

# Érythrée: violence sexuelle touchant les femmes

Recherche rapide de l'analyse-pays

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# 1 Introduction

Le présent document a été rédigé par l'analyse-pays de l'Organisation suisse d'aide aux réfugiés OSAR à la suite d'une demande qui lui a été adressée. Il se penche sur les questions suivantes:

- À quel point la violence sexuelle est-elle répandue en Érythrée?
- Y a-t-il des mesures de protection pour les victimes de violence sexuelle?
- Quelles sont les conséquences de la violence sexuelle en Érythrée?

Pour répondre à ces questions, l'analyse-pays de l'OSAR s'est fondée sur des sources accessibles publiquement et disponibles dans les délais impartis (recherche rapide) et sur les renseignements d'une personne de contact bien informée.

Le thème des mutilations génitales féminines (MGF) n'est pas traité dans cette recherche rapide. Voir à ce sujet: Organisation suisse d'aide aux réfugiés OSAR, mutilations génitales féminines (MGF), le 11 janvier 2018: [www.osar.ch/assets/herkunftslander/afrika/eritrea/180111-eri-fgm-f.pdf](http://www.osar.ch/assets/herkunftslander/afrika/eritrea/180111-eri-fgm-f.pdf).

## 2 Cadre juridique

**La violence sexuelle en tant qu'attaque systématique et crime contre l'humanité.** Sur la base des constats qu'elle a rassemblés, la *Commission d'enquête des Nations Unies sur la situation des droits de l'homme en Érythrée* (UNHRC, juin 2016) classe certains viols dans la catégorie des crimes contre l'humanité. Il s'agit de viols commis dans des centres d'entraînement militaires et en prison ou sur des femmes et des filles de la communauté *Afar*. Ils font, dans ce cas, partie d'une attaque généralisée contre la population civile érythréenne. Il semble les agressions sexuelles de femmes de la minorité *Afar* à majorité musulmane s'inscrivent dans la stratégie de l'armée pour chasser de leurs terres ces personnes qui ont traditionnellement un mode de vie nomade (UNHRC, 2015).

**Manque d'État de droit et d'une justice indépendante.** Les systèmes juridiques pour la protection, la prévention, la répression et l'élimination de la violence contre les femmes sont limités et inefficaces, d'après la *Commission d'enquête des Nations Unies sur la situation des droits de l'homme en Érythrée* (UNHRC 2015). Les femmes sont, selon elle, touchées de manière disproportionnée par le manque d'État de droit et l'absence d'une justice indépendante. D'après *UN Women*, il y a eu, entre 2009 et 2012, 302 cas de plaintes, recours ou actions en justice pour cause d'agressions sexuelles (*UN Women*, 2016 (2)). Ces cas concernaient des affaires de viols, de contrainte sexuelle («*sexual outrage*»), de séduction, d'adultère et de bigamie. Il n'est pas précisé s'ils ont abouti à une condamnation ou à une peine. D'après l'USDOS (mars 2017), aucun rapport ne faisant état d'accusations de droit pénal pour cause de harcèlement sexuel.

**Une nouvelle législation a été adoptée en 2015, mais elle n'est pas appliquée. Le Code pénal de 1957 est toujours en vigueur.** Un nouveau Code pénal, un Code civil, ainsi qu'un

Code de procédure pénale et civile, ont été adoptés en mai 2015 (*28 Too Many*, novembre 2017). Selon les indications d'une personne de contact experte de l'Érythrée, la nouvelle législation n'est toutefois pas en vigueur et personne ne sait quand elle sera appliquée (renseignement donné par courriel le 2 février 2018 à l'OSAR). Selon elle, le Code pénal de 1957 est toujours utilisé. D'autres sources confirment ce point (*28 Too Many*, novembre 2017; *Library of Congress*, mars 2016).

**Définition et peine encourue en cas de viol.** L'article 589 du *Code pénal éthiopien* de 1957 définit le viol comme un acte commis exclusivement contre une femme. Un viol peut entraîner jusqu'à dix ans d'emprisonnement. En cas de viol collectif, de viol d'une personne de moins de 15 ans ou d'une personne handicapée, les auteurs encourent jusqu'à 15 ans de privation de liberté. La violence sexuelle ou la contrainte (« *sexual outrages*») peut aboutir à une peine d'emprisonnement allant de six mois à huit ans (*Code pénal éthiopien* de 1957; voir aussi USDOS, mars 2017).

**Le viol conjugal n'est pas défini comme une infraction pénale.** Le viol conjugal n'est pas mentionné dans le *Code pénal éthiopien* de 1957 et ne représente donc pas un délit d'après le *Ministère néerlandais des Affaires étrangères* (février 2017) (voir aussi USDOS, 2017). Même dans le nouveau Code pénal de 2015, le viol conjugal n'est pas défini en tant que crime. D'après l'article 307 al. 2 du *Code pénal érythréen* de 2015, il n'est punissable que si le couple ne vit pas dans le même ménage.

**Avorter est illégal en Érythrée et puni par une peine d'emprisonnement allant jusqu'à cinq ans.** Le *Code pénal éthiopien* de 1957 prévoit une peine d'emprisonnement allant jusqu'à cinq ans en cas d'avortement. Pour les avortements dus à une forte souffrance psychique ou physique, suite à un viol ou un inceste ou à cause d'une extrême pauvreté, la peine peut être adoucie. Un avortement n'est toléré que si cette intervention peut sauver la femme d'une menace grave et durable pour l'intégrité corporelle et la vie.

### 3 Étendue de la violence sexuelle contre les femmes en Érythrée

**Manque de statistiques sur violence contre les femmes en Érythrée.** D'après la *Commission d'enquête des Nations Unies sur la situation des droits de l'homme en Érythrée* (UNHRC, juin 2015), il est difficile de documenter l'ampleur de la violence sexuelle contre les femmes. C'est dû, selon elle, au contexte spécifique de l'Érythrée, ainsi qu'à la honte et à la stigmatisation des victimes (voir paragraphe 4). Le *Comité pour l'élimination de la discrimination à l'égard des femmes* (CEDAW, mars 2015) relève qu'il y a trop peu de données statistiques sur la violence contre les femmes. D'après la base de données sur les violences contre les femmes de *UN Women*, les statistiques nationales officielles sur l'étendue de la violence domestique et non domestique ne sont pas disponibles (*UN Women*, 2016 (1); voir aussi *OECD Data*, sans date, accès le 16 janvier 2018).

### 3.1 Violence sexuelle au service militaire, au service national et en détention

**De nombreux sévices sexuels infligés par les forces de sécurité au service militaire et au service national, surtout dans le camp de Sawa.** La discrimination sexiste, ainsi que la violence contre les femmes et les filles, sont très répandues en Érythrée dans le cadre du service militaire et du service national (USDOS, mars 2017; AI, février 2017, UNHRC, juin 2016, CEDAW, mars 2015). Bien que la violence sexuelle subie dans le cadre du service national ne dépende pas de la localité ou de la mission, elle est particulièrement marquée dans le camp militaire de Sawa (*Gaim Kibreab*, avril 2017). Beaucoup de femmes et de filles sont exploitées sexuellement dans les camps militaires et assignées à des tâches subalternes telles que le nettoyage, la lessive ou la préparation du café pour leurs supérieurs (UNHRC, 2015; *Kibreab*, 2017). Si elles refusent, elles sont punies et doivent alors accomplir des travaux dangereux, à des endroits exposés, par des chaleurs extrêmes. Elles peuvent aussi être victimes de tracasseries et de châtiments corporels (*Kibreab*, 2017; UNHRC, 2015; CEDAW, 2015). Les formateurs et même de «simples» soldats imposent des rapports sexuels à des femmes astreintes au service national et au service militaire (UNHRC, 2016). Un officier a rapporté à la *Commission d'enquête des Nations Unies sur la situation des droits de l'homme en Érythrée* que la violence sexuelle et les viols sont «habituels» au service national et au service militaire (UNHRC, juin 2016). Selon un autre ancien formateur, l'exploitation sexuelle est «normale» au camp de Sawa (UNHRC, 2015).

