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دولة ارتريا
وزارة العمل والرعاية الاجتماعية
مكتب الوزير

The State of Eritrea
Ministry of Labour & Human Welfare
Office of the Minister

Date: 08/06/2005

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Mr. Paulos Sergio Pinheiro

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OHCHR REGISTRY

14 JUN 2005

Recipients :

J.C. O.C.

MAM (encl.)

Re: - UN Study on Violence Against Children

Dear Mr. Paulos,

In reference to the above-mentioned subject matter, I have enclosed herewith 20 pages of soft and hard copy document on violence against children in Eritrea, which will be useful for the United Nations Secretary- General's in-depth study on the issue of violence against children.

Sincerely Yours,

For AMW

Askalu Menkerios
Minister



United Nations Secretary-General's Study on Violence against Children Questionnaire to Governments

I. LEGAL FRAMEWORK

ISSUE

The issue is whether there are legislative provisions on

- a) Prevention of all forms of physical, sexual, mental violence, injury or abuse, neglect or negligent, treatment and sexual abuse;
- b) Protection of children from all forms of violence;
- c) Redress including compensation, for child victims violence;
- d) Penalties for perpetrators of violence against children;
- e) Reintegration and rehabilitation of child victims of violence.

Relevant Rules

Eritrean Constitution Articles 545, 594-599, 606 of the Transitional Penal Code, Article 278(d) Article 276(d) of the Draft Penal Code.

1. Analysis (Sexual abuse)

Pursuant to Penal Code of Eritrea, it clearly states that severe punishment should be carried out to anyone who sexually abuses a child. Article 276(d) of the Draft Penal Code state that a person who, is committing a sexual assault, is fifteen or older and assaults a person under the age of fifteen is guilty of aggravated sexual assault. Similar to Article 594(a) of the Transitional Penal Code, "It is punishable

with rigorous imprisonment not exceeding 5 years any one causing an infant or young person under fifteen years of age to have sexual intercourse or performing an act corresponding to a sexual act".

2. Neglect (Negligent treatment)

A parent or the caretaker must not treat a child with negligence, to overload a child with enormous task, beat the child in a way which may affect his/her mental or physical development; abandon his/her in dangerous place or conditions. According to Article 546 of the Transitional Penal Code and Article 268 of the Draft Penal Code; a person who, having the custody or charge of a person in capable of protecting him self, whether on account of his health, his age, his situation or any other circumstance, intentionally exposes or abandons him/her, there by putting imminent danger of serous bodily injury is guilty of an offence. If the child is denied necessities as the result of negligence, then the court may impose a punishment on the parent or guardian. Pursuant to Article 626 of Transitional Penal Code and Article 292 of the Draft Penal Code, every parent exercising parental authority who,

- a) grossly neglect the children in his charge and abandons them without due care and attention or to moral or physical danger; or
- b) entrusts a child for a long time to a person, an organization or an institution with whom or where he knows, or could have foreseen, that it will be physically or morally endangered, is guilty of child neglect.

3. Protection of children from all forms of violence

The new constitution of Eritrea specifies fundamental rights, freedoms and duties that are equally applicable to children. Article 14 of the constitution, says no person shall be discriminated against on account of race, ethnic origin, language, color, sex, religion, disability, age, political belief or opinion or social economic status or any other factors.

The Transitional Civil Code incorporates a number of provisions that make up the principles of "the best interest of the child. It is specifically mentioned in relation to the appointment of guardians and tutors to the child placing the child with one parent in the event of dissolution of marriage, choice of type of education, conditions for approval of adoption and other similar issues pertaining to the child's welfare. For instance, according to Article 681/s of Transitional Civil Code of Eritrea" the custody and maintenance of children born out or without a marriage shall be regulated having regard solely to the interest of the children".

ISSUE

The issue is whether Eritrean legislation addresses, redress or compensation for child victims or not.

Rules Applicable

Article 2028 of TCCE and 2113-2114 of TCCE (Transitional Civil Code of Eritrea)

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Article 2028 of TCCE and 2113-2114 of TCCE (Transitional Civil Code of Eritrea)

Analysis

Pursuant to Article 2028 of TCCE, whosoever causes damage to another by offence shall compensate him/her. The offence could be either sexual or physical injury (abuse). As to the physical injuries or death, fair compensation may be awarded by way or redress to the victim of bodily injuries or in the event of his death in consequence thereof, to his family, Article 2113 of TCCE. In case of indecent assault, where a person has been sentenced by a criminal court for rape or indecent assault, the court may award the victim fair compensation by way of redress. In such an event, compensation may also be awarded to the husband of the woman or to the family of the girl who has been raped, Article 2114(1) of TCCE.

