



Global Initiative to
**End All Corporal Punishment
of Children**

BRIEFING ON ERITREA FOR THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, PRESESSIONAL WORKING GROUP – Jul 2014

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The human rights obligation to prohibit corporal punishment – a key strategy in eliminating all forms of violence

The legality and practice of corporal punishment of girls breaches their fundamental rights to respect for their human dignity and physical integrity, to equality under the law and to protection from all forms of violence – rights guaranteed in the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments. There are strong links between corporal punishment of children – girls and boys – and all other forms of violence, including gender-based violence. As the Committee on the Rights of the Child emphasised in its General Comment No. 8 (2006), addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”.

The near universal acceptance of a degree of violent punishment in childhood and deeply held views that parents and other adults have a “right” to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. Physical violence against girls and boys in their own home is typically assumed not to be domestic violence because it is inflicted under the guise of “discipline” or “correction” – a rationale totally unacceptable when the victim is an adult woman. **It is for these reasons that we respectfully urge the Committee on the Elimination of Discrimination Against Women to specifically recommend that corporal punishment be prohibited in the home and all settings.**

This briefing describes the legality of corporal punishment of children in Eritrea. In light of General Recommendation No. 19 on Violence against women (1992), the links between corporal punishment of children and all other forms of violence including gender-based violence, and the repeated recommendations to Eritrea by treaty monitoring bodies and during the UPR, we hope the Committee on the Elimination of Discrimination Against Women will:

- **raise the issue of corporal punishment of girls in its List of Issues for Eritrea, asking what progress has been made towards prohibiting and eliminating corporal punishment in all settings, including the home, and**
- **recommend to Eritrea, in the concluding observations on the fifth state party report, that legislation which prohibits corporal punishment in all settings, including the home, is adopted as a matter of priority.**

1 The state party's reports to CEDAW

1.1 The fourth and fifth state reports of Eritrea to CEDAW include information on legal and other measures aimed at protecting marriage and family relations but no reference is made to corporal punishment of children – punitive violence which may lawfully be inflicted on them in the home and other settings.¹ **We hope the Committee will emphasise the importance of prohibiting and eliminating physical punishment of girls and boys within the family when taking measures against family violence.**

2 The legality of corporal punishment of children in Eritrea

2.1 **Summary:** Corporal punishment of children in Eritrea is lawful in the home, alternative care settings and day care. The Government has indicated it is prohibited in the penal system and schools, but our research suggests that law reform to date has not achieved prohibition in those settings.

2.2 **Home (lawful):** Eritrea's criminal law is based on the 1957 Penal Code of Ethiopia, amended by Proclamation No. 4/1991 and known as the Transitional Penal Code of Eritrea. We have been unable to examine this Proclamation, but in its original form the 1957 Penal Code provides for corporal punishment of children. Article 64(b) states that "acts reasonably done in exercising the right of correction or discipline" are not punishable; article 548 punishes cruelty to children under 15 but states that "the right to administer lawful and reasonable chastisement is not subject to this provision". Article 626 punishes "abuse of the right to administer reasonable chastisement".

2.3 During the Universal Periodic Review of Eritrea in 2009, the Government stated that Proclamation No. 4/1991 prohibits corporal punishment.² We have been unable to verify this information, but it would appear that any prohibition does not apply to all forms of corporal punishment. Under examination by the Committee on the Rights of the Child in 2008, the Government stated that the Transitional Penal Code prohibits corporal punishment in the home, schools and other institutions,³ but also that "light punishments" by persons with legal authority over the child are permitted.⁴

2.4 At the end of 2009, the Government was in the final stages of drafting Civil and Criminal Codes and Civil and Criminal Procedure Codes. They are said to be in line with the Constitution 1997 – which upholds the dignity of every person and prohibits cruel, inhuman or degrading treatment or punishment (art. 16) – but we have no information regarding provisions relating to corporal punishment of children. According to the Government's report to the Universal Periodic Review of Eritrea in 2014, the new Codes which will replace the Transitional Codes are ready for proclamation and international obligations have been taken into account.⁵ **We hope that during the review the Committee will question the Government of Eritrea on the detail of the new Codes and emphasise the importance of ensuring they include prohibition of all forms of corporal punishment, without exception.**

2.5 **Alternative care settings (lawful):** Corporal punishment is lawful under the provisions for the "right of correction or discipline" and related provisions in articles 64, 548 and 626 of the Transitional Penal Code (see para. 2.2, above).

¹ 19 February 2013, CEDAW/C/ERI/4, Fourth state party report; 5 May 2014, CEDAW/C/ERI/5 Advance Unedited Version, Fifth state party report

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

³ 23 October, CRC/C/ERI/3, Second/third state party report, para. 72

⁴ 23 October, CRC/C/ERI/3, Second/third state party report, para. 56

⁵ 8 November 2013, A/HRC/WG.6/18/ERI/1, National report to the UPR, para. 5; 5 February 2014, A/HRC/WG.6/18/L.11 Advance Unedited Version, Draft report of the working group, paras. 7 and 54

- 2.6 **Day care (lawful):** Corporal punishment is lawful under the provisions for the “right of correction or discipline” and related provisions in articles 64, 548 and 626 of the Transitional Penal Code (see para. 2.2).
- 2.7 **Schools (lawful):** A school code of conduct states that corporal punishment should not be used but there appears to be no explicit prohibition in law. On the contrary, corporal punishment is lawful under the “right of correction or discipline” in article 64(b) of the Penal Code (see para. 2.2) As already noted (para. 2.3), during the 2009 Universal Periodic Review of Eritrea, the Government indicated corporal punishment is prohibited by Proclamation No. 4/1991 but the assertion is contradicted by previous statements to the Committee on the Rights of the Child that “light punishments” are lawful.⁶
- 2.8 **Penal institutions (?lawful):** We have been unable to verify Government statements that corporal punishment is prohibited under Proclamation No. 4/1991.
- 2.9 **Sentence for crime (?lawful):** The Government has repeatedly stated that Proclamation No. 4/1991 abolished corporal punishment, but we have been unable to verify this. The Penal Code 1957 states in article 172 that young offenders may be caned: “(1) Where a young offender is contumacious the Court may, if it considers corporal punishment is likely to secure his reform, order corporal punishment. Corporal punishment shall be inflicted only with a cane and the number of strokes shall not exceed twelve to be administered on the buttocks. Only young offenders in good health shall be subjected to corporal punishment.” We have been unable to establish whether or not Proclamation No. 4/1991 repealed this provision.

3 Recommendations by human right treaty monitoring bodies and during the UPR

- 3.1 **CRC:** The UN Committee on the Rights of the Child has twice recommended to Eritrea that corporal punishment be explicitly prohibited in all settings, including the home, schools and other institutions – in its concluding observations on the state party’s initial report in 2003 and on the second/third report in 2008.⁷
- 3.2 **UPR:** The first cycle Universal Periodic Review of Eritrea took place in 2009. The Government rejected the recommendation to prohibit corporal punishment in the penal and educational system, stating that it was already banned by proclamation No. 4 of 1991.⁸

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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⁶ 23 October, CRC/C/ERI/3, Second/third state party report, para. 56

⁷ 2 July 2003, CRC/C/15/Add.204, Concluding observations on initial report, paras. 31 and 32 ; 23 June 2008, CRC/C/ERI/CO/3, Concluding observations on second/third report, paras. 38 and 39

⁸ 4 January 2010, A/HRC/13/2, Report of the working group, para. 79(69); 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