**Sévices sexuels infligés par des militaires en dehors du service national.** Même en dehors du service national, les femmes et les filles sont exposées à des sévices sexuels de la part des militaires. C'est ce que rapporte la *Commission d'enquête des Nations Unies sur la situation des droits de l'homme en Érythrée* (UNHRC, juin 2016). Elle cite le cas de femmes et de filles agressées par des soldats qui les auraient forcées à retirer leurs vêtements après une tentative de fuite. Les soldats auraient commis des attouchements et harcelé sexuellement même des filles de cinq et neuf ans.

**Plusieurs sources font état d'esclavage sexuel et de torture.** D'après l'USDOS (2017) et le UNHRC (2015), les sévices sexuels infligés par le personnel de l'armée sont comparables à des tortures et les travaux domestiques imposés dans les camps de formation correspondent à de l'esclavage sexuel (USDOS, mars 2017; UNHRC, 2015). *Kibreab* (2017) parle aussi de torture très répandue et d'abus sexuels. AI (février 2017) dénonce également des d'esclavage sexuel et de torture de femmes et de filles dans le camp de formation militaire de Sawa.

**La violence sexuelle, très répandue en détention, touche aussi les hommes.** La violence sexuelle est chose courante aussi dans le milieu carcéral et les hommes ne sont pas à l'abri (CEDAW, 2015; UNHRC, 2015). La *Commission d'enquête des Nations Unies sur la situation des droits de l'homme en Érythrée* (UNHRC, 2015) signale des viols collectifs et des viols répétés. Des prisonniers seraient violés par d'autres hommes ou contraints à des rapports sexuels avec d'autres détenus. Le CEDAW (2015) critique l'absence d'organe de surveillance indépendant chargé de visiter les établissements pénitentiaires en Érythrée.

## 3.2 Violence domestique et violence sexuelle de la part de la population civile

**Forte prévalence de la violence domestique.** D'après le *Ministère néerlandais des Affaires étrangères* (février 2017), la violence domestique est très répandue en Érythrée, surtout dans les régions rurales. Dans un rapport au Comité des droits de l'enfant, le *gouvernement érythréen* renvoie à une étude menée en 2001, selon laquelle 40 % des femmes étaient victimes de violence domestique (*gouvernement érythréen*, 2003). Selon une autre étude datant de 2002, 90 % des femmes érythréennes étaient exposées à la violence domestique. D'après la *Commission d'enquête des Nations Unies sur la situation des droits de l'homme en Érythrée* (UNHRC, 2015), l'étendue de la violence domestique est due à la conception traditionnelle du rôle de la femme dans la société, à la militarisation de la population, à la pression qui en résulte sur la famille et à la grande quantité d'armes en circulation au sein de la société érythréenne.

**Forte acceptation de la violence domestique.** D'après les données de l'OCDE (*OECD Data*, sans date, accès le 16 janvier 2018), 71 % des femmes érythréennes ont déclaré en 2014 que la violence au sein du couple (marié ou non) était justifiée dans certaines circonstances.

**Agressions sexuelles en cas de départ illégal.** En cas de départ illégal, les femmes sont fortement exposées à la violence sexuelle, car elles sont livrées à des gens susceptibles de profiter de leur situation délicate dans un cas de ce genre (UNHRC, 2015).

## 3.3 Mariages de mineurs, mariages arrangés et mariages forcés<sup>1</sup>

**Bien que l'âge légal pour se marier soit fixé à 18 ans, il y a beaucoup de mariages de mineurs.** En Érythrée, l'âge légal pour se marier est fixé à 18 ans pour les hommes comme pour les femmes (USDOS, mars 2017; UNHRC, 2015). Le mariage de mineurs repose malgré tout sur une tradition dans de nombreux groupes ethniques d'Érythrée et certains le pratiquent toujours (UNHRC, 2015). D'après *l'enquête démographie et de santé érythréenne (Population and Health Survey)* de 2010, 41 % des femmes interrogées dans la tranche d'âges de 20 à 24 ans étaient mineures au moment de leur mariage et 13 % avaient moins de 15 ans (USDOS, mars 2017). Les filles des régions rurales en particulier sont exposées à un risque de mariage précoce. Le CEDAW (2015) relève aussi dans son rapport la forte prévalence de mariages de mineurs en Érythrée.

**La peur de la maltraitance sexuelle entraîne des décrochages scolaires prématurés, des départs prématurés du service national, des mariages forcés et des grossesses.** Pour éviter que leurs filles ne soient victimes d'agressions sexuelles sur le chemin de l'école ou à l'école, certaines familles préfèrent les garder à la maison jusqu'à ce qu'elles soient mariées (UNHRC, 2015; CEDAW, 2015). L'idée qu'une agression sexuelle est plus grave avant le

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<sup>1</sup> Le *Service mariages forcés (Fachstelle Zwangsheirat)* établit à cet égard une distinction entre mariage forcé et union forcée. Si la seconde est définie comme «la contrainte de rester dans les liens d'un mariage déjà contracté», le premier est qualifié de «décision tierce contraire aux droits humains». Il implique «qu'au moins une des personnes concernées (la fiancée ou le fiancé) se sent contrainte au mariage». Les notions de «mariages arrangés» et «mariages de mineurs» correspondent à la terminologie de ce service (*Fachstelle Zwangsheirat*, sans date, accès le 29 janvier 2018).

mariage qu'après pousse les parents à marier des jeunes filles mineures (UNHRC, 2015). Cela place à nouveau les filles et les jeunes femmes dans une situation de violence et d'exploitation à cause de leur âge.

Au service national, beaucoup de recrues se marient avec d'autres recrues ou avec des hommes plus âgés dans l'espoir de réduire ainsi le risque de violence sexuelle et pour être provisoirement libérées du service (*Kibreab*, avril 2017; UNHRC, 2015). Des familles marient en outre leurs filles pour leur permettre d'échapper au service national et de s'occuper de la famille et du ménage à la maison (UNHRC, 2015). Beaucoup de femmes optent délibérément pour une grossesse, afin d'échapper au service national (*Kibreab*, 2017; CEDAW, 2015).

**Les mesures du gouvernement pour lutter contre les mariages de mineurs bafouent le droit de fonder une famille.** D'après les indications dont dispose la *Commission d'enquête des Nations Unies*, le gouvernement érythréen prend des mesures pour éviter que trop de femmes se marient avant d'avoir terminé le service national (UNHRC, 2015). Il interdit ainsi aux églises et aux mosquées de célébrer des mariages de filles en âge d'effectuer leur service, à moins d'une autorisation officielle. Cette permission n'est délivrée qu'après la fin du service national. D'après la *Commission d'enquête des Nations Unies*, cette pratique bafoue le droit de fonder une famille.

**La polygamie en tant que pratique discriminatoire à l'égard des femmes.** Le CEDAW (2015) s'inquiète du fait que le droit de la famille islamique discrimine les femmes par rapport au mariage, au divorce et à l'héritage. La polygamie est toujours pratiquée dans certaines sociétés musulmanes; or, elle précarise le statut de la femme. Le CEDAW cite pour exemple les affaires successorales dans lesquelles le mari ne pourrait désigner qu'une seule femme comme héritière, défavorisant ainsi les autres.

## 4 Manque de protection, large impunité

**Manque de mesures de protection et de services d'assistance pour les victimes. Une source indique que le gouvernement nie l'ampleur de la violence contre les femmes.** La *Commission d'enquête des Nations Unies sur la situation des droits de l'homme en Érythrée* (UNHRC 2015) constate une «négation complète» de l'ampleur de la violence contre les femmes de la part de l'État érythréen. Il n'y a pas de systèmes et de prestations efficaces pour les victimes. Le CEDAW (mars 2015) déplore l'absence de procédures médicales spécifiques, de procédures de médecine légale et d'autres procédures fondées sur des preuves pour poursuivre des cas de violence contre les femmes. D'après la même source (CEDAW, mars 2015), rien n'indique l'existence de prestations de réhabilitation, de paiement de dommages et intérêts ou d'indemnités aux victimes de violence sexuelle, ni d'accompagnement et de protection des témoins. D'après le UNHRC (juin 2015), l'organisation proche du gouvernement *National Union of Eritrean Women* (NUEW) propose certains services et informations pour les victimes de violence sexuelle et domestique. Mais d'après les indications faites au UNHRC (2015) par des personnes concernées, ces services sont «pratiquement inexistant».