ISSUE

The issue is to prove whether there are specific provisions that deal with all forms of violence including physical, sexual and psychological violence injury abuse, neglect or negligent treatment and sexual exploitation against children which takes place in.

a) The family/home (b) Schools or preschool (c) Military schools (d) Institutions including care, residential, health and mental health (e) Detention facilities or prisons (f) The neighborhood and, street and the community (g) work place,

Rules Applicable

Article 594 - 599 of TPC Article 279 of DPC (Draft Penal Code)

Analysis

Sexual abuse within the family is often to be unknown. However, since no research has been done to figure out the extent of the problem, it is difficult to conclude that it does not occur at all. Pursuant to Article 279 of the Draft Penal Code and Article 621 of the transitional Civil Code of Eritrea, where the offender has committed incest with an infant or young person the punishment is rigorous imprisonment not exceeding 10 years.

The Penal Code penalizes not only sexual outrage but also any other indecent act upon an infant or young persons, including a child to perform such an act or deliberately performing such an act in the presence of the child is punishable according to the circumstance with rigorous imprisonment not exceeding five years or with simple imprisonment for not less than 3 months. Where the victim is, apprentice, school boarder or domestic servant of the offender or in any other way directly dependent upon or subordinate to him or is the offenders adopted child, the child of the spouse, his ward or a child entrusted to his case study or case, the punishment is more sever and shall be rigorous imprisonment not exceeding eight years (Article 594(2) and (3) of TPCE). There were very few incidents where Teachers in schools sexually abuse their students. However, with no research on this matter, it is difficult to verify the said allegations.

ISSUE

The issue is whether corporal punishment of children in any setting including to the family is explicitly prohibited in Eritrean legal system or not? Provide details of any legal defenses available to those who administer corporal punishment to children, including in the family? Provide information on penalties applicable to those who administer corporal punishment to children, including the family?

Rules applicable

Article 548, Article 626

It is a punishable offence to beat a child in a way, which may affect his/her mental or physical development. Pursuant to Article 548 in relation to Article 626 of TPCE, whosoever having the custody or charge of an infant or a young person under fifteen years of age, deliberately neglects, ill-treats, over tasks or beats in such away as to affect endanger gravely his physical or mental development or his health, is punishable with simple imprisonment for not less than 1 month, However this provision cannot be contradicted with the right to administer lawful and reasonable chastisement or acts reasonable done in exercising the right or correction or discipline. Article 548(2) and Article 64(b) respectively of TPCE

ISSUE

The issue is whether Penal Code permits corporal punishment and/or capital punishment as a sentence for crimes committed by less than 18 years old.

Rules

Article 172 of TPCE and Article 76 - 77 of the DPCE

Analysis

If a child offender is rebellious or contumacious, the court may order punishment if it thinks that it is likely to secure his reform Article 172 of TPCE. However, in the Draft Penal Code of Eritrea corporal punishment is abolished.

ISSUE

The issue is whether harmful or violent tradition practices, including female genital mutilation, child marriage or honor crimes are addressed in Eritrea laws or not?

Analysis

Traditional practices, which are harmful to the health of a child, are still carried out extensively in Eritrea. Most of these practices are thought to be carried out not for religious, but rather for cultural reasons and vary accordingly between different ethnic groups. Like all harmful traditional practices, they are difficult to eradicate because those that carry out these practices are often ignorant of the real consequence of the custom.

Child Marriage

Pursuant to Draft Civil Code of Eritrea states marriageable age is 18. However, this does not apply if the man and women have both attained the full age of 16 and the woman submits to the authority who will celebrate the marriage a declaration made by a doctor stating that the woman is pregnant or has already given birth to a child (Article 581(2) of the Draft Civil Code). Even though this is the fact, it is still practiced extensively in the vast rural areas where it is estimated that the average age of marriage is 12-14 years.

8. Honor crimes are unknown in Eritrea.

9. There are no provisions that apply alone to non-citizens, stateless children, and asylum seekers.

13. There is no special court tasked with addressing violence against children in Eritrea.

Minimum age for sexual activity

ISSUE

The issue is to provide information on minimum age for sexual activity? a) In case of girls and boys? b) In case of homosexuals?

Rules

Article 309(1); Article 329 Articles 581(2) of Draft Civil Code.

