

## **Inhuman sentencing of children in Antigua and Barbuda**

### **Introduction**

While capital punishment is expressly prohibited in national law, in sentencing persons under 18 at the time of the offence, life imprisonment and corporal punishment are lawful.

The main laws governing juvenile justice are the Magistrates Code of Procedure Act 1892, the Juvenile Act 1951, the Juvenile Court Act 1948 and the Corporal Punishment Act 1949. The Juvenile Act defines a child as under 14, a juvenile as under 16, and a young person as 14 or 15, and sets the minimum age of criminal responsibility at 8.<sup>1</sup> The Magistrates Code of Procedure Act, as amended in 2004, defines a child as under 14 for criminal matters and under 18 for quasi criminal and civil matters; a young person is aged 14 to 17 for criminal matters.<sup>2</sup>

The country's juvenile justice system is currently undergoing reform as part of the Organisation of Eastern Caribbean States' Juvenile Justice Reform Programme and has taken steps to establish Family Courts to specialise in criminal behaviour and punishment of children.

### **Legality of inhuman sentencing**

#### **Death penalty**

The death penalty is unlawful for persons under 18 at the time of the offence. Under article 3 of the Offences Against the Person Act 1873 a person convicted of murder shall “suffer death as a felon”, but it also states: “Provided 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....”

Capital punishment is the prescribed punishment for high treason under the Treason Act 1984.<sup>3</sup> The Act does not specify an age limit on this sentence but the Government has stated that the limitation regarding the death penalty in article 3 of the Offences Against the Person Act applies also to the offence of treason.<sup>4</sup>

There is no provision for capital punishment in the Juvenile Act or the Magistrates Code of Procedure Act.

#### **Corporal punishment**

Corporal punishment is lawful as a sentence under the criminal law. A number of laws allow whipping as part of, or an alternative to, the punishment only if the offender is under the age of 16, including the Offences Against the Person Act (for child stealing and making or possessing gunpowder with intent to commit a crime),<sup>5</sup> the Railways Offences Act 1927 (e.g. for obstructing a railway),<sup>6</sup> and the Magistrates Code of Procedure (for unspecified offences).<sup>7</sup>

The Juvenile Act, referring to the Magistrates Court Act, also allows for persons under 18 at the

<sup>1</sup> Articles 2 and 3; see also Cipriani, D. (2009), *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective*, Farnham: Ashgate Publishing Limited

<sup>2</sup> Article 2

<sup>3</sup> Article 7

<sup>4</sup> CRC/C/28/Add.22, 9 December 2003, Initial state party report to the Committee on the Rights of the Child, para. 89

<sup>5</sup> Articles 54 and 62

<sup>6</sup> Article 3

<sup>7</sup> Article 105

time of the offence to be sentenced to whipping.<sup>8</sup>

According to the Corporal punishment Act, as amended in 1967, a juvenile may be sentenced by a High Court or a Magistrates Court to be whipped with up to 12 strokes. 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.<sup>9</sup> The Act states that 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.<sup>10</sup>

For further details, see the Global Initiative to End All Corporal Punishment of Children report on corporal punishment in Antigua and Barbuda.<sup>11</sup>

## **Life imprisonment**

Life imprisonment and detention during her Majesty's pleasure are both lawful penalties for crimes committed by persons when under the age of 18.

The Treason Act specifies life imprisonment as the punishment for treason,<sup>12</sup> and the Government has stated that this applies to any person, including persons under 18.<sup>13</sup>

In prohibiting the death penalty for persons convicted of murder when they were under 18 (see above), article 3 of the Offences Against the Person Act prescribes in lieu detention "during Her Majesty's pleasure". There are no limits placed on the duration of detention and the Government has stated that this allows for the possibility of life imprisonment for under 18s.<sup>14</sup>

Under the Juvenile Court Act, all offences committed by persons under 18, except murder or those allegedly committed jointly with an adult, should be heard by a juvenile court.<sup>15</sup> There is no provision for life imprisonment of under 18s in the Juvenile Act.<sup>16</sup> The Magistrates Code of Procedure Act states that for offences which come under the jurisdiction of the Magistrates court, no child (i.e. under the age of 14) convicted under this Act or the Juvenile Act can be sentenced to imprisonment, and there are limits on imprisonment of three months for a young person and six for an adult.<sup>17</sup>