**Il est pratiquement impossible de porter plainte contre des fonctionnaires et/ou des membres des forces de sécurité. Une source fait état de torture pour cause de plainte pénale.** D'après la *Commission d'enquête des Nations Unies sur la situation des droits de*

*l'homme en Érythrée* (UNHRC 2015), il est «extrêmement difficile» pour les femmes victimes de violence sexuelle de déposer plainte. Il y a d'ailleurs très peu de chances qu'une plainte soit instruite de façon appropriée ou que les criminels soient poursuivis en justice. La *Commission d'enquête des Nations Unies* rapporte que la police et l'armée ont repoussé des personnes qui souhaitaient porter plainte (UNHRC, juin 2015). La disponibilité à reconnaître la violence contre les femmes est particulièrement faible quand le délit est le fait de membres d'institutions publiques, telles que les forces de combat armées par exemple. Selon les indications recueillies par la *Commission d'enquête des Nations Unies sur la situation des droits de l'homme en Érythrée* (UNHRC, 2016) de la bouche d'un ancien officier, tous les commandants sont liés les uns aux autres. Si une plainte est déposée contre l'une de ces personnes en vue, il ne se passe rien ou la femme est punie (UNHRC 2015). Comme les femmes ont honte et qu'elles s'autocensurent, les militaires peuvent continuer à les importuner en toute impunité.

La *Commission d'enquête des Nations Unies* (UNHRC, 2015) rapporte le cas d'une femme victime d'une tentative de viol de la part d'un officier de l'armée. Quand elle s'est rendue au poste de police pour signaler cette agression, elle a rencontré son abuseur. On lui a dit de rentrer chez elle et de ne parler de l'incident à personne. Dans le même rapport, la *Commission d'enquête des Nations Unies* signale le cas d'une jeune femme violée par un officier de l'armée. Son père a été incarcéré pendant un mois et torturé après avoir signalé l'affaire au commandant du camp militaire.

**Pas de dispositions ou de directives restreignant les pouvoirs des chefs militaires.** Selon *Gaim Kibreab* (avril 2017), le comportement des chefs militaires, ainsi que le traitement des recrues, échappent en général à tout contrôle. Toujours d'après la même source, il n'y a pas de prescriptions ou de directives définissant entre autres les pouvoirs des supérieurs, interdisant les comportements sexuels inappropriés à l'égard des recrues ou permettant des procédures de recours en cas d'abus sexuels ou autres. Le manque de contrôle et de prescription confère un pouvoir illimité aux chefs militaires et assure leur impunité. Une personne de contact qualifie d'«absolu» le pouvoir des supérieurs (*Kibreab*, 2017).

**La grande impunité favorise d'autres violences envers les femmes.** Les manquements du système juridique entraînent, selon le UNHRC (2015), une impunité en cas de violence envers les femmes qui génère à son tour d'autres actes de violence. L'État n'arrive pas à obliger les personnes violentes à rendre des comptes. Cet échec intensifie la subordination et l'impuissance des femmes et envoie le message que la violence des hommes envers les femmes est acceptable et inévitable. La *Commission d'enquête des Nations Unies* (UNHRC, 2015) rapporte ainsi le cas d'une femme qui s'est adressée à la police pour signaler une affaire de violence domestique. On lui a rétorqué qu'elle devait tolérer ces débordements, parce qu'un mariage fonctionne ainsi.

**Le manque de protection de l'État incite à partir.** Plusieurs femmes ont indiqué à la *Commission d'enquête des Nations Unies* être parties à cause du manque de protection de l'État, parce qu'elles ne se sentaient plus en sécurité en Érythrée (UNHRC, juin 2015).

**La violence domestique est souvent arbitrée en privé.** Selon les indications du *Ministère néerlandais des Affaires Étrangères*, la violence domestique suscite peu de plaintes. Ceux qui s'en rendent coupables sont rarement trainés en justice (*Ministère néerlandais des Af-*



*faïres Étrangères*, février 2017). D'après le CEDAW (mars 2015), les cas de violence domestique sont souvent arbitrés par des chefs traditionnels et religieux. La médiation est privilégiée à une poursuite pénale.

## 5 Stigmatisation des victimes de violence sexuelle et autres tortures

**La violence sexuelle est un sujet tabou dans la société érythréenne.** Les différentes sources sont unanimes à ce sujet (*Human Rights Concern Eritrea*, mars 2017; UNHRC, 2016, UNHRC, 2015; *Kibreab*, avril 2017). Beaucoup de femmes ont indiqué à la *Commission d'enquête des Nations Unies sur la situation des droits de l'homme en Érythrée* (UNHRC, 2015) qu'elles avaient peur de parler de la violence sexuelle à cause de l'importance culturelle de la virginité, de la chasteté et de la monogamie. Comme ce sujet n'est guère évoqué, d'anciens recrues ont déclaré à *Gaim Kibreab* avoir supposé au début que les rapports sexuels entre recrues et commandants étaient consentis (*Kibreab*, 2017).

**Beaucoup de victimes de viols ne peuvent pas se marier ou sont répudiées.** Comme la virginité et la chasteté des femmes sont des valeurs très considérées en Érythrée, beaucoup de victimes de viol n'ont pas la possibilité de se marier. Les intéressées considèrent souvent cela comme la pire conséquence d'un viol. Si la femme est déjà mariée au moment du viol, une procédure de divorce peut être engagée contre elle ou ses enfants lui sont retirés (UNHRC, juin 2015).

**La honte, la stigmatisation et la peur de ne pas être crues dissuadent les femmes de porter plainte.** D'après le *Ministère néerlandais des Affaires étrangères* (février 2017) et l'USDOS (mars 2017), les normes culturelles et la honte dissuadent les femmes de porter plainte pour violence sexuelle domestique ou non domestique. Si une femme soumettait l'affaire devant un tribunal, tout le voisinage apprendrait ce qui s'est passé. Cela entraînerait par la suite un préjudice pour la famille et personne n'épouserait la fille violée (UNHRC, juin 2015). Beaucoup de parents de victimes évitent aussi de porter plainte par peur de voir leurs filles stigmatisées et exclues (*Human Rights Concern Eritrea*, mars 2017). D'après *Gaim Kibreab* (avril 2017), la peur de ne pas être crues retient en outre beaucoup de femmes de signaler ce genre d'affaire.

**Les victimes de violence sexuelle souffrent de violence et/ou d'exclusion de la part de la famille et de la communauté, quelques-unes craignent la mort.** D'après le UNHRC (juin 2016), certains groupes ethniques et religieux chassent les femmes violées de la communauté. Selon la même source (2015), quelques femmes redoutent une réaction violente de la part des membres de leur famille s'ils venaient à être informés des violences sexuelles. Il arrive que la victime subisse des violences supplémentaires pouvant dans certains cas conduire à la mort quand leurs proches partent du principe que l'affaire entache l'honneur familial. D'après la *Commission d'enquête des Nations Unies sur la situation des droits de l'homme en Érythrée* (UNHRC, 2015), certains rapports font état de meurtres de femmes *Afar* suite à un viol.

**Rapports au sujet de suicides.** À cause de la pression psychique, physique et sexuelle et de «l'extrême honte» que ressentent les femmes suite à un viol, certaines optent pour le suicide (*Human Rights Concern Eritrea*, mars 2017; UNHRC, 2016; UNHRC, 2015).

