

## Recherche rapide Analyse-Pays de l'OSAR du 3 août 2016 sur l'Erythrée : répression à l'encontre des personnes mineures en cas de départ illégal du pays

Questions posées à l'Analyse-Pays de l'OSAR :

- Les personnes mineures subissent-elles une répression pénale en cas de départ illégal du pays ?

Les informations se fondent sur une recherche limitée dans le temps (recherche rapide) établie à partir des documents publics qui nous sont actuellement disponibles.

### Répression des mineurs en cas de départ illégal

Il n'y a pas d'informations fiables indiquant que les mineurs qui ont quitté l'Erythrée illégalement ne sont pas punis [à leur retour]. Il en est de même dans le nouveau rapport du SEM du 22 juin 2016 intitulé « Focus Eritrea » (cf : SEM, Focus Eritrea [mise au point concernant l'Erythrée], Update Nationaldienst und illegale Ausreise, du 22 juin 2016:

[www.sem.admin.ch/dam/data/sem/internationales/herkunftslander/afrika/eri/ERI-ber-easo-update-nationaldienst-d.pdf](http://www.sem.admin.ch/dam/data/sem/internationales/herkunftslander/afrika/eri/ERI-ber-easo-update-nationaldienst-d.pdf) ).

Ce rapport du SEM indique clairement que les informations disponibles sont limitées : «*Der Zugang zu Informationen über Eritrea, insbesondere bei menschenrechtlichen Themen, ist schwierig. Das eritreische Informationsministerium kontrolliert alle Medien in Eritrea. Forscher, Journalisten und Vertreter von Menschenrechtsorganisationen können in der Regel nicht oder nur sehr eingeschränkt vor Ort recherchieren. Die eritreischen Behörden selbst veröffentlichen kaum detaillierte Informationen zum Nationaldienst. Auch in der Umsetzung der Gesetzgebung zu Nationaldienst und illegaler Ausreise sind die Behörden nicht transparent und veröffentlichen keine Richtlinien oder Ausführungsbestimmungen. Somit fallen bei Eritrea essentielle Informationsquellen zu jenen Themen, welche für die Asylpraxis relevant sind, weg.*» (SEM, Focus Eritrea, S.13.)

**Informations non fiables du Gouvernement** . D'après le rapport du SEM, seuls les représentants du Gouvernement ayant été entendus par la délégation d'établissement des faits prétendent que les enfants mineurs ne sont plus sujets à des sanctions pénales lors du retour suite à un départ illégal du pays. Le SEM cite Yemane Gebreab, chef des Affaires politiques du *People's Front for Democracy and Justice*, d'après une interview du 11 mars 2016 : «*Eine spezielle Behandlung bestehe für Minderjährige, die in der Regel straflos entlassen oder für kurze Zeit in ein «Rehabilitationszentrum» gebracht würden.*» (SEM, Focus Eritrea, p. 25) Comme le SEM l'indique lui-même, il

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n'était cependant pas possible d'avoir des informations fiables sur les centres de réhabilitation dans le cadre de la mission d'établissement des faits malgré les demandes répétées de la délégation (SEM, Focus Eritrea, p. 25).

**Sources diplomatiques non fiables.** Une source diplomatique, non précisée, part de l'idée que les mineurs sont « généralement » (« *In der Regel* ») impunis. Il n'est cependant pas expliqué dans quelles circonstances cette règle ne serait pas suivie. La même source – comme d'autres sources diplomatiques interrogées – ne savait pas non plus quelle est l'autorité responsable de l'application des sanctions et de leur mise en œuvre. Cette source estime cependant que la peine n'est pas déterminée dans le cadre de procédures judiciaires ou administratives régulières et transparentes. Étant donné que cette source laisse apparaître des incertitudes fondamentales et des lacunes dans les informations qu'elle apporte, on ne peut pas supposer *a priori* que la déclaration faite par les autorités concernant l'impunité des mineurs en cas de départ illégal du pays est fiable. (SEM, Focus Eritrea, p.25)