When a person is sentenced to life imprisonment, they are given a minimum set period that must be served in detention.<sup>18</sup> Sentencing is at the discretion of the judge who must consider all factors relating to the offender and the offence, including the age of the offender when the crime was committed.<sup>19</sup>

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<sup>8</sup> Article 12

<sup>9</sup> Articles 3, 10 and 15

<sup>10</sup> Articles 2 and 5

<sup>11</sup> The Global Initiative to End All Corporal Punishment of Children, Antigua and Barbuda – Country Report, August 2012 (<http://www.endcorporalpunishment.org/pages/frame.html>)

<sup>12</sup> Article 8

<sup>13</sup> CRC/C/28/Add.22, 9 December 2003, Initial state party report to the Committee on the Rights of the Child, para. 89

<sup>14</sup> CRC/C/28/Add.22, 9 December 2003, Initial state party report to the Committee on the Rights of the Child, para. 88

<sup>15</sup> Article 3; see also CRC/C/28/Add.22, 9 December 2003, Initial state party report to the Committee on the Rights of the Child, para. 286

<sup>16</sup> Article 12

<sup>17</sup> Articles 101 and 103

<sup>18</sup> See *The Queen v. Welsh*, Criminal Case No. 15 of 1994 of Antigua and Barbuda, Judgment on Resentencing, 14 December 2011 at paragraph 39

<sup>19</sup> Id. at paragraphs 39 and 31

Although sentencing is subject to judicial discretion, the Eastern Caribbean Supreme Court, Court of Appeal, “has set out ... guidelines for sentencing; and in order that there should be some consistency, it is incumbent that a trial judge complies with those guidelines, save where there are compelling reasons to depart from them”.<sup>20</sup> Among the “three very important matters” that a trial judge must consider when imposing a sentence is the age of the offender:<sup>21</sup> trial courts must pay attention to “the very compelling mitigating factors in each case, including the youthfulness of the offender.”<sup>22</sup>

Legislation can be read as permitting life imprisonment without parole, but no known child is serving such a sentence.<sup>23</sup>

### **Inhuman sentencing in practice**

We have not been able to obtain statistical information relating to the sentencing of children to life imprisonment, detention “during Her Majesty’s pleasure”, or corporal punishment.

### **Corporal punishment**

During its report as part of the Universal Periodic Review in 2011, Antigua and Barbuda submitted that it was not aware of any child being sentenced to corporal punishment “in a long time”.<sup>24</sup>

Press reports from within Antigua and Barbuda indicate that corporal punishment is carried out at Antigua’s Training School for Boys, whose student body includes minors placed there as a judicial sentence.<sup>25</sup>

### **Life imprisonment**

CRIN has not been able to identify any cases in which a child has been sentenced to life imprisonment.

In the case of *The Queen v. Avie Howell and Kaniel Martin* in sentencing a defendant who had recently turned 18, the court found his age to be “a critical consideration” in deciding to impose a life sentence, and contrasted the situation to crimes committed by persons under the age of 18.<sup>26</sup>

When serving a sentence of imprisonment, a child can be transferred to an adult prison if he or she is deemed to be “of such an unruly character or so depraved a character” that such detention is necessary.<sup>27</sup>

### **Progress towards prohibition and elimination**

#### **Law reform needed**

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<sup>20</sup> *The Queen v. Queshia Gieger*, Criminal Court Case No. 16 of 2007 of Antigua and Barbuda

<sup>21</sup> Id. citing *Desmond Baptiste v. The Queen et al*, Criminal Appeals No. 8 of 2003 of Saint Vincent and the Grenadines.

<sup>22</sup> Id.

