

**BRIEFING ON ERITREA FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 119th session (March 2017)**

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**This briefing describes the legality of corporal punishment of children in Eritrea. In light of the obligation under international human rights treaties to prohibit all corporal punishment of children, the global commitment to ending violence against children – including corporal punishment – in the context of the 2030 Agenda for Sustainable Development, the recommendations of the UN Secretary General’s Study on Violence against Children, and the recommendations made to Eritrea by the Committee on the Rights of the Child in 2003, 2008 and 2015 and during the UPR in 2009 (which the Government rejected), we hope the Human Rights Committee will:**

* **raise the issue of corporal punishment of children in its List of Issues for Eritrea, in particular asking what progress has been made towards law reform to prohibit all corporal punishment of children, including the so-called “right of correction or discipline”, and**
* **in its concluding observations on the initial report of Eritrea, recommend that legislation be enacted to clearly prohibit all forms of corporal punishment, without exception, in the home and other settings, and to explicitly repeal the “right of correction or discipline”.**

**1 The legality of corporal punishment of children in Eritrea**

1.1 ***Summary:*** Corporal punishment of children in Eritrea is unlawful as a sentence for a crime. It appears to be lawful in the home, alternative care, day care, schools and penal institutions. There have been reports suggesting it is prohibited in some institutions but the information has been inconsistent and we have been unable to confirm prohibition.

1.2 ***Home (lawful):***Article 32 of the Penal Code 2015 states: “Authorised Acts. A person shall not be punishable for acts required or authorised by law and such acts do not constitute offences in particular: … (b) acts reasonably done in exercising the right of correction or discipline.” The Code previously in force – the Penal Code of Ethiopia 1957 (the Transitional Penal Code) – had also recognised a right of correction or discipline (art. 64). Articles 284 and 285 of the new Penal Code punish respectively intentional and negligent bodily injury and assault, and bodily injury is defined as “physical pain, illness or any impairment of physical condition” (art. 6), but clearly in light of the “right of correction or discipline” this does not protect children from all corporal punishment in childrearing.

1.3 During the Universal Periodic Review of Eritrea in 2009, the Government stated that Proclamation No. 4/1991 prohibits corporal punishment.[[1]](#footnote-1) In 2012, the Government reported to the Committee on the Rights of the Child that Proclamation No. 1/1991 “officially rejects corporal punishment and flogging as inhumane kinds of punishment”, and that the Transitional Penal Code prohibited corporal punishment in families, schools and other institutions and, in article 548(1), protects children from a parent or guardian who “beats, ill-treats, overburdens or neglects his/her child”.[[2]](#footnote-2) A similar statement on the issue was made to the African Committee of Experts on the Rights and Welfare of the Child in 2012.[[3]](#footnote-3) Under examination by the Committee on the Rights of the Child in 2008, the Government similarly stated that the Transitional Penal Code prohibited corporal punishment in the home, schools and other institutions, but also confirmed that “light punishments” by persons with legal authority over the child are permitted.[[4]](#footnote-4) However, in reporting to the Committee on the Rights of the Child in 2015, the Government confirmed that no progress had been made towards abolishing the right of correction and the right to administer lawful discipline.[[5]](#footnote-5)

1.4 ***Alternative care and day care settings (lawful):***There is no explicit prohibition of corporal punishment in alternative care settings and in day care settings. Corporal punishment is lawful under the “right of correction or discipline” in the Penal Code 2015 (art. 32).

1.5 ***Schools (lawful):***A school code of conduct states that corporal punishment should not be used but there is no explicit prohibition in law. On the contrary, corporal punishment is lawful under the “right of correction or discipline” in article 32 of the Penal Code 2015.

1.6 As noted above, during the 2009 Universal Periodic Review of Eritrea, the Government indicated that corporal punishment is prohibited by Proclamation No. 4/1991 and in 2012 reported to the Committee on the Rights of the Child that the Transitional Penal Code prohibited corporal punishment in schools. However, subsequent statements to the Committee on the Rights of the Child confirm that “light punishments” are lawful and that no progress had been made towards abolition of the right to administer “reasonable chastisement”.[[6]](#footnote-6)

1.7 ***Penal institutions (lawful):***There appears to be no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions. We have been unable to verify Government statements that it is prohibited under Proclamation No. 4/1991 (or No. 1/1991).

1.8 ***Sentence for crime (unlawful):*** The Penal Code 2015 states that punishment “should not cause physical suffering to the offender or degrade his human dignity” (art. 58) and makes no provision for judicial corporal punishment among authorised sentences (art. 62) or among measures applicable to child and juvenile offenders (arts. 101, 102 and 103). There is no provision for judicial caning in the Criminal Procedure Code 2015. Customary law plays a significant role in Eritrea but it must be consistent with state law.[[7]](#footnote-7)

**2 Recommendations by human rights treaty bodies and during the UPR**

2.1 ***CRC:*** On three occasions, the Committee on the Rights of the Child has recommended to Eritrea that corporal punishment of children be prohibited in all settings, including the home – in its concluding observations on the state party’s initial report in 2003[[8]](#footnote-8), on the second/third report in 2008,[[9]](#footnote-9) and on the fourth report in 2015.[[10]](#footnote-10)

2.2 ***UPR:*** Eritrea was examined in the first cycle of the Universal Periodic Review in 2009 (session 6). The Government rejected a recommendation to prohibit corporal punishment in the penal and educational system, stating that it was banned by Proclamation No. 4/1991.[[11]](#footnote-11)

*Briefing* *prepared by the Global Initiative to End All Corporal Punishment of Children*

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1. 8 March 2010, A/HRC/13/2/Add.1, Report of the working group: Addendum, para. 14 [↑](#footnote-ref-1)
2. 2 January 2014, CRC/C/ERI/$, Fourth state party report, para. 146 [↑](#footnote-ref-2)
3. July 2012, Initial report of Eritrea on implementation of the African Charter on the Rights and Welfare of the Child, para. 20 [↑](#footnote-ref-3)
4. 23 October 2012, CRC/C/ERI/3, Second/third state party report, paras. 56 and 72 [↑](#footnote-ref-4)
5. 7 May 2015, CRC/C/ERI/Q/4/Add.1, Reply to list of issues, para. 52 [↑](#footnote-ref-5)
6. 23 October 2012, CRC/C/ERI/3, Second/third state party report, para. 56; 7 May 2015, CRC/C/ERI/Q/4/Add.1, Reply to list of issues, para. 52 [↑](#footnote-ref-6)
7. Dirar, L. & Tesfagabir, K. (2011), *Introduction to the Eritrean legal system and research*, [www.nyulawglobal.org/globalex/Eritrea.html#\_edn11](http://www.nyulawglobal.org/globalex/Eritrea.html#_edn11), accessed 21 April 2016 [↑](#footnote-ref-7)
8. 2 July 2003, CRC/C/15/Add.204, Concluding observations on initial report, paras. 31 and 32 [↑](#footnote-ref-8)
9. 23 June 2008, CRC/C/ERI/CO/3, Concluding observations on second/third report, paras. 38 and 39 [↑](#footnote-ref-9)
10. 8 June 2015, CRC/C/ERI/CO/4 Advance Unedited Version, Concluding observations on fourth report, paras. 36, 37, 38 and 39 [↑](#footnote-ref-10)
11. 8 March 2010, A/HRC/13/2/Add.1, Report of the working group: Addendum, para. 14; 8 February 2011, A/HRC/13/56, Report of the Human Rights Council on its thirteenth session, para. 265 [↑](#footnote-ref-11)