

Corporal punishment of children in Eritrea: Briefing for the Universal Periodic Review, 32nd session, January 2019



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

From the Global Initiative to End All Corporal Punishment of Children, July 2018

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Eritrea, corporal punishment of children is still lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child.

We hope the Working Group will note with concern the legality of corporal punishment of children in Eritrea. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Eritrea enact legislation to explicitly prohibit corporal punishment of children in all settings, including in the home, and repeal all legal defences for its use.

1 Review of Eritrea in the 2nd cycle UPR (2014) and progress since

- 1.1 Eritrea was reviewed in the second cycle of the Universal Periodic Review in 2014 (session 18). Although the issue of corporal punishment of children was raised in the summary of stakeholders' information,¹ no specific recommendation on corporal punishment was made.
- 1.2 Since the review, a new Penal Code was enacted in 2015 which confirmed the prohibition of judicial corporal punishment. We have however been unable to verify the Government's statement that Proclamation No. 4/1991 prohibits all corporal punishment of children in all settings.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Eritrea. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Eritrea enact legislation to explicitly prohibit corporal punishment of children in all settings, including in the home, and repeal all legal defences for its use.**

¹ 4 November 2013, A/HRC/WG.6/18/ERI/3, Summary of stakeholders' views, paras. 22 and 23

2 Legality of corporal punishment in Eritrea

Summary of current law and reforms needed to achieve prohibition

Corporal punishment in Eritrea is prohibited as a sentence for a crime but it is still lawful in the home, in alternative and day care settings, in schools and in penal institutions. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including in the home, and all legal defences for its use, including in the Penal Code 2015, should be repealed.

- 2.1 **Home (lawful):** Corporal punishment is lawful in the home. 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. We have yet to obtain a copy of the new Civil Code 2015.
- 2.2 During the Universal Periodic Review of Eritrea in 2009, the Government stated that Proclamation No. 4/1991 prohibits corporal punishment.² 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”.³ A similar statement on the issue was made to the African Committee of Experts on the Rights and Welfare of the Child in 2012.⁴ 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.⁵ 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.⁶
- 2.3 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment in alternative care settings. Corporal punishment is lawful under the “right of correction or discipline” in the Penal Code 2015 (art. 32).
- 2.4 **Day care (lawful):** There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children. Corporal punishment is lawful under the provisions for the “right of correction or discipline” in the Penal Code 2015 (art. 32).

² 8 March 2010, A/HRC/13/2/Add.1, Report of the working group: Addendum, para. 14

³ 2 January 2014, CRC/C/ERI/5, Fourth state party report, para. 146

⁴ July 2012, Initial report of Eritrea on implementation of the African Charter on the Rights and Welfare of the Child, para. 20

⁵ 23 October, CRC/C/ERI/3, Second/third state party report, paras. 56 and 72

⁶ 7 May 2015, CRC/C/ERI/Q/4/Add.1, Reply to list of issues, para. 52

2.5 **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. 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”.⁷

2.6 **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).

2.7 **Sentence for crime (unlawful)**: Corporal punishment is unlawful as a sentence for crime. 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.⁸ Prior to the 2015 reform, corporal punishment (caning) of young offenders was provided for in the Transitional Penal Code 1957 (art. 172) and the Transitional Criminal Procedure Code 1961 (art. 213). We had been unable to verify reports that it had been abolished by Proclamation No. 4/1991.

3 Recommendations by human rights treaty bodies

3.1 **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 2003⁹, on the second/third report in 2008,¹⁰ and on the fourth report in 2015.¹¹

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The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and since 2011 the Committee on the Rights of Persons with Disabilities.

⁷ 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

⁸ Dirar, L. & Tesfagabir, K. (2011), *Introduction to the Eritrean legal system and research*, www.nyulawglobal.org/globalex/Eritrea.html#_edn11, accessed 21 April 2016

⁹ 2 July 2003, CRC/C/15/Add.204, Concluding observations on initial report, paras. 31 and 32

¹⁰ 23 June 2008, CRC/C/ERI/CO/3, Concluding observations on second/third report, paras. 38 and 39

¹¹ 8 June 2015, CRC/C/ERI/CO/4 Advance Unedited Version, Concluding observations on fourth report, paras. 36, 37, 38 and 39