Analysis

A person has to attain the age of 18, if he is going to marry. In spite of this, the Code in many Articles talks of underage marriage. But for underage to marry, he/she must voluntarily agree and get the permission from his/her guardian (Article 309(1) of TLCE). According to Article 329 of TCLE, once a minor is married, she/he is considered a major and gets all the benefits of being a major. With regard to the minimum marriageable age although the Draft Civil Code of Eritrea states that the marriageable age is 18.

This does not apply if the man and women have attained the full age of 16 years and the woman submits to the authority that will celebrate the marriage declaration made by a doctor stating that the woman is pregnant or already has given birth to a child-Article 581(2) of the Draft Civil Code. With regard to homosexual activity, since it is a crime, marriage, as well as sexual activity between the same sexes is not allowed.

Sexual exploitation of children

ISSUE

The issue is to provide information on legislation and other measures to prevent the commercial sexual exploitation of children, including through prostitution and other unlawful sexual activities.

Rules

Article 605 of TPCE, Article 606 (a) of TPCE

Analysis

Whosoever, for gain, or to gratify the passions of another:

a) Traffics in women or infants and young persons, whether by seducing them or inciting them, or by procuring them or other wise inducing them to engage in prostitution with their consent.

b) Keeps such, as person in a disorderly house or to let her out to prostitution is punishable with rigorous imprisonment not exceeding five years Article 605 of TPCE. In case of professional procuring or traffic under 15 years of age rigorous imprisonment shall be from 3 to 10 years (Article 606 of TPLCE). Moreover, "whosoever makes arrangements or provisions of any kind of the traffic in women or infants and young persons, is punishable with simple imprisonment or, according to the circumstance of the case, especially where a professional procurer is evolved or where the arrangement are fully made and intended to apply to many victims is punishable with rigorous imprisonment not exceeding 3 years", Article 607 of TPCE.

There has been no documented evidence regarding the sale, trafficking or abduction of children, this shows that it is not a problem in Eritrea.

ISSUES

The issue is to provide information on existing legislation on child pornography, sale of children, child prostitution the information include.

- a) Legislation on the definition child pornography.
- b) Legislation on producing, offering, distributing, training procuring and possessing child pornography through or in computers system.
- c) Information on the ages of consent to sexual activity visa-avis the age used in child pornography legislation.
- d) Legislation on Internet service providers in relation sexual exploitation of children through Internet.

Rules

- a) Articles 594,595,596,605,608,610-613 of the transitional penal Code
- b) Articles 280,281, of new Draft Penal Code
- c) Public notices N06/c2004 on public pornography access through Internet.

Analysis

The term "Child pornography" is not enshrined in the Eritrean legislation. However, pursuant to Article 608 of the Transitional Penal Code of Eritrea and Article 281 of the new Draft Penal Code of Eritrea pornography in general is categorized under "public indecency and outrages against morals". Without

distinguishing child from adult both acts alike are crimes under the Eritrean Penal Code. Since pornography is a criminal act, every mechanism that goes with it such as producing, offering transmitting, procuring and possessing pornography through or in various systems such as computer/internet/ also a criminal act. This can be buttressed by Articles 610-613 of the Transitional Penal Code and Article 282 of the new Draft Penal Code which state, "a person who makes import or export transport receives, possesses, displays in public, offers for sale or rents, distributes advertises or circulates, writings, images, posters, films, objects or other communications which are obscene or grossly indecent, or any other way traffics or trades in them his act is punishable as an offence".

As far as the age factor in sexual consent is concerned, only those 18 years and above are allowed to engage in sexual intercourse. Away from this, "whosoever causes an infant or young person under 15 years of age, other than his own child to have sexual intercourse, or to perform an act corresponding to sexual act with him is punishable, according to circumstance with rigorous imprisonment not exceeding 5 years".

Moreover, "whosoever commits any other indecent act upon infant or young person induces him to perform such an act or deliberately performs such an act in his presence is punishable according to the circumstance with rigorous imprisonment not exceeding 5 years or simple imprisonment for not less than 3 months" (Article 594(1) and (2) respectively of Transitional Penal Code of Eritrea). As to those minors aged from 15 to 18 ages are concerned it is sexual outrage and offence whosoever has sexual intercourse or performs analogous act with them (Article 595 of the Transitional Penal Code).

The mere consent of underage (minor) to have sexual intercourse with the offender will not vindicate the latter. Pursuant to Article 280 (1) of the new Draft

Penal Code, the offender charged with an offence in respect of a person, under age of the 15 it is not a defense that the person consented to the activity that forms the subject matter of the charge.