<sup>23</sup> University of San Francisco Law School, The Centre for Law and Global Justice ([http://www.usfca.edu/law/jlwop/other\\_nations/](http://www.usfca.edu/law/jlwop/other_nations/))

<sup>24</sup> Report of the Working Group on the Universal Periodic Review, 14 December 2011, A/HRC/19/5, paragraph 19

<sup>25</sup> Reported in Antigua Observer Newspaper, 16 September 2011 (“Boys’ Training School Workers Protect GG’s [Governor General] Interference”), available at <http://www.antiguaobserver.com/2011/09/16/boys%e2%80%99-training-school-workers-protest-gg%e2%80%99s-interference/>

<sup>26</sup> Criminal Case Nos. 29 and 30 of 2010 of Antigua and Barbuda

<sup>27</sup> Juvenile Court Act, section 7

All legal provisions authorising judicial corporal punishment for crimes committed when the offender was under 18 should be repealed. Life imprisonment for offenders under 18 should also be explicitly prohibited.

## **Law reforms under way**

### ***Organisation of Eastern Caribbean States Juvenile Justice Reform Project***

The Government of Antigua & Barbuda has acknowledged that the *Corporal Punishment Act* should be repealed and efforts are underway to harmonise the country's criminal laws with its international human rights obligations.<sup>28</sup> These local reform initiatives are a part of the Organization of Eastern Caribbean States ("OECS") Juvenile Justice Reform Programme—a collaborative effort between six member states of the OECS (including Antigua & Barbuda) and the United States Agency International Development ("USAID")—that was formally launched in the summer of 2012.<sup>29</sup> USAID has pledged \$5.6 million to promote juvenile justice in the region, and each of the six OECS countries are required to complete work plans and submit supporting documentation by 2013 to access the project funding.<sup>30</sup>

A model Child Justice Bill was drafted in 2007 by the OECS and has been seen by the Ministry of Social Transformation and the Ministry of Legal Affairs. The Bill defines a child as a person under 18 and sets the minimum age of criminal responsibility at 12. It does not include corporal or capital punishment among permitted sentences, though 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 February 2013 had not been resumed.

### ***Family Court***

During the 2011 Universal Periodic Review of Antigua and Barbuda, the Government reported that a family court was being introduced "which would specialize in criminal behaviour and punishment of juveniles and also address all other family matters so that more speedy, more interactive and mediatory resolutions of family matters and offences against children would be expected".<sup>31</sup> As reported in the Antigua Observer Newspaper on April 2, 2012, "Antigua & Barbuda has moved one step closer to its vision of strengthening the juvenile justice system with the opening of a family court this week."<sup>32</sup> At present, the court will be handling all new child maintenance matters, domestic violence cases and other family matters, and in time, will address all criminal cases involving juveniles. According to an interview with National Security Minister Dr. Errol Cort, there are also plans to review existing legislation that deals with juveniles:

"We are looking at modernising our legislation that specifically touch and concern juveniles and how we handle them in Antigua & Barbuda. So there is a whole juvenile justice programme where the parents will play a critical role in that whole process and the whole environment in terms of meting out justice will be changed."<sup>33</sup>

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<sup>28</sup> See United Nations Committee on the Rights of the Child, Universal Periodic Review: Antigua & Barbuda (2011), U.N. Doc. A/HRC/19/5, Report of the Working Group, para. 19.

<sup>29</sup> Antigua Observer Newspaper, "Reforms aim to keep kids out of prison," October 10, 2012

<sup>30</sup> *Id.*

<sup>31</sup> United Nations Committee on the Rights of the Child, Universal Periodic Review: Antigua & Barbuda (2011), U.N. Doc. A/HRC/19/5, Report of the Working Group, para. 36.

<sup>32</sup> Antigua Observer, "New family court opens this week," April 2, 2012, available at: <http://www.antiguaobserver.com/?p=73329>.

<sup>33</sup> *Id.*

The aim is reportedly to develop a series of legislation that offers alternatives to incarceration of juveniles who break the law.

### **Legal challenges to inhuman sentencing**

In *The Queen v. Welch*<sup>34</sup> a seventeen-year-old successfully challenged his sentence to detention “until the Governor General's pleasure be known” on the basis that placing the discretion in the hands of the executive was unconstitutional. The court applied the sentence as “at the court's pleasure” so that the courts now hold the role of deciding when a convicted person should be released. This decision did not alter the legality of the sentence, but placed persons under such sentences under the supervision of the courts rather than the executive.

