



ERITREA: A BRIEF ON IMPLEMENTATION OF CRC
COMMITMENTS FROM ARTICLES 2, 9, 19, 23, 24, 28, 34, 37
AND GENERAL COMMENT 4

*Information for the Committee on the Rights of the Child
97th Pre-Sessional Working Group, February 2024*

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INTRODUCTION

The WORLD Policy Analysis Center, based at the University of California, Los Angeles, captures quantitative policy data on more than 2,500 indicators that matter to equality, health, and well-being.

We strive to improve the quantity and quality of globally comparative data available to policymakers, citizens, national governments, intergovernmental organizations, civil society, and researchers for all 193 UN member states. We submit the following brief in advance of the 97th Pre-Sessional Working Group of the Committee on the Rights of the Child.

This brief will focus on the following areas:

- General Principles: **Equality and Non-Discrimination**
- Special Protection Measures: **Education, Leisure and Cultural Activities**
- Special Protection Measures: **Child Marriage**
- Special Protection Measures: **Children in Situations of Emergency (Detention based on Immigration Status)**

We have collected and analyzed information on rights, laws, and policies in these areas for all 193 UN member states (150 in the case of detention based on immigration status) using a variety of sources, including primary national legal sources (e.g. original legislation and constitutions), national reports on policies and laws to the United Nations and official global and regional bodies, and secondary sources where clarification or corroboration of primary data is needed. Using a rigorous double-coding process, we create original databases that distill thousands of pages of text to highlight the essential features of each right, law, or policy. These original databases are the reference for the following brief. When drafting each brief, we perform a series of additional verifications to ensure the data provided reflects the current constitutional and legal landscape of a country.

In this report we first provide a summary of our constitutional and legislative findings, as well as suggested questions for the Committee to ask Eritrea, and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed constitutional and legislative excerpts documenting our findings. We hope the Committee will recommend that Eritrea address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations.

We also recognize that while having strong laws and policies in place are necessary first steps, implementation is also of paramount importance. In areas where we have commended Eritrea for having provisions in place, we hope the Committee will recommend that Eritrea work with stakeholders to overcome any obstacles in implementing these provisions.



SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. General Principles: Equality and Non-Discrimination (Article 2)

Based on our review of full-text national constitutions, Eritrea's constitution grants equality before the law to all, and explicitly prohibits discrimination on the basis of race, sex, language, religion, political opinion, social status, economic status, and disability. However, some groups guaranteed equality in the Convention are not explicitly covered by this constitutional provision, including children facing discrimination based on national origin or birth. The constitution does, however, also protect on the basis of "any other improper status" beyond the groups and statuses explicitly listed.

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Eritrea: Can Eritrea demonstrate whether the constitutional prohibition of discrimination on the basis of "other improper status" has been interpreted through case law or other policies to apply on the basis of national origin, property, or birth status?
 - If not, recommend in its concluding observations that Eritrea amend its constitution to add explicit guarantees of equality and non-discrimination based on these grounds. These provisions could be added to Article 14 of the constitution, which already lists multiple other groups and statuses listed in the Convention.

2. Special Protection Measures: Education, Leisure and Cultural Activities (Articles 23, 28)

Our research shows that Eritrea has no legal provisions on free and compulsory education, even at the primary level. Despite claims that the government provides free and compulsory education as a matter of policy, as of 2019, 45% of all Eritrean children of primary school age were out of school.¹

Further, our research of Eritrea's legal framework found no provisions that guarantee any level of integration of children with disabilities in classrooms, or that prohibits discrimination in the education system against them.

¹ UNESCO Institute for Statistics. SDG 4 September 2023 Country Dashboard. Accessed October 9, 2023, at: <http://sdg4-data.uis.unesco.org/>



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Eritrea: Does Eritrea have any concrete, near-term plans to pass an education act that includes provisions on free and compulsory education?
 - If not, recommend in its concluding observations that Eritrea develop concrete, near-term plans to pass an education act that explicitly provides free and compulsory education at least at the primary level, in accordance with article 28 of the Convention.
- In its list of issues, ask Eritrea: Does Eritrea have any concrete, near-term plans to pass legislation that prohibits discrimination against students with disabilities in the education system?
 - If not, recommend in its concluding observations that Eritrea develop concrete, near-term plans to pass legislation that explicitly prohibits discrimination on the basis of disability in education.
- In its list of issues, ask Eritrea: Does Eritrea have any concrete, near-term plans to pass legislation that guarantees the integration of children with disabilities in the education system?
 - If not, recommend in its concluding observations that Eritrea develop concrete, near-term plans to pass legislation that explicitly guarantees school integration of students with disabilities.

3. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4)

Based on our research, marriage under 18 is prohibited in Eritrea for both girls and boys, but there are exceptions: notably, girls 16 and over can get married if pregnant, and Muslim marriages are exempted from the prohibition. Eritrea's most recent data on child marriage (2010) shows high rates of child marriage in the country: 41% of women aged 20-24 in 2010 had been married before age 18, 13% had been married before age 15, and 17% of women aged 15-19 in 2010 were already married.²

² UNICEF data – Child Marriage. Retrieved October 6, 2023 from <https://data.unicef.org/topic/child-protection/child-marriage/>



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Eritrea: Can Eritrea outline any concrete, near-term plans to pass legislation that raises the minimum age of marriage to 18 years old without exceptions?
 - If not, recommend in its concluding observations that Eritrea pass and implement legislation that protects children under the age of 18 from early marriage without exceptions
- In its list of issues, ask Eritrea: given the lack of available data on child marriage after 2010, can Eritrea provide more recent statistics on underage marriages in the country, disaggregated by sex and age?
 - If not, recommend in its concluding observations that Eritrea begin collecting and reporting statistics on age of marriage, disaggregated by sex and age.

4. Special Protection Measures: Children in Situations of Emergency (Detention based on Immigration Status) (Articles 9, 24, 28, 37)

Our review of legislation, regulations and decrees finds that Eritrea's immigration proclamation **generally permits the imprisonment of foreigners without constraints, without specifying ages, and without specifying a maximum period of detention.** Further, it contains no provisions on alternatives to detention, or on family unity.



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Eritrea: given the absence of explicit provisions on the detention of minor migrants and minor asylum-seekers in its current legal framework:
 - Can Eritrea provide details on the current rates of detention among minor migrants and minor asylum seekers?
 - If not, recommend that Eritrea systematically collect, monitor and report figures on detention rates and duration among minor asylum-seekers and minor migrants.
 - Can Eritrea provide details on any specific steps it is taking to explicitly prohibit the detention of minor migrants and minor asylum-seekers?
 - If not, recommend in its concluding observations that Eritrea pass and implement legislation prohibiting immigration detention of minors.

DETAIL OF CONSTITUTIONAL AND LEGISLATIVE FINDINGS

While the following review is systematic and rigorous, we recognize that there may be laws or policies governing these areas that we have not captured, including new legislation or policies that have not yet been published globally.

1. General Principles: Equality and Non-Discrimination (Article 2)

Article 2.1 of the Convention states that:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Constitutions state the values of a country, outlining the rights of people living within the country and profoundly influencing norms and practices. In nearly all countries, constitutions take precedence over other sources of law—making them critical tools for delineating and implementing equal rights. New



constitutions and new rights guaranteed in constitutions can be used to overturn discriminatory laws, as well as to legislate non-discrimination guarantees. Moreover, constitutions can offer protection against policy and legal changes during periods of social and political shifts that may seek to undermine equal rights. For these reasons and others, as the foundational document setting out the rights of all human beings in a country, a constitution and the rights contained therein are essential to realizing equal rights.

We reviewed full text constitutions for all 193 UN member states available from official government sources to determine whether the constitution took any approach to equality across the grounds listed in article 2.1 of the CRC by prohibiting discrimination based on each specific status, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities.

ERITREA'S CONSTITUTIONAL PROVISIONS: MISSING EXPLICIT GUARANTEES OF EQUALITY AND NON-DISCRIMINATION BASED ON MULTIPLE PROTECTED GROUNDS

Based on our review of full-text national constitutions, Article 14 of Eritrea's constitution guarantees equality before the law to all, and further protects against discrimination on the basis of race, sex, language, religion, political opinion, social status, economic status, disability, and "any other improper factors".

Constitution of Eritrea

Article 14. Equality under the Law

All persons are equal under the law.

No person may be discriminated against on account of race, ethnic origin, language, color, gender, religion, disability, age, political view, or social or economic status or any other improper factors.

(...)

However, some groups guaranteed equality in the Convention are not covered by this constitutional provision, including children facing discrimination based on foreign national status and birth.

2. Special Protection Measures: Education, Leisure and Cultural Activities (Articles 23, 28)

Article 28.1 of the CRC recognizes a child's right to education, and specifically outlines that States Parties "make primary education compulsory and available free to all". In addition, Article 23.3 of the CRC recognizes the rights and special needs of children with disabilities, and in particular, encourages States

Parties to design assistance policies which “ensure that the disabled child has effective access to and receives education”.