**Stigmatisation supplémentaire en cas de grossesse suite à un viol.** D'après le UNHRC (juin 2016), les femmes et les filles victimes de violence sexuelle sont encore plus stigmatisées si elles se retrouvent enceintes après le viol. Selon un ancien officier de l'armée, des femmes sont mises enceinte dans des camps d'entraînement militaires et on leur ordonne ensuite de rentrer à la maison. Personne ne s'occupe d'elles, ni de leurs enfants. La plupart de ces femmes sont libérées du Service national sans rétribution ou compensation. Privées d'avenir, elles finissent à la rue en tant que prostituées et gagnent à peine de quoi se nourrir elles et leurs enfants. La *Commission d'enquête des Nations Unies sur la situation des droits de l'homme en Érythrée* (UNHRC, juin 2015) signale le cas de jeunes femmes ayant décidé de partir à l'étranger, après avoir appris qu'elles étaient enceintes. Une jeune femme *Afar* a été forcée de quitter sa communauté, lorsque celle-ci a appris qu'elle avait été violée par un militaire et qu'elle était enceinte.

**Une interruption de grossesse peut entraîner des complications parfois mortelles.** Plusieurs femmes interrompent une grossesse non désirée suite à un viol (*Human Rights Concern Eritrea*, mars 2017). L'avortement peut entraîner des problèmes judiciaires, ainsi que des complications physiques, des infections et même des décès.

**Plusieurs femmes sont contaminées par le VIH/SIDA ou d'autres maladies sexuellement transmissibles. Cela entraîne une stigmatisation encore plus grande.** D'après les indications de la *Commission d'enquête des Nations Unies sur la situation des droits de l'homme en Érythrée* (UNHRC, juin 2016), les violeurs n'utilisent généralement pas de préservatifs dans les camps d'entraînement de l'armée. Indépendamment des grossesses non désirées, cela entraîne la propagation de maladies sexuellement transmissibles telles que le VIH/SIDA. Il n'y a certes pas de preuves scientifiques permettant de ramener la propagation du VIH/SIDA à la militarisation. Mais beaucoup considèrent la promiscuité et les abus sexuels au service national comme des facteurs favorisant la transmission du VIH (*Gaim Kibreab*, avril 2017). D'après les statistiques du gouvernement érythréen de 2002, le taux de personnes infectées par le VIH/SIDA était en effet plus élevé à l'armée (4,6%) que dans la population en général (*Kibreab*, 2017).

D'après la *Commission d'enquête des Nations Unies* (UNHRC, 2016), les personnes séropositives souffrent de violations supplémentaires des droits humains. Ainsi une fille de dix ans a été fortement discriminée et stigmatisée à cause de sa maladie aussi bien à l'école qu'en dehors, après avoir été violée par un soldat qui lui a transmis le VIH. D'après le UNHRC (juin 2015), les personnes séropositives n'ont en outre guère les moyens de se payer des soins médicaux appropriés.

## **28 Too Many, novembre 2017:**

**«Eritrea published new Penal, Civil, Civil Procedure and Penal Procedures Codes (formally Transitional Codes) in 2015. Although the Minister of Justice announced that the new codes were being put immediately into effect, other sources, (such as the Gazette**

*of Eritrean Laws Vol. 23) state that they have not yet come into effect and the courts continue to use the Transitional Codes.*» Source: 28 Too Many, Country Profile: FGM in Eritrea, novembre 2017, p. 30: [www.refworld.org/docid/5a17e8c44.html](http://www.refworld.org/docid/5a17e8c44.html).

#### **Amnesty International (AI), 22 février 2017:**

*«Le service militaire obligatoire a encore pu être prolongé pour une durée indéterminée, bien que le gouvernement ait annoncé déjà en 2014 l'intention de supprimer ce système. Une grande partie de la population était appelée au service militaire pour une durée indéterminée, dans certains cas jusqu'à 20 ans. Bien que l'âge minimum pour la convocation soit fixé à 18 ans, tous les élèves ont encore dû effectuer leur dernière année d'école au **camp de formation militaire de Sawa**. Ainsi, des mineurs ont de facto été appelés aussi au service militaire. Les conditions de vie étaient dures dans le camp de formation. Les élèves étaient soumis à une discipline militaire et entraînés au maniement des armes à feu. Les femmes représentaient 48 % des quelque 14000 personnes ayant achevé en juillet 2016 leur formation au camp de Sawa. **Pour elles, les conditions ont été particulièrement dures : elles ont été exposées notamment à un esclavage sexuel, à des tortures et à d'autres formes d'agressions sexuelles.**»* Source: Amnesty International (AI): Amnesty International Report 2016/17 - The State of the World's Human Rights - Eritrea, 22 février 2017: [www.amnesty.de/jahresbericht/2017/eritrea](http://www.amnesty.de/jahresbericht/2017/eritrea).

#### **Code pénal érythréen, 2015:**

**«Art. 307. - Rape.**

*(1) A person who commits a sexual assault against another person by any act that involves the penetration of the body of the person assaulted, is guilty of rape, a Class 6 serious offence, punishable with a definite term of imprisonment of not less than 7 years and not more than 10 years.*

*(2) Rape between spouses is punishable only where the spouses are not living together in the same household under circumstances which do not show a mutual agreement or understanding between the spouses not to live together in the same household temporarily. »*

Source: Code pénal érythréen (Penal Code of the State of Eritrea), 2015, p. 195: [www.refworld.org/pdfid/55a51ccc4.pdf](http://www.refworld.org/pdfid/55a51ccc4.pdf).

#### **Code pénal éthiopien, 1957:**

**«Art. 528. — Principle.**

**(1) The deliberate termination of a pregnancy, at whatever stage or however effected, is punishable according to the following provisions, except as otherwise provided (Art. 534).**

*The nature and extent of the punishment awarded for intentional abortion shall be determined according to whether it is procured by the pregnant woman herself or by another, and in the latter case according to whether or not the pregnant woman gave her consent. Termination of pregnancy by imprudence or negligence does not come under the criminal law.*

(2) *The advertising for contraceptive or abortive, means is punishable under the Code of petty offences (Art. 802).*

**Art. 529. — Abortion procured by the Pregnant Woman.**

(1) ***A pregnant woman who procures her own abortion is punishable with simple imprisonment from three months to five years.***

(2) *Any other person who procures for her the means of, or aids her in the abortion shall be punished in accordance with the general provisions as an accomplice or co-offender. In the latter case, the punishment is simple imprisonment from one to five years.*

**Art. 530. — Abortion, procured by another.**

(1) ***Whosoever performs an abortion on another, or assists in the commission of the offence, is punishable with rigorous imprisonment not exceeding five years.***

(2) ***Rigorous imprisonment shall be from three to ten years, where the woman was incapable of giving her consent, or where such consent was extorted by threats, coercion or deceit, or where she was incapable of realizing the significance of her actions, or where the intervention was effected against her will. (...)***

**Art. 533. — Extenuating Circumstances.**

*Apart from the general extenuating circumstances justifying ordinary mitigation of the punishment (Art. 79), **the Court may mitigate it without restriction (Art. 185) where the pregnancy has been terminated on account of an. exceptionally grave state of physical or mental distress, especially following rape or incest, or because of extreme poverty.***

**Art. 534. — Termination of Pregnancy on Medical Grounds.**

(1) ***Termination of pregnancy is not punishable where it is done to save the pregnant woman from grave and permanent danger to life or health which it is impossible to avert in any other way, provided that it is performed in conformity with the following legal requirements. (...)***

**Art. 589.— Rape.**

(1) ***Whosoever compels a woman, to submit to sexual intercourse outside wedlock, whether by the use of violence or grave intimidation, or after having rendered her unconscious or, incapable of resistance, is punishable with rigorous imprisonment not exceeding ten years. Rigorous imprisonment shall not exceed fifteen years where the rapt is committed:***

***(a) on a child under fifteen years of age: or***

***(b) on an inmate of a hospital, alms-house or asylum, or any establishment of education, correction, internment or detention, who is under, the supervision or control of or dependant upon the accused person; or***

*(c) by a number of persons acting in concert.*

**Art.590. — Sexual outrages accompanied by violence.**

***Whosoever, by the use of violence or grave intimidation, or after having in any other way rendered his victim incapable of offering resistance, compels a person of the opposite sex, outside wedlock, to perform or to submit to an act corresponding to the sexual act, or any other indecent act, is punishable with rigorous imprisonment not exceeding eight years, or with simple imprisonment for not less than six months.»***

Source: Code pénal éthiopien (The Penal Code of Ethiopia), 1957: [www.ref-world.org/pdfid/49216a0a2.pdf](http://www.ref-world.org/pdfid/49216a0a2.pdf).

**Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),  
12 mars 2015:**

***«(b) Reports that women performing national service are frequently victims of sexual violence, including rape, committed by officers and male recruits and that women who refuse sexual advances are often severely punished; (...)***

***(d) Reports that many girls drop out of school, become pregnant and/or are forced to enter into child marriages to avoid enrolment at the Sawa Military Training Centre and national service; (...)***

***The Committee is further concerned about the prevalence of child marriage and the fact that polygamy persists in some Muslim communities. (...)***

***Violence against women.***

*The Committee is deeply concerned about reports that violence against women and girls is widespread in the State party, in particular in the domestic sphere, in educational institutions and in the context of national service. It remains particularly concerned:*

***(a) That the State party has not yet adopted comprehensive legislation that explicitly criminalizes all forms of violence against women, including marital rape;***

***(b) That traditional and religious leaders often mediate in domestic violence cases;***

***(c) That alleged perpetrators of sexual violence against women in the context of national service are rarely prosecuted;***

***(d) That no specific evidentiary, medical and forensic procedures exist to address cases of violence against women;***

***(e) That no information has been provided on mechanisms of redress, rehabilitation and compensation for women who are victims of violence and on assistance to and protection of witnesses;***

***(f) That there are insufficient statistical data on violence against women, disaggregated by age and the relationship between the victim and the perpetrator. (...)***

21. The Committee recommends that the State party: (...)

(c) Ensure that alleged perpetrators of violence against women, including domestic violence and sexual violence, are duly prosecuted by a competent criminal court, witnesses are assisted and protected and victims are compensated, and that **mediation is not given preference over criminal proceedings in domestic violence cases**; (...)

11 36. The Committee notes the measures taken to promote the participation of women in economic life, including the provision of microcredit, but remains concerned: (...)

(b) That sharia is applied in inheritance cases in Muslim communities, under which a woman's share of land is half of that to which a man is entitled;

(c) That **the position of women in polygamous marriages is uncertain in this regard, given that husbands may register land under the name of only one of the wives**;(...)

#### **Women in detention**

40. **The Committee is concerned about reports that women in detention, including secret detention, are subjected to multiple forms of violence, including sexual violence, by male guards and that cases are not adequately prosecuted. It notes with concern that there is no independent monitoring body in place to visit places of detention.** (...)

#### **Marriage and family relations 42.**

**The Committee is concerned that, although the minimum age for marriage is set at 18 years, child marriage remains prevalent in the State party. It is also concerned that discriminatory provisions of family law are implemented in Muslim communities with respect to issues concerning marriage, divorce and inheritance, including provisions that allow polygamous marriages.**» Source: Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Concluding observations on the fourth and fifth periodic reports of Eritrea, 12 mars 2015, p. 2-3, 5-6, 11-13: [www.ecoi.net/file\\_upload/1930\\_1431527537\\_n1506769.pdf](http://www.ecoi.net/file_upload/1930_1431527537_n1506769.pdf).

#### **Gouvernement érythréen, 2003:**

**«According to one study, conducted in 2001 in the Central Region of Eritrea, 40% of women have been victims of domestic violence.** As of that time, there were no counseling or mediation services provided for domestic violence victims, nor were there any legal aid mechanisms for women who wanted to press charges. Additionally, that study indicated that prosecution for domestic violence will only be pursued where the violence is life-threatening, meaning that a weapon must be used.

**Another regional study indicated that as many as 90% of women are subject to domestic violence.**<sup>22</sup> Specifically, most interviewees in the study estimated that the rate of “sexual and gender-based violence” is between 5% and 25%. However, it was pointed out that these estimates would change drastically, resulting in a 90% prevalence rate, if domestic violence was included within the definition of “sexual and gender-based violence.”» Source: Gouvernement érythréen, Violence against Girls in Eritrea. A Report to the Committee on the Rights of the Child, 2003, p. 204: [www.legal-tools.org/doc/1901b3/pdf/](http://www.legal-tools.org/doc/1901b3/pdf/).

### Human Rights Concern Eritrea, 13 mars 2017:

«Furthermore, due to the lack of adequate secondary schools, particularly in rural areas, children are forced to walk long distances to get to the nearest school, which renders many vulnerable young girls to rape and many are forced to stop attending school at an early age. **Sexual abuse is a taboo subject within Eritrean societies; many parents would not be willing to report sexual abuse for fear of stigma or isolation of the female child, yet the physical and psychological impact of it on young women is severe.**

Among others, the results are:

a. **Unwanted pregnancy: many choose to abort the pregnancy, but must deal with physical and legal issues. Abortion could result in infections and death. It could also result in fertility complications.**

b. **Social stigma: since it is taboo to bear a child outside of marriage, some young women decide to leave the country while they are pregnant and die in the process of crossing the border and others have drowned in the Mediterranean while trying to reach Europe.**

c. **Committing suicide: due to the psychological, physical, and sexual abuses many women endure they commit suicide, bearing huge psychological problems and trauma for the entire household, including the children they leave behind.**» Source: Human Rights Concern Eritrea, Report on Women's Rights Violations in Eritrea – HRCE Report 1/2017, 13 mars 2017: <http://hrc-eritrea.org/report-on-womens-rights-violations-in-eritrea-hrce-report-12017/>.

### Kibreab, Gaim, avril 2017:

«**There are no regulations or guidelines that (1) define and limit the powers of military commanders; (2) forbid sexual misconduct of commanders against conscripts (i.e., no checks on such tendencies; (3) establish home or annual leave for conscripts; (4) prescribe punishment, such as how much can be inflicted and for what kinds of behavior; (5) establish appeal procedures and remedies against sexual and other abuses of power; (6) control allocation and use of conscripts' labor time; (7) determine criteria for assignment of conscripts after the six months of military training; or (8) ban collusion for the sake of obscuring such practices. The behavior of the commanders and their treatment of recruits are mostly unregulated, and as we shall see, abuses that permeate the ENS, including sexual victimization of female conscripts, exploitation of conscripts' labor power for personal gain, and infliction of inhumane punishments are the consequence of this absence of clearly defined and enforced constraints. The lack of regulation and monitoring gives the military commanders unlimited, unaccountable power and impunity.**

**Although all female conscripts within the ENS are exposed to a high risk of sexual violence, the extent of the risk appears to be far higher among those assigned to remain in the Sawa military camp after their six months of military training, mainly as megebt (cooks, cleaners, and launders), secretaries, personal assistants of commanders, and office workers. Nevertheless, it is important to bear in mind that the problem is by no means limited to the Sawa military camp and that female conscripts face high risk of sexual violence regardless of the location of their assignment within the framework of**

**the ENS.** Given the unlimited power and authority of the army commanders, and their unconstrained ability to harm victims under their command, the use of force may not be necessary to achieve “consent.” A threat of punishment or assignment to hardship locations or frontline combat are apparently sufficient to engender acquiescence.

Although none of the 190 respondents to the questionnaire denied the prevalence of sexual encounters between commanders and female conscripts, **some claimed that these relationships were consensual. However, since the main reason offered for this consent was the shamefulness of rape,** it is likely that their own answers were motivated by similar cultural factors: that is, their reluctance to expose individual women to shame and a preference, therefore, for providing an evasive explanation. **In Eritrean tradition, female promiscuity and being the victim of rape are both shameful, and in fact, survivors of sexual violence tend to be more stigmatized than promiscuous women.** Nevertheless, the reports of specific informants showed that sexual encounters between female conscripts and military commanders, rather than representing voluntary and mutually reached agreements, were unwanted by the woman and obtained by intimidation, coercive pressure, and abuse of power. **The unaccountable power of commanders and the widespread practice of torture and sexual abuse** in complete absence of state protection are enough to terrify young female conscripts who have never before lived outside of shielded familial environments. In some cases, the mere threat of violence and harsh punishment precipitates submission to sexual violence. Consent obtained under such circumstances is not genuine.

