expressed serious concern about the Corporal Punishment Act and about the possibility of child offenders being sentenced to imprisonment for life; it recommended that the Corporal Punishment Act be repealed and that juvenile justice legislation be brought into line with international human rights standards, particularly article 37 of the Convention on the Rights of the Child.⁷

The Review of Antigua and Barbuda by the Human Rights Council

In light of the clear international human rights consensus against the imposition of capital punishment, life imprisonment and corporal punishment on child offenders, the specific recommendations to Antigua and Barbuda made by the Committee on the Rights of the Child, and the current legality of life imprisonment and corporal punishment in the state, we hope that members of the Human Rights Council will make the following recommendations to the Government of Antigua and Barbuda during its Universal Periodic Review:

1. Repeal all legal provisions authorising corporal punishment as a sentence of the courts for persons under 18 years of age at the time of the offence.
2. Explicitly prohibit life imprisonment and indeterminate detention ("during Her Majesty's pleasure") of child offenders, including when such imprisonment is in lieu of the death penalty, and legislate for the detention of children to be imposed only as a last resort and for the shortest possible duration.

⁷ CRC/C/15/Add.247, 3 November 2004, Concluding observations on initial report, paras. 35, 36, 68 and 69.