For all 193 UN member states, we systematically reviewed education acts, child protection laws, and anti-discrimination legislation available online through UNESCO’s Observatory on the Right to Education Library and International Labour Organization’s NATLEX database. Through the review, we determined whether national legislation or supplementary policy documents guaranteed free and compulsory primary education. Our review also determined whether national legislation guaranteed non-discrimination in education based on disability, and whether legislative provisions guaranteed individualized accommodations and supports to promote inclusion and enable students with disabilities to succeed in school alongside their peers.

ERITREA’S LEGISLATIVE PROVISIONS: LACKING LEGAL GUARANTEES OF FREE AND COMPULSORY EDUCATION FOR ALL CHILDREN, AND OF INCLUSION AND NON-DISCRIMINATION FOR CHILDREN WITH DISABILITIES

Our review of laws and policies in Eritrea shows that the country has no legal provisions on free and compulsory education, even at the primary level. Paragraphs 151 and 153 of the state party report claim that, as a matter of government policy, Eritrea makes education free at all levels and compulsory at the basic level. Despite these contentions, as of 2019 45% of all Eritrean children of primary school age were out of school.³

Further, our research of Eritrea’s legal framework found no provisions that guarantee any level of integration of children with disabilities in classrooms, or that prohibits discrimination in the education system against them, although the state party report claims in paragraph 112 that there are recently enacted policy approaches on inclusion.

3. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4)

General Comment No. 4 (2003) states that:

The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.

Child marriage has life-long health, educational, and economic consequences, particularly for girls. Married girls are more likely to be victims of domestic abuse, experience pregnancy and childbirth complications due to early childbearing, and drop out of school, all of which affect core rights of the

³ UNESCO Institute for Statistics. SDG 4 September 2023 Country Dashboard. Accessed October 9, 2023, at: <http://sdg4-data.uis.unesco.org/>



Convention, specifically the right to protection from violence (Article 19), the right to health (Article 24), the right to education (Article 28), and the right to protection from sexual exploitation and abuse (Article 34).

We systematically reviewed national civil codes and child-related legislation for all 193 UN member states to determine whether national legislation established a minimum age of marriage for both girls and boys generally, with parental consent, under religious and customary law, and with court or governmental approval. We reviewed all legislation available through the Lexadin World Law Guide, Foreign Law Guide, International Labour Organization's NATLEX database, Pacific Islands Legal Information Institute, Asian Legal Information Institute, JaFBase, and official country websites.

ERITREA'S GOVERNING PROVISIONS: CHILD MARRIAGE PROHIBITED, BUT WITH IMPORTANT EXCEPTIONS

Multiple reports before this Committee and other human rights committees confirm that the general minimum age of marriage is 18 for both boys and girls. However, as highlighted in previous reports, including CEDAW/C/ERI/5, CEDAW/C/ERI/4, and CRC/C/ERI/4, girls 16 and over may obtain dispensation to get married if pregnant, and Muslim marriages are exempted from the code's provisions unless the parties explicitly request that the Transitional Civil Code apply instead.

Eritrea's most recent round of data on child marriages is over a decade old (2010). Despite being prohibited since 1991, child marriage rates in Eritrea were extremely high: 41% of women aged 20-24 in 2010 had been married before age 18, 13% had been married before age 15, and 17% of women aged 15-19 in 2010 were already married.⁴ Thus, child marriage in Eritrea remains an issue of concern.

4. Special Protection Measures: Children in Situations of Emergency (Detention based on Immigration Status) (Articles 9, 24, 28, 37)

As noted in the 2002 Committee's Report on the Rights of All Children in the Context of International Migration, migrant children may experience heightened vulnerabilities. Particularly, the detention of children based on immigration status violates the principle of the best interests of the child and infringes on core values outlined in the Convention including the right to liberty (Article 37) and the right to not be separated from their family (Article 9). Children held in detention may also face barriers accessing education (Article 28) and health services (Article 24).

Article 37.b. specifically states:

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

⁴ UNICEF data – Child Marriage. Retrieved October 6, 2023 from <https://data.unicef.org/topic/child-protection/child-marriage/>



Article 9.1 affirms the right to family unity stating:

1. *States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. [...]*

*ERITREA'S GOVERNING PROVISIONS: DETENTION OF MIGRANT AND ASYLUM-SEEKING CHILDREN
GENERALLY PERMITTED, AND NO EXPLICIT PROVISIONS ON FAMILY UNITY*

Eritrea's governing provisions on immigration apply to all foreigners within Eritrea's territory, and generally **permit imprisonment without constraints, without specifying ages, and without specifying a maximum detention period**. These governing provisions do not explicitly address alternatives to detention, or provisions on family unity.

Proclamation No. 24/1992 issued to regulate the issuing of travel documents, entry and exit visa from Eritrea, and to control residence permits of foreigners in Eritrea

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