**Amnesty International et Commission d'enquête de l'ONU.** Le SEM se réfère également à Amnesty International et à la Commission d'enquête de l'ONU, qui peuvent être considérées comme deux sources fiables et qui sont publiées officiellement. Selon ce que décrivent ces deux sources, certains mineurs [et pas seulement les adultes] ont été également poursuivis pénalement suite à leur départ illégal du pays : « *Sowohl Amnesty International als auch die UN-Untersuchungskommission berichten, dass auch Fälle von Minderjährigen bekannt seien, die beim illegalen Grenzübertritt inhaftiert wurden. Amnesty International erwähnt 16- und 17-Jährige (und bezieht sich dabei auf die Jahre 2014 und 2015), während die UN-Untersuchungskommission summarisch und ohne Zeitangabe von «Kindern» spricht. Diese würden sowohl als Alleinreisende als auch in Begleitung ihrer Eltern inhaftiert. 2016 berichtete die UN-Untersuchungskommission auch von Vergewaltigungen von Frauen und Mädchen an der Grenze, ohne diese Vorfälle zu datieren. In einem Vorfall 2015 hätten sich Frauen und Mädchen vor Soldaten entkleiden müssen.* » (SEM, Focus Eritrea, p. 27)

**Conclusions du SEM au sujet de l'ampleur des peines pénales en cas de départ illégal du pays.** A propos des peines encourues en cas de départ illégal, sans qu'il y ait désertion ou objection de servir, le SEM conclut qu'il n'est pas « clair » si le facteur de l'âge influence ou non la peine encourue et quelle en est la sévérité. La responsabilité de fixer cette peine n'est « pas clairement » déterminée, mais plusieurs sources mentionneraient qu'il s'agit de l'armée. Cependant, il est probable selon le SEM, qu'au moins dans certains cas, des lignes directrices internes seraient utilisées pour fixer la peine. Étant donné que celles-ci ne sont pas accessibles et que les autorités ne publient aucun jugement, leur mise en œuvre n'est « pas transparente » et dans certains cas, probablement aussi « arbitraire ». (SEM, Focus Eritrea, p. 28)

Amnesty International, décembre 2015 :

*«However, according to the testimonies of people who have fled the country, most of the attempts are made on foot, across the porous borders with Sudan in the west and Ethiopia in the south. A small number of people interviewed in 2015 had crossed in a vehicle. In all cases, these were reported to be military vehicles, where the person fleeing had found and paid a smuggler to arrange their passage across the border.»*

**The information collected from Amnesty International's interviews indicates that most, if not all, people caught attempting to cross the border are arrested and detained arbitrarily.** 15 people interviewed by Amnesty International who fled Eritrea in 2014 and 2015 reported that they had made one or two previous attempts to flee the country and had been caught, arrested and detained arbitrarily. **These included several people as young as 16 or 17 years old at the time of their detention.**

**These detentions are arbitrary because the detained individuals are not charged with any offence, brought before a judicial authority, able to challenge their detention before a competent court or given access to a lawyer.** Detainees are often held incommunicado throughout their detention. No-one interviewed by Amnesty International in 2015 who had been detained when trying to flee communicated with their families while in detention. As with other groups of prisoners, the absence of due process and lack of transparency made it impossible to know how many are detained in Eritrea for trying to flee. However, the information given in interviews with former detainees indicates that detention on this basis is commonplace. (...)

**Children have also been detained when caught fleeing. Several former detainees interviewed by Amnesty International were under 18, or had been at the time of their detention. The presence of many 16 and 17 year olds among newly-arrived asylum seekers interviewed also suggests a number of children are among those caught attempting to cross the borders.**

**Tesfalem, a 17 year old boy, told Amnesty International what happened when he was caught near the border with Ethiopia,**

*"Last year [2014], when I was in 9th grade, I tried to escape because I am afraid of Sawa and military service. But they caught me in Tserona [near the Ethiopian border]. I was taken to a place where I was kept for a week. When the cell was full, they took us to Dekemhare where they clarified the status of the people who had been caught. They confirmed I am a student and underage. I was held for six months as punishment then released. I was 16 at the time. In Dekemhare, the underage prisoners were in a container. We were maybe 50 people, all there for trying to escape the country. We had one window, and one jerry can in the corner to use as a toilet. It smelt so bad. We got one serving of bread in the morning and one at night."*

**Robel, another 17 year old boy interviewed, was detained for six months in Gergera after he was caught trying to flee.** He was held in a room with 150 other people and, for the first month of his detention, was not allowed to leave the cell.

