

# Corporal punishment of children in Eritrea

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Child population 2,562,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal  
Punishment of Children**

## Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, schools and possibly in penal institutions.

Article 32 of the Penal Code 2015 confirms a “right of correction or discipline”. The near universal acceptance of corporal punishment in childrearing means that the law should be clear that no form or amount of such punishment is acceptable or lawful. This provision should be repealed, and prohibition enacted of all corporal punishment by parents and others with children in their care.

*Alternative care settings* – Prohibition should be enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

*Day care* – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

*Schools* – Policy against corporal punishment in schools should be confirmed in legislation, which should clearly prohibit all corporal punishment in all education settings, public and private.

*Penal institutions* – The effect of Proclamation No. 4/1991 in prohibiting corporal punishment requires verification and prohibition should be enacted, as required, in institutions accommodating children in conflict with the law.

## Current legality of corporal punishment

### Home

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.

During the Universal Periodic Review of Eritrea in 2009, the Government stated that Proclamation No. 4/1991 prohibits corporal punishment.<sup>1</sup> 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”.<sup>2</sup> A similar statement on the issue was made to the African Committee of Experts on the Rights and Welfare of the Child in 2012.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

We have yet to obtain a copy of the new Civil Code 2015. A new Constitution has been in the drafting stage since 2015.<sup>6</sup>

### Alternative care settings

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).

### Day care

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).

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

<sup>2</sup> 2 January 2014, CRC/C/ERI/Ş, Fourth state party report, para. 146

<sup>3</sup> July 2012, Initial report of Eritrea on implementation of the African Charter on the Rights and Welfare of the Child, para. 20

<sup>4</sup> 23 October 2008, CRC/C/ERI/3, Second/third state party report, paras. 56 and 72

<sup>5</sup> 7 May 2015, CRC/C/ERI/Q/4/Add.1, Reply to list of issues, para. 52

<sup>6</sup> 12 November 2018, A/HRC/WG.6/32/ERI/1, National report to the UPR, para. 110

## Schools

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”.<sup>7</sup> In 2019, the Government again declared to the Universal Periodic Review that policies were in place to ban corporal punishment in schools.<sup>8</sup>

## Penal institutions

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).

## Sentence for crime

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.<sup>9</sup>

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.

## Universal Periodic Review of Eritrea’s human rights record

Eritrea was examined in the first cycle of the Universal Periodic Review in 2009 (session 6). The following recommendation was made:<sup>10</sup>

“Ban child corporal punishment, notably within the penal and the educational system (France).”

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<sup>7</sup> 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

<sup>8</sup> 12 November 2018, A/HRC/WG.6/32/ERI/1, National report to the UPR, para. 59

<sup>9</sup> 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

<sup>10</sup> 4 January 2010, A/HRC/13/2, Report of the working group, para. 79(69)

The Government rejected the recommendation, stating that corporal punishment was banned by proclamation No. 4 of 1991.<sup>11</sup>

The second cycle review of Eritrea took place in 2014 (session 18). No recommendations were made on corporal punishment of children. However, the following recommendation was made and was accepted by the Government:<sup>12</sup>

“Ensure the respect of the fundamental rights and freedoms of all the population, in particular women and children, and adopt all necessary measures to guarantee the fight against the impunity of the perpetrators of crimes, acts of violence and all human rights violations (Argentina)”

Third cycle review took place in 2019 (session 32). No recommendations were made specifically on corporal punishment of children. However, the following recommendations were made:<sup>13</sup>

“Adopt and apply laws, policies or plans of action at national level to combat all forms of violence against children (Mexico);

“Approve and apply laws, national policies or national action plans to address all forms of violence against children (Costa Rica);

“Strengthen legislation aimed at protecting children from all forms of abuse and violence (Bahrain)”

The Government supported the recommendations.<sup>14</sup>

## **Recommendations by human rights treaty bodies**

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

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

“The Committee notes the information given during the dialogue that caning has been abolished as a sentence for young offenders. However, it remains seriously concerned about reports indicating that:

...

c) children in detention routinely face torture, cruel and degrading treatment, including corporal punishment, in particular children accused of attempting to avoid military service or fleeing the country.

“The Committee urges the State party to:

a) enforce the legal prohibition of all forms of violence including corporal punishment in all settings, including in military training camps, and ensure that it is no more used as a sentence for crime....