According to the key female informants who were interviewed in depth, **abusive officers apply various methods to force and blackmail female conscripts to respond positively to sexual demands. Although few in number, those who refuse to comply—who, against all odds, insist on asserting their agency and individual choice—are assigned to dangerous tasks, or sent to dangerous locales and/or places of hardship, or face psychological bullying and physical punishment.** Most interviewees reported that practices such as beating, detention in shipping containers or underground cells, exposure to extreme heat, or denial of home leave were also common. (...)

These comments show, on the one hand, the dearth of state protection against sexual violence and the ability of some commanders to act with absolute impunity, and on the other, the indomitable agency and power of female conscripts who defy the danger of sexual slavery despite intimidation and punishment. **Still, many female conscripts chose accommodation over defiance, resorting to unaffectionate marriages-of-convenience with male conscripts or with older men unaffected by the ENS, since married women are not always targeted and the fact of marriage may help a woman obtain a temporary release. Many also use pregnancy as an escape route from the ENS, since pregnancy, though not an official grounds for discharge, is usually a successful strategy, though not necessarily a permanent one.** The decision about whether to recall married women and mothers back to service after an initial discharge is arbitrary and open to abuse.

The risk of being sexually molested in the army also has severe health implications. **Although there is no scientific evidence that attributes the spread of HIV/AIDS specifically to militarization, many people who were interviewed saw the ENS, and the promiscuity and abuse that are widespread in the service, as the vehicle through which the transmission of the lethal virus is accelerated. Government statistics show that in 2002 4.6 percent of**



**men and women in the army were HIV-positive in comparison with 3 percent in the general population.** Whereas HIV/AIDS was the tenth highest killer in Eritrean hospitals in 1996, by 2001 it was the second most frequent cause of death among patients over five years of age (IRIN 2002). According to the World Health Organization document titled “Best Practices in HIV/AIDS Response in Eritrea,” “extrapolated from the results of the sentinel survey, close to 48,000 people are estimated to be living with HIV and AIDS in Eritrea. . . . The peak age for AIDS infection is 29 to 34 among males and 20–24 among females” (n.d.: 11). The most affected groups, therefore, are within the age of conscription. (...)

For example, R#49 (M) said, “**The conscripts are forced to do whatever their commander orders them to do. The power of the commander is absolute and as a result, nothing can stop him from doing whatever he wants, including raping or sexually abusing female conscripts.**” R#151 (M) said, “Yes women are subjected to sexual abuse because those who have power in Eritrea are able to do anything they want with impunity and without accountability.”

As we have seen, most women are unlikely to admit that they have been violated for fear of being stigmatized, bringing “shame” and “dishonor” to her family, and damaging her reputation in ways that may affect her prospects of finding a husband in the future. Fear of repercussions from the perpetrator and fear of forcibly being married to the abuser may also keep her quiet. **Given the sexist attitudes of the police, fear of not being believed is also a major factor.** The commanders are aware of this dark culture of silence and exploit it to their advantage. It is an irony, of course, that it is the abused rather than the abusers who are preoccupied with the potential loss of honor and reputation.» Source: Kibreab, Gaim, Sexual Violence in the Eritrean National Service, dans: African Studies Review, Volume 60, numéro 1, avril 2017, p. 131-132, 134-137 (pas accessible au public): <https://muse.jhu.edu/article/655346>.

#### Library of Congress, 7 mars 2016:

«**It appears that the new codes, which were published in May 2015, have yet to take effect. The Eritrean government’s position on this phase of the process is unclear.** While the issuance of the codes was not accompanied with an announcement regarding the exact date of implementation, in an interview with a state run media, the Minister of Justice, Ms. Fawzia Hashim, suggested that the codes had taken effect. However, **there is evidence that the transitional laws that had been in place since independence continue to be applied.** For instance, the Legal Tender Nakfa Currency Notes Regulations (No. 124/2015), which were enacted in November 2015, months after the publication of the codes, make reference to the transitional laws and not the new codes (art. 6). It is possible that the implementation process could take a few years to complete.» Source: Library of Congress, New Eritrean Codes Now Available to Researchers, 7 mars 2016: <https://blogs.loc.gov/law/2016/03/new-eritrean-codes-now-available-to-researchers/>.

#### Ministère néerlandais des Affaires étrangères, 6 février 2017:

«**Violence, including sexual violence**

Violence against women, as well as rape, is a criminal offence in Eritrea. Rape carries a ten-year prison sentence and gang rape, rape of a minor or a disabled person carries up to fifteen years. If a perpetrator marries the victim with her consent, he escapes prosecution. **Marital rape is not an offence. Out of shame, most women do not report domestic and non-**

**domestic violence or rape. Domestic violence still occurs frequently, especially in rural areas.** Although domestic violence is a crime, **such matters are rarely brought to justice.** Sometimes an attempt is made to resolve the issue within the family or the religious circle. According to the UN Commission of Inquiry, some cases of sexual assault in local communities are tried and the perpetrators are sentenced to imprisonment. Sexual harassment and rape of women during military training and military service still occurred regularly according to the UN Commission of Inquiry.<sup>449</sup> According to the Commission, some young women had to perform household chores for the military officers in Sawa, Wi'a and other military training camps. They had to cook, clean, do laundry and make coffee. Some women were forced into sexual acts. Military personnel in subordinate positions were ordered to pick up women for their superiors. Women were subjected to physical and mental punishment if they did not cooperate. In some cases they were imprisoned or forced to have abortions.<sup>450</sup> Women and girls who try to leave the country are reportedly still at increased risk of sexual violence.<sup>451</sup> Some Eritrean women and girls who went to the Gulf States to do domestic work were subjected to sex trafficking on arrival. Smaller numbers of women and girls are sexually exploited in South Sudan, Sudan and Israel.» Source: Ministère néerlandais des Affaires étrangères, Algemeen Ambtsbericht Eritrea, 6 février 2017, p. 55: [www.ecoi.net/file\\_upload/1226\\_1502861555\\_coi-eritrea-2017.pdf](http://www.ecoi.net/file_upload/1226_1502861555_coi-eritrea-2017.pdf).

#### OECD Data, sans date (accès le 16 janvier 2018):

« **Violence against women. Attitudes towards violence / Prevalence in the lifetime, Percentage, 2014. Source: Gender, Institutions and Development (Edition 2014)**

**Eritrea:**

**Attitudes towards violence: 71.0**

**Prevalence in the lifetime: .. (...)**

**Definition of Violence against women**

The violence against women indicator presents you with data on:

- **Attitudes toward violence: The percentage of women who agree that a husband/partner is justified in beating his wife/partner under certain circumstances**
- **Prevalence of violence in the lifetime: The percentage of women who have experienced physical and/or sexual violence from an intimate partner at some time in their life.»**

Source: OECD Data, Violence against women, sans date (accès le 16 janvier 2018):

<https://data.oecd.org/inequality/violence-against-women.htm>.

#### Service mariages forcés (Fachstelle Zwangsheirat), sans date (accès le 29 janvier 2018):

« **Mariage forcé : décision prise par un tiers en violation des droits humains.**

**Il y a mariage forcé quand au moins l'une des personnes impliquées (le fiancé ou la fiancée) se sent contraint-e au mariage. Soit la personne concernée n'est pas entendue avec son « non » et son refus, soit elle n'ose pas s'opposer, par crainte des conséquences**

*négatives. Le/la fiancé, la famille ou les proches exercent une pression par différents moyens. (...)*

**Union forcée : obligation de rester dans les liens du mariage.**

**Une union forcée est l'obligation de rester dans les liens d'un mariage déjà contracté. Il y a union forcée quand au moins l'un des deux époux se sent forcé de perpétuer l'union et de ne pas la dissoudre, parce que son/sa conjoint-e, la famille ou des proches exercent une pression dans ce sens par différents moyens. Une telle contrainte peut apparaître après toutes les formes de mariage, même après des noces auto-organisées. »** Source: Service mariages forcés (Fachstelle Zwangsheirat), notions et définitions, sans date (accès le 29 janvier 2018): [www.zwangsheirat.ch/de/worum-es-geht/begriffe-und-definitionen/#Zwangsheirat](http://www.zwangsheirat.ch/de/worum-es-geht/begriffe-und-definitionen/#Zwangsheirat).