Most of the people interviewed by Amnesty International who had been detained, said that **when they were released from detention, they were either sent for military training if they had not yet been conscripted or back to National Service if they were already conscripted.** Seble, a young man who had already completed his initial training and then further military training, reported that he was sent for training again after release from detention,

*"I tried to go to Ethiopia but I was caught and detained for seven months in Gergera. Then I was sent for re-training in Mai Seraw and assigned to the military."» Source*

consultée : Amnesty International, Eritrea: Just deserters: Why indefinite National Service in Eritrea has created a generation of refugees, 2 décembre 2015, p. 44-45:  
[www.amnesty.org/en/documents/afr64/2930/2015/en/](http://www.amnesty.org/en/documents/afr64/2930/2015/en/).

UN Office of the High Commissioner on Human Rights, juin 2015 :

**« 1066. The Commission found that unaccompanied children caught crossing the border equally undergo interrogation and are subjected to ill-treatment and torture, before being sent to prison.**

**One victim, who was 14 at the time of his first attempt, explained: “We did not know the persons who arrested us. They asked us where we were going. At first we told them that we were visiting a village, but later when they beat us, we told the truth. They tied our hands and legs at the back together.” Another victim, who was 16 years old when he was caught, was interrogated for two years, during which time he was beaten. A witness described the situation of Ethiopian children caught at the border who were detained with him: “Among the children who were in the prison were two 11-year old Ethiopian children from the village of Adi Hibtai. The Ethiopian children were in a very distressing condition. Before reaching Adi Abeito prison, they had passed through four prisons and through a lot of questioning, harassment and intimidation.”».** Quelle: UN Office of the High Commissioner on Human Rights, Report of the detailed findings of the Commission of Inquiry on Human Rights in Eritrea, A/HRC/29/CRP.1. 5. Juni 2015, S. 298:  
[www.ohchr.org/Documents/HRBodies/HRCouncil/ColEritrea/A\\_HRC\\_29\\_CRP-1.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/ColEritrea/A_HRC_29_CRP-1.pdf).

UN Office of the High Commissioner on Human Rights, juin 2016 :

**« 121. Furthermore, women and girls who try to flee the country are at increased risk of sexual and gender-based violence. The Commission heard evidence about recent cases of women and girls being raped in Eritrea when trying to leave the country, including a 14 year-old girl who was raped by soldiers and became pregnant. Although women are aware of the possibility to be raped when trying to flee the country, many still prefer to leave Eritrea. One witness explained that:**

*“Before our attempted [flight in June 2015], fearing what could happen on our journey, [two female relatives] had a contraceptive injection [...] to prevent unwanted pregnancy. Because you hear about rapes, this is why they had this injection. Women trying to flee often have this injection, because we know what can happen.”*

**122. Moreover, in some instances, women and girls who tried to flee the country and were arrested by soldiers guarding the border were forced to strip naked, or nearly naked, and submitted to acts of sexual violence, which in some cases amounted to rape, as described by one witness who tried to flee in April 2015:**

*“What was really sad...we were men, women and **children**...they obliged everyone to take off all their clothes so they could search them. [...] All the guards were men. They searched the women and were touching them. The women couldn't say no. They felt bad and we felt bad but could do nothing. They searched everywhere, even the genitals, with their hands. They even laughed*

*about it. Even put their fingers inside the women's genitals and the little girls' genitals – 5-year-old girl, a 9-year-old girl. The girls cried.”»* Quelle: UN Office of the High Commissioner on Human Rights, Report of the detailed findings of the Commission of Inquiry on Human Rights in Eritrea – A/HRC/32/CPR.1., 8. Juni 2016, S. 31:  
[www.ohchr.org/Documents/HRBodies/HRCouncil/CoIEritrea/A\\_HRC\\_32\\_CRP.1\\_read-only.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoIEritrea/A_HRC_32_CRP.1_read-only.pdf).