As to the legislation on Internet service providers is concerned, there are only "regulations" issued by Ministry in charge called The Ministry of Transport and Communications.

Even though both the Transitional Penal Code as well as the new Draft Penal Code penalizes pornography as indecent act, there are no specific rules (legislated) that deal with pornography through Internet. However, this is not without a reason because the transitional Penal Code of Eritrea was adopted from former Ethiopian Penal Code of 1957. Many amendments have been made to it since Eritrea got its independence and in 1998 a new Penal Code also was drafted. However, since Internet technology was introduced after 1998, ratified rules regarding access to pornography through Internet are not enshrined or incorporated. However, due to the extent of damage causing on the minds of Eritreans especially on children is so immense, the Government of Eritrea forced to come up with imperative public notice.

In accordance with the public notice (6/c Internet pornography access in public (e.g. cyber cafes) anybody is punishable by this public notice. If any individual is caught accessing porno-web-site in any public place the owner/license will be held responsible if a licensee is found to breach this public notice he/she is going to be punished to the extent of losing his/her license. The Ministry issued this notice with due regard to: -

a) The objective of the Communications Department (Communication Proclamation 102/1998)

- b) Reminding the permit and permit conditions of cyber-café's etc. under Article 3 which says the permit holder shall take all measures to ensure the users are not allowed to access or browse web pages containing indecent, obscene or offensive voice or data in public.
- c) The aim of respecting the Eritrean culture and its social values.

II. INSTITUTIONAL FRAMEWORK AND RESOURCES TO ADDRESS VIOLENCE AGAINST CHILDREN

Question 26 and 27

At the national level, Ministry of Labour and Human Welfare, Ministry of Justice, Ministry of Education, Ministry of Health and Ministry of Information are responsible for addressing violence against children while this is percolated down at the grass-roots level by the regional offices.

The task of the above-mentioned ministries is to formulate policies, programmes, training and research as well as monitoring and evaluation of all activities implemented at the regional level. This structure goes to the six regions, which are responsible for activities in their jurisdictions. Co-ordination at the National level is ensured at by the Ministry of Labour and human Welfare, while this is assured at regional level through the Local Governments.

The Ministry of Labour and Human welfare is the lead Government authority responsible for addressing violence against children. The tasks of the ministry among other things include prevention, protection of violence against children as

well as reintegration and rehabilitation of the children whose rights are violated.

Questions 28, 29 and 30

Although, a huge amount of Eritrea's budget goes to the social protection of population groups with special needs, meager financial amount goes to address violence in general and that of violence against children in particular due to the fact that violence in general and that of violence against children are not major social problem in Eritrea. Activities carried out with the available resources are public sensitization, advocacy, and rehabilitation of abandoned children.

UNICEF Eritrea is the only international organization that provides resources to Eritrea for activities of child protection. Resources obtained are used for public sensitization and advocacy.

Questions 31,32,33 and 34

The contribution of Eritrea to other countries is mainly emphasized on the prevention and appropriate intervention on violence against children. The country believes that all cultures and societies have developed natural coping mechanisms that assist them confronting most difficult situations, including violence against children. There have been also community traditions, developed over time that supports children and families to address violence against children. Therefore, efforts to respond to the problem of violence against children should be based on a given country's cultural context and coping mechanism.

The institutions indicated on question 32 are non-existent. With regard to question 33, there is a committee in the parliamentary structure to address the 'Rights of the Child' in general and that of violence against children in particular.

The Ministry of Labour and human Welfare, which is responsible for the Rights of the Child and child Protection has membership in parliament and is responsible in reporting to the parliament on issues and activities carried out on the Rights of the Child in General and that of violence against children in particular. The six regions, which are also accountable to the parliament, are also responsible for monitoring and reporting issues and activities carried out on violence against children in their vicinity to the parliament.

III. ROLE OF CIVIL SOCIETY IN ADDRESSING VIOLENCE AGAINST CHILDREN

Question 35

The National Union of Eritrean Youth and Students and the National Union of Eritrean Women have a significant role in addressing violence against children. The activities of these unions with regard to violence against children include: awareness creation on the prevention and protection of children from neglect, physical and sexual abuse.

Question 36

The Government of Eritrea is providing financial support for the two unions in their endeavor to implement the above-mentioned activities. The Ministry of Labour and Human Welfare is coordinating the initiatives of these two unions and other relevant authorities initiatives.

Question 37

The media has a significant role in awareness raising to the public pertinent to the prevention of violence against children.