### **National campaigns**

CRIN is not aware of any national campaigns on these issues.

As part of CRIN's work on the inhuman sentencing campaign, we have submitted reports and alternative reports to the international human rights mechanisms as they have reviewed States involved in the campaign, with the aim of ensuring that the practices are recognised as illegal under international law and of exerting pressure on States to reform their laws.

In March 2011, CRIN submitted a report to the UPR highlighting the forms of inhuman sentencing that are still legal in Antigua and Barbuda. The submission is available here:

<http://www.crin.org/resources/infodetail.asp?ID=26481>.

CRIN has also been lobbying internationally to raise the issue of inhuman sentencing on the international agenda. We have met with UN experts working on judicial sentencing (including relevant Special Procedures) and participated in expert meetings on juvenile justice and to influence UN reports and resolutions.

When launching the original reports, CRIN contacted the government of Antigua and Barbuda for their response to the information contained in reports about their country. The State provided information regarding amendments to the Sexual Offences Act and the Education Act, but otherwise confirmed the accuracy of the report.

### **National and international law conflicting with inhuman sentencing**

#### **The Constitution**

A number of provisions in the Constitution (1981) protect the physical integrity of all persons, but there are also exemptions for cruel punishments prescribed by law.

Article 3:

“Whereas every person in Antigua and Barbuda is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, regardless of race, place of origin, political opinions or affiliations, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-

- a. life, liberty, security of the person, the enjoyment of property and the protection of the law;
- b. freedom of conscience, of expression (including freedom of the press) and of

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<sup>34</sup> *The Queen v. Welch*, Criminal Case No. 15 of 1994 of Antigua and Barbuda, Judgment on Resentencing, 14 Decembger 2011

peaceful assembly and association; and

c. protection for his family life, his personal privacy, the privacy of his home and other property and from deprivation of property without fair compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.”

Article 5:

“(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say-

...

b. in execution of the sentence or order of a court, whether established for Antigua and Barbuda or some other country, in respect of a criminal offence of which he has been convicted;

c. in execution of an order of the High Court or of the Court of Appeal or such other court as may be prescribed by Parliament on the grounds of his contempt of any such court or of another court or tribunal;

d. in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on him by law; ...

...

g. under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years....”

Article 7:

“(1) No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Antigua on 31st October 1981.”

## **General Assembly Resolutions**

General Assembly Resolution, 9 November 2012, A/C.3/67/L.34, paragraph 18:

“The General Assembly... urges States to ensure that, under their legislation and practice, neither capital punishment nor life imprisonment without the possibility of release, nor corporal punishment as a sentence or as a disciplinary measure, is imposed for offences committed by persons under 18 years of age, and invites States to consider repealing life imprisonment with the possibility of release for offences committed by persons under 18 years of age;”

## **International human rights treaties**

Antigua and Barbuda has ratified or acceded to the following international treaties:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in 1993)

- Convention on the Elimination of All Forms of Discrimination against Women (in 1989)
- Convention on the Rights of the Child (in 1993)
- International Convention on the Elimination of All Forms of Racial Discrimination (in 1988)

Antigua and Barbuda has signed but not ratified the Convention on the Rights of Persons with Disabilities (in 2007), and has neither signed nor ratified the International Covenant on Civil and Political Rights or its Second Optional Protocol aiming at the abolition of the death penalty or the International Covenant on Economic, Social and Cultural Rights. The Government has also not ratified the American Convention on Human Rights.

The Government has signed but not ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities (in 2007).

Antigua and Barbuda has ratified or acceded to the following complaints/communications mechanisms:

- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (in 2006)

### **Treaty Bodies communications and complaints procedures**

These Treaty Bodies all have optional mechanisms, either provided for by the Convention itself or an optional protocol, that allow for individuals, groups of individuals or their representatives to make complaints that their rights have been violated.

Antigua and Barbuda has ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and so has recognised the competence of the Committee on the Elimination of Discrimination against Women to receive and consider communications relating to the violation of rights within the Convention.

CRIN has produced a guide and resources to help navigate these complaints procedures, please see here for more information: <http://www.crin.org/resources/infoDetail.asp?ID=15489>.