**UN Human Rights Council (UNHRC), 8 juin 2016:**

*«Sexual violence suffered by women and girls*

**Collecting evidence on cases of sexual violence suffered by women and girls in Eritrea proved difficult due to cultural, social, and religious beliefs associated with marriage and sexuality. Victims' reluctance to disclose information stems from the trauma and general shame they feel as well as the stigma which attaches to them if the harm they have suffered is known. Indeed, many women mentioned the cultural emphasis on their virginity, chastity or monogamy as one of the reasons to fear speaking about sexual violence. As a woman's virginity and chastity are highly regarded in much of Eritrea, many victims of rapes are unable to marry and therefore prefer to remain silent. On top of the trauma, "[t]he honour system causes additional shame". As a result, in some instances, women and girls who were raped committed suicide. The Commission also heard evidence that, within some ethnic or religious groups, if a woman is raped, she is rejected by her community. Finally, women and girls suffer even more stigma if they have a child from the rape. For all these reasons, rape is an underreported crime in Eritrea and most of the victims of such acts live in a culture of silence. (...)**

**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."**

**In nearly all the cases documented by the Commission, the rape led to physical and/or mental suffering and pain – including post-traumatic stress disorder – and, in some instances, to unwanted pregnancy or transmission of sexually-transmitted diseases, such as HIV. This resulted not only in the violation to be free from torture and from cruel, inhuman or degrading treatment or punishment but also to the right to sexual and reproductive health.**

**124. Victims of rape infected by HIV suffered additional human rights violations. For example, a young girl who was only 10 year-old when raped by a soldier described to the Commission the discrimination and stigmatisation she faced at school, outside school, and while in detention because of her illness. (...)**

*The facts*

The Commission conducted interviews detailing incidents of rape against women, girls, and men. As explained in more detail below, **the evidence collected indicates that instances of rape which can be legally qualified as a crime against humanity, given that they were committed as part of a widespread or systematic attack directed against the Eritrean civilian population, occurred in two distinct circumstances. The first is in military training centres and in the army, the second is in detention. A third occurrence concerns rape of women and girls from the Afar ethnic minority by military officers.** However, given its limited resources, the Commission has not been able to investigate further these instances of rape and to establish whether these rapes were also committed as part of a widespread or systematic attack directed against the Eritrean civilian population. Accordingly, the Commission is of the view that its inquiry may have only partially captured the extent and details of rape as a crime against humanity.

#### **a. Rape in military training centres and in the army**

**Women are at a disproportionate risk of discrimination and violence within the military/national service and in the army** and are targeted for sexual abuse on account of their gender. As described above in the section on enslavement as a crime against humanity, many women in military training centres, as well as to a lesser extent in the army, are raped by military officials and trainers.

*The extent of the rape in the military/national service is best described by a male military officer:*

**“Sexual violence and rape are very common in the national and military service especially against recruits; it also happens a lot when soldiers are conducting raids. [...] They take the young ladies there as wives and they have children by them and discard them. They do this to many recruits; when the women don’t agree they force them and threatened them sometimes [...] in the public; they are forced when they refuse to have sex with the commanders. It is not just the commanders but even common soldiers do that, but the commanders start this first; they select the women first. When new ones arrived they do the same thing to them. [...] I remember that one lady refused to have sex with the commander; after a while the commander got drunk and put the lady at gunpoint and raped her. There are many girls who were raped like this during training or when already in services. All these sexual violence crimes took place in Sawa military training centre [during a period of six years until I left the national service]. I can’t give you an estimate of the number of victims but they are many; they complained to other colleagues about the rape but not to the commanders. On several occasions the women raised the problems with the overall commander of the Sawa military training school [...]; all times the commander responded that please deal with this issues directly with the persons you have problem with. The reason for not addressing this problem against the perpetrators is very simple; because these commanders know each other so nothing happens when reported. They also reported the problem to [...] at the cadre school but he**

responded that people should take care so that these things should not backfire in the public. [...] At the time we received many cases and complaints [...]; you will imagine that if this bad things happened in the main training centre and nothing happen[s], what do you think is happening in the remote training camps? [...] I [am aware] of information from all training centres across the country [...]. **Very bad things happened to these women; women get pregnant and bore children. They are told to return home and no one takes care of the children and the women. These women don't have a future; some have ended up in the streets as prostitutes just to earn money to feed their children and themselves. Most of these women are released from the national service without paying them salary or anything.**" (...)

**Moreover, in most instances, the perpetrators did not use condoms, which in some cases led to unwanted pregnancies and/or transmission of sexually-transmitted diseases, such as HIV. Finally, in many occasions, rape resulted in physical and psychological impairment. In light of the above, the Commission is satisfied that the first element of rape as a crime against humanity is met given that these women were vaginally penetrated by the sexual organ of the perpetrator(s).**(...)

#### **b. Rape in detention**

While the vast majority of cases of rape in detention concern the penetration of the vagina of the victim by the penis of the perpetrator, the Commission also documented other forms of rape, including: (a) objects, such as pens, being inserted in the anus of women; (b) metal rods being inserted in the vagina of a woman up to her womb; **(c) male detainees being raped by male perpetrators; as well as (d) male detainees being forced to have sex with other male detainees. In some cases, victims reported being raped only once by one single perpetrator. In other instances, survivors provided evidence about being raped multiple times or gang raped, including over extended period of time.**» Source: UN Human Rights Council (UNHRC), Detailed findings of the commission of inquiry on human rights in Eritrea, 8 juin 2016, p. 7-8, 31, 74-77: [www.ecoi.net/file\\_upload/1930\\_1470821343\\_a-hrc-32-crp-1-e.doc](http://www.ecoi.net/file_upload/1930_1470821343_a-hrc-32-crp-1-e.doc).

#### **UN Human Rights Council (UNHRC), 5 juin 2015:**

«50. **Sexual violence, particularly against women proved difficult to document owing to the cultural contexts specific to Eritrea, as well as to the general shame and stigma that still attaches to victims.** Eritrean women were generally afraid to speak about sexual violence because of the cultural emphasis on their virginity, chastity or monogamy. Women reported that they customarily self-censor to avoid shame being brought upon their families as news travels quickly and easily through communities both inside and outside Eritrea. **In Eritrea, the social shame a sexual violence victim suffers from can in turn lead to ostracism, inability to marry if single, and divorce and loss of children if married. In some cases, women also feared violence from their families if their experience of sexual violence was known. In the Afar community women and girl victims of sexual violence were also afraid that such violence could lead to their death.**

51. **The Commission also received reports of suicide among victims of sexual violence in Eritrea as a result of the extreme shame, stigma and related consequences from which they traditionally suffer. In the words of a woman who spoke with the Commission: (...)**

708. The Commission has received a large amount of testimony relating to the sexual abuse of Afar women and girls, in particular by members of the military.<sup>888</sup> **A predominantly Muslim community, the Afar people live in the lowlands and border regions of Ethiopia and Djibouti and are traditionally nomadic people. They contend that rape and sexual abuse of Afar women and girls by members of the military is a deliberate attack on their community by the State and a tactic to force them from their traditional lands. Reports of Afar women killed after being raped were also received.** Gender-related killings are not isolated incidents, but rather represent the ultimate act experienced in a continuum of violence by women living under conditions of gender-based discrimination.

709. The Commission received reports of the military being unwilling to render assistance to victims and to investigate allegations of violence against women perpetrated by members of the military.