IV. CHILDREN AS ACTORS IN ADDRESSING VIOLENCE

Questions 38,39 and 40

Children have participated and consulted in the design of activities and monitoring of programmes on the "Rights of the child". Their ages range from 14 to 18.

There is no participation of children in designing special procedural or evidentiary rules applying in court proceedings with respect to hearing on violence against children.

Financial and human resources are available to support children's participation in the design of prevention programme on violence against children. Nevertheless, it is difficult to pinpoint the financial and resource allocated to support children's participation due to the fact that the budget is allocated for awareness creation on the Convention on the rights of the child, where the issue of violence is one component of CRC.

V. POLICIES AND PROGRAMMES TO ADDRESS VIOLENCE AGAINST CHILDREN

Questions 41

A comprehensive child policy is being designed and the issue of violence against children is one of the sections of child policy.

Question 42, 43 and 44

The Government is providing a direct support of specific programmes aimed at child protection in general and that of preventing and responding to violence against children in particular. Supports are bestowed particularly to schools, institutions and law enforcement agencies. Monitoring of programme interventions is carried out through reporting and field visit by the concerned Government authorities.

Eritrea has participated in several regional and international coordinated activities concerning violence against children. The main ones included the First International Congress Against Sexual Abuse, Violence and Commercial Exploitation of Children held in Stockholm (1996), the first Arab-African Conference Against Sexual Abuse, Violence and Commercial Exploitation of Children held in Rabat (2001), the Second International Congress Against Sexual Abuse, Violence and Commercial Exploitation of Children held in Yokohama (2001), the second Arab- African Conference Against Sexual Abuse, Violence and Commercial Exploitation of Children held in Rabat (2004) and International

conferences on War Violence Against Children held in Venice and Washington (2004).

VI. DATA COLLECTION AND ANALYSIS AND RESEARCH

Questions 45 to 53

The Eritrean concept of the relationship of the child to the extended family and community differs from the Western concept in that the extended family members such as aunts, uncles, nephews and grandparents play an important role in the socialization of children such as monitoring children's behaviour, transmission of norms, values, and culture. Community members also play a significant role in this regard. The immediate environment is greatly influential in the child's life and development. Since there is a belief that younger children need constant attention parents, extended family and communities protect them from violence and abuse.

Eritrean societies deal duly with families who maltreat children, and there are strong societal sanctions against such families. For example, attempts that were made to investigate violence against children in two nationwide evaluations on the reintegrated families with the extended families have ensured that there was no violence occurred among the children. However, in 2004, there was one sexual abuse case reported in one of the schools. Having assessed the overall situation, penalty was imposed on the perpetrator and psychosocial support was provided to the reintegrated child.

VII. Awareness, Advocacy and Training

Question 54, 55 and 56

In Eritrea, there have been community traditions, developed over time that protects children from violence. Over the past five years, the Government of Eritrea has conducted several awareness-raising campaigns with the aim of strengthening the structures and coping mechanisms as well as meeting any newly emerged situations. The campaigns emphasized mainly on (a) punishable offences that a parent or guardian should not treat a child with negligence, bestow heavy and too many task to the child to accomplish, beat and offend a child in a way which affects her/his moral value, mental or physical development, abandon her/him in unsafe places and conditions; (b) Prevention of sexual abuse and exploitation of children as well as treatment, psychosocial support and rehabilitation of children harmed by sexual abuse and exploitation.

The target audience was the public in general and that of children, caregivers, religious and opinion leaders, and teachers in particular. The campaigns were held through radio, newsletters, television, seminars, theater through the media and schools.

The Government of Eritrea has provided training programmes for different professionals with the aim of preventing violence against children. The focus of the training and issues addressed by the training are indicated as follows:

Social workers, psychologists and Sociologists: prevention of children from sexual abuse, neglect, physical and psychological violence, negligent treatment, protection of children from all forms of violence. The training has also emphasized on prevention and protection of children in institutions.

Court officials including judges: Redress, including compensation for children victims of violence and penalties for the perpetrators of sexual abuse, maltreatment, physical and psychological harm as well as protection of children during the court procedures.

Teachers: prevention and protection of children from physical and sexual violence including corporal punishment.

Police: protection of street children, disadvantaged children, commercially sexually exploited children and children in conflict with the law.

Juvenile offenders, institution personnel and prison officers: protection of children in conflict with the law from all forms of violence.

Public health practitioners and nurses: detection, treatment, care and protection of children victimized of all forms of violence including physical, psychological violence, injury, maltreatment and sexual exploitation.