“The Committee, while noting the information given during the dialogue that ‘reasonable chastisement’ is no longer an excuse for corporal punishment of children, is concerned that children are frequently subjected to violence at home and in educational institutions, including sexual abuse of girls in schools. Furthermore, the Committee notes with concern that:

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<sup>11</sup> 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

<sup>12</sup> 17 June 2014, A/HRC/26/13/Add.1, Report of the working group: Addendum, para. 122.153

<sup>13</sup> 18 April 2019, A/HRC/41/14, Report of the Working Group, paras. 131(251), 131(253) and 131(254)

<sup>14</sup> 20 June 2019, A/HRC/41/14/Add.1 Advance version, Report of the Working Group: Addendum

- a) data on violence against children, including on investigation and persecution conducted for the allegation of such violence, is not collected;
- b) laws, policies or plans of action which specifically address all forms of violence against children, including child abuse and neglect, domestic and sexual violence, do not exist;
- c) information is not provided on adequate complaints mechanisms for violence against children, on mechanisms of redress, rehabilitation and compensation for child victims of violence, or on assistance and protection of child witnesses and on support for their recovery and social reintegration....

“With reference to the Committee’s general comment No. 8 (2006) on corporal punishment and general comment No. 13 (2011) on the right of the child to freedom from all forms of violence, the Committee urges the State party to continue enforcing the prohibition of violence in all settings and to prosecute perpetrators, and to furthermore:

- a) establish a reliable system for the collection of statistical data on violence against children, disaggregated by age, forms of violence and the relationship between victims and perpetrators, and on the number of complaints, prosecutions, convictions and sentences imposed on perpetrators as well as on reparations provided to victims;
- b) undertake a comprehensive study on violence against children, including child abuse and neglect, as well as gender-based and sexual violence, in order to identify the prevalence and root causes of the problem and effective measures to respond them;
- c) adopt and implement laws, national policies or national plans of action to address all forms of violence against children, in a comprehensive manner;
- d) ensure children’s effective access to justice by establishing confidential, child-friendly and gender-sensitive complaints mechanisms and legal aid programmes;
- e) ensure that mediation is not given preference over criminal proceedings in domestic violence cases, including marital rape; and
- f) provide capacity building on all forms of violence against children to relevant professional groups, including the military as well as religious and traditional leaders, and conduct awareness raising programmes, including campaigns, targeting children, teachers, media and the general public.
- g) intensify its efforts, including with support from UNICEF, to raise awareness on alternative forms of discipline in a manner consistent with the child’s human dignity and in conformity with the Convention.”

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

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

“The Committee notes that the provision on corporal punishment in the Transitional Penal Code only applies to children under 15 when endangering gravely their physical and mental health and that ‘reasonable chastisement’ remains permitted. The Committee is concerned that corporal punishment is still widely practised in the home, the schools and other settings.

“The Committee recommends that the State party prohibit corporal punishment by law and enforce the prohibition in all settings, including in the family, the schools and alternative childcare. It also recommends that the State party conduct awareness-raising campaigns to ensure that alternative forms of discipline are used, in a manner consistent with the child’s human dignity and in conformity with the Convention, especially article 28, paragraph 2, while taking due account of the general

comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment. The Committee also recommends the State party to seek technical assistance from UNICEF in order to implement relevant programmes in the school environment.”

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

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

“The Committee is concerned at the lack of data on ill-treatment of children, including child abuse and corporal punishment. It also notes with concern that corporal punishment is not expressly prohibited by law and is widely practised in the home and in institutions.

“The Committee recommends that the State party:

b) carry out public education campaigns about the negative consequences of ill-treatment of children and, in collaboration with community leaders and others, promote positive, non-violent forms of discipline as an alternative to corporal punishment;

c) expressly prohibit corporal punishment by law in the home, schools and other institutions; ...”

### ***African Committee of Experts on the Rights and Welfare of the Child***

([January 2017], Concluding observations on initial report, para. 10)

“The Committee notes the prohibition of acts of torture, cruel, inhuman and degrading treatment and the recognition on children’s need for special protection. However, it was brought to the attention of the Committee that children at the Sawa Military Training Camp are still subjected to acts amounting to torture, inhuman, degrading treatment and to corporal punishment. The Committee is also concerned over the application of Proclamation No 4/1991 to children over 15 years. The Committee therefore recommends that the State Party;

- Strictly enforce the prohibition of torture, cruel, inhuman and degrading treatment to children and ensure perpetrators of such acts are prosecuted and punished accordingly;

- Enforce the legal prohibition of all forms of violence including corporal punishment in all settings, including in military training camps, and ensure that it is no more used as a sentence for crime and devise positive alternatives punishment;

- Conduct awareness - raising campaigns to popularise positive alternative punishments and on the dangers of corporal punishment;

- Remove measures that may prevent children and their families from reporting such cases and provide psychological support to child victims of abuse and torture...”

### **Prevalence/attitudinal research in the last ten years**

None identified.