### **Status of treaties**

The legal system of Antigua and Barbuda is based on English common law. Treaties become part of domestic law only when they have been expressly incorporated by legislation.<sup>35</sup> Generally this means that international treaties and conventions are not enforceable, though they can, in principle, be used as interpretive guidance, as regional courts that hold jurisdiction over the country have done so.

[<https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=21+J.+Transnat'l+L.+%26+Pol'y+1&srctype=smi&srcid=3B15&key=24f36fb02248465cea60fad97b551d8f>]

### **Recommendations from human rights treaty monitoring bodies**

#### **UN Committee on the Rights of the Child**

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

<sup>35</sup> Ratification of Treaties Act (CAP. 364), section 3(3) (<http://www.laws.gov.ag/acts/chapters/cap-364.pdf>)

and 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 recommends that the State party:

a) consider the immediate repeal of, or amendment to, the Corporal Punishment Act and the Education Act....”

“The Committee is concerned at the very low minimum age of criminal responsibility, which is set at 8, and at the possibility that a person under 18 years can be sentenced to life imprisonment for murder. The Committee is further concerned that persons under 18 are not separated from adults when in detention, and that other problems in the administration of juvenile justice exist in the State party, including:

a) a juvenile (defined as a person under the age of 16 years) can be tried as an adult if charged with an adult for a homicide;

...

e) persons under 18 years of age can be sent to prison, possibly for life, for murder or treason, since, by the State party’s own admission, the law does not stipulate the length of such incarceration.

“The Committee recommends that the State party review its legislation and policies to ensure the full implementation of juvenile justice standards, in particular article 37 (b) and article 40, paragraph 2 (b) (ii)-(iv) and (vii), of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), and in the light of the Committee’s 1995 day of general discussion on the administration of juvenile justice (see CRC/C/46). In this regard, the Committee recommends that the State party, in particular:

a) raise the minimum age of criminal responsibility to an internationally accepted level;

b) amend legislation so that juveniles are not brought before an adult court;

c) ensure that detained children are always separated from adults and that deprivation of liberty is used only as a last resort, for the shortest appropriate time and in appropriate conditions....”

[Note: the Education Act cited in the above recommendation has since been repealed by Act No. 21 of 2008]

### **Other UN Treaty Bodies**

With the exception of the Committee on the Rights of the Child, no other UN Treaty Bodies have made recommendations related to the death penalty, life imprisonment or corporal punishment.

### **Universal Periodic Review (UPR)**

Antigua and Barbuda was examined in the first cycle of the UPR in 2011. During the review states made recommendations that specifically called on the Antigua and Barbuda to abolish sentences of corporal punishment and life imprisonment for children. CRIN made a submission to the UPR when Antigua and Barbuda was reviewed.<sup>36</sup>

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<sup>36</sup> CRIN, “CRIN REPORT: UPR submission on inhuman sentencing in Antigua and Barbuda” 29 October 2011 (<http://www.crin.org/resources/infodetail.asp?ID=26481>)

The State rejected all of the following recommendations.<sup>37</sup>

R - 69.9. Prohibit corporal punishment of children in all settings (Slovenia);

R - 69.10. Criminalize the corporal punishment of children in all circumstances and places (Uruguay);

R - 69.11. Prohibit all forms of corporal punishment of children in any setting including the home and as a sentence of the courts (Uruguay);

R - 69.12. Introduce a legal prohibition of corporal punishment as a punitive and corrective measure in the school system and in the family (Spain);

R - 69.13. Consider taking necessary measures aimed at prohibiting all forms of corporal punishment (Brazil);

R - 69.14. 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);

R - 69.15. 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)

R - 69.16. Explicitly prohibit under criminal law life imprisonment and indeterminate detention of child offenders (Hungary);

Antigua and Barbuda is scheduled to be reviewed in the second cycle of the UPR in 2016.

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<sup>37</sup> CRIN, “Antigua and Barbuda: Child Rights References in the Universal Periodic Review” 17 August 2011 (<http://www.crin.org/resources/infodetail.asp?ID=25818>)