**A young woman, raped by a member of the military and forced to leave her community due to the shame associated with discovering the rape had resulted in pregnancy, explained that in her community the police are no longer present and the military are unhelpful: "There is no Government person you can tell. They are all mafia. Police were there before but they have since left. Now it is only military. I was too afraid to tell my family. And also I was afraid for my family members if they said something to the military." (...)**

#### **b. Violence against women by non-State actors**

710. The Commission has also received reports of sexual violence perpetrated against women by non-State actors in the community. **The reports indicate that women are most vulnerable to violence when seeking to leave the country as they are at the mercy of persons who may take advantage of the clandestine nature of such departures.**

711. Inside the home, women are vulnerable to domestic violence, which is reported to be pervasive in Eritrea. **The underlying traditional views of women's place and role in society, the militarisation of the population, the resulting pressures on the family and the abundance of weapons in society give rise to violence against women in the home.** Eritrean families face considerable hardship, including the stress and dangers of national service, financial pressure due to their inability to earn even a subsistence income; financial demands from officials, smugglers and traffickers; and the constant threat of detention and disappearance. Many Eritreans face frustration and despair at the lack of control over their own lives.<sup>895</sup> Alcohol abuse and mental health problems have also been reported.<sup>896</sup> Customary deference to the privacy of the home and the family facilitates the perpetration of domestic violence with impunity.

712. The Commission received testimony suggesting the police are unwilling to act on reports of domestic violence or to provide assistance to victims.

The Commission heard: "You cannot go to the police and tell them that your husband has abused you unless it is very severe; the police will not do anything."

**A victim of domestic violence was refused police assistance several times. She told the Commission: "I went to the police many times when my husband attacked me, but the**

*police told me I needed to tolerate it because this is how a marriage works. ... When I realised this was to be my life, I decided to escape to Sudan.”*

**713. The Commission is aware the National Union of Eritrean Women (NUEW) disseminates information aimed at deterring violence against women, particularly FGM/C and domestic violence. The NUEW reportedly also provides some services to women victims of domestic violence. But, according to witnesses, services “are basically nonexistent”. The Committee on the Elimination of Discrimination against Women, in its 2015 consideration of the fifth report submitted by Eritrea, noted that safe houses, rehabilitation services, redress and compensation for victims of domestic violence appear not to exist.**

**(ii) Lack of effective systems and services for victims**

**714. The Commission has received testimonies pointing to the limited and ineffective legal systems to protect, prevent, punish and remedy acts of violence against women.<sup>901</sup> Adequate policing, prosecution and punishment are required not only to investigate and punish offenders, but also to provide general deterrence. The general lack of rule of law and the non-impartial nature of the judicial system disproportionately affect women. It is extremely difficult for women victims of violence to report complaints and have them adequately investigated or prosecuted. This difficulty is more pronounced when the perpetrator of violence is a member of the armed forces. As noted above, the Commission has received testimony of attempts to report violence suffered by women to both the army and the police, only to be refused. Reportedly, family members of female victims have been subjected to violence when they attempted to report the sexual abuse. The deficiencies in the legal system lead to impunity for acts of violence against women. Such impunity leads to further acts of violence against women. When the State fails to hold perpetrators accountable, it intensifies the subordination and powerlessness of women, and sends a message to society that male violence against women is both acceptable and inevitable.**

**The victim of an attempted rape by a military officer told the Commission of making a contemporaneous complaint to two military officers. The officers told her to report the incident at the police station the following day. When she went there, the officer who had attempted the rape and the two officers to whom she had reported the incident were waiting. “They told me if I want to live peacefully, [to] go home and never talk to anyone about it.”**

**The father of a young woman raped by a military officer was detained and tortured for one month after reporting the incident to the military camp leader.**

**715. Due diligence obligations also require procedures to take into account the needs and preferences of the individuals harmed.<sup>904</sup> Services such as health care, counselling centres, legal assistance, shelters, restraining orders and financial aid are methods of meeting this obligation.<sup>905</sup> None of the witnesses the Commission spoke with reported being able to access such services; the Commission can only conclude that they either do not exist or are insufficient.**

**716. The Commission further finds that there is a complete denial by the State of the extent of violence against women within its borders. A review of State reports to international bodies, witness testimony and a lack of data on violence against women all point to a lack of willingness to acknowledge the existence of violence against women, particularly violence perpetrated by the State through members of the military, and in the home. (...)**

*(iii) Wider consequences for girls, women and the community*

**718. The State's failure of due diligence to address violence against women not only leads to individual acts of violence against women, but also results in longer-term consequences both for the victim of an attack, and for the community as a whole. As a direct result of the Government's failure to prevent, prosecute and punish acts of violence against women, there is a widespread fear of sexual abuse of women and girls in the community. In response, families reportedly take steps to prevent their daughters from being sexually attacked on their way to school or while at school. This includes stopping girls from going to school and keeping them close to their homes until they are married. In some communities, the prevailing view appears to be that the harm to a girl or woman is greater if she is sexually abused prior to marriage as opposed to after, because it ruins her marriage possibilities. Such views perpetuate early and under-age marriage, which further places girls and young women in positions of vulnerability to violence and abuse because of their age and sex.**

**719. Rape and sexual violence against women also have health consequences, including HIV/AIDS, other sexually transmitted diseases and unwanted or unplanned pregnancies. With limited financial resources, victims are often unable to receive the care and services they need. The social stigma that attaches to victims of sexual violence compounds these problems. The victims are often ostracised and alienated from their families and communities.**

**720. Reports of young women electing to leave the country when discovering they were pregnant after being raped were also documented. The women described the shame associated with being known as having been violated as the reason for their departure. Others leave because they simply no longer feel safe. When the State fails in its obligations to protect women from discrimination and violence, and permits such acts to be perpetrated (particularly by State agents) with impunity, victims are left with no option but to leave in order to be safe. (...)**

**1202. Early marriage is a traditional feature of many ethnic groups in Eritrea that continues in some groups today despite the legal age for marriage being 18 for both women and men. Additionally, many women and girls themselves seek to avoid national service through marriage or motherhood, or are coerced to do so by family members in order to avoid national service. The primary reason why girls seek to avoid national service is to avoid the risk of the sexual abuse that is known to occur within the national service (particularly during military training), but also to keep women and girls at home so that they may take care of family members and household responsibilities. (...)**

**1205. The Commission received recent reports indicating the Government of Eritrea is trying to restrict girls and women who have not completed national service from marrying. One report suggests the Government is prohibiting churches and mosques from**



**officiating marriages of women and girls of conscription age without permission from the Government, which is only issued if the woman has completed national service. Such a prohibition would amount to a violation of the right to form a family. (...)**

a. *Forced domestic duties and sexual abuse of women and girls in military training.*

1312. *The Commission heard that young women conscripted into national service are discriminated against on the basis of their sex and are at a disproportionate risk of sexual violence from military camp leaders, trainers and other military personnel in the military training camps. **The Commission finds that discrimination and violence against women is to such a degree it also constitutes sexual slavery and torture.***

i. *Forced domestic duties*

***In the military training camps, many women and girls are forced to perform nonmilitary activities such as cleaning, laundry and coffee preparation for officers in military training centres.***1758 *Despite the objective of conscripting both men and women to place them on an equal footing with one another,*1759 *men and boys are never asked to perform these tasks.*1760 *The forced servile status of women and girls in military training camps is rooted in traditional attitudes by which women are regarded as subordinate to men and perpetuation of stereotyped roles. Some women and girls are lured to perform these duties in the promise of additional foodstuffs such as milk.*1761 ***Others are forced to perform such duties and risk severe forms of punishment if they refuse.***1762 *The Commission finds that such behaviour amounts to discrimination against women. The denial of their rights to nondiscrimination and freedom from servitude also creates the conditions of vulnerability to violence and sexual abuse.*1763 *The forced servile status is described to be the first step of military training leaders attempting to co-opt the female conscripts for sexual purposes.*

*A young Eritrean woman described to the Commission how traditional practices and discrimination against women manifest in the military training camps: “Sawa is a reflection of how people view male and female roles in society today. The mantra is that we are all equal, and Sawa is sold in a similar way, there is no male/ female etc., we are all equal. But inside, they don’t ask men to clean their clothes, make their tea and coffee.”*

*A sister of a former conscript forced to perform domestic labour for a military leader within a training camp explained how it can begin: “**When my sister was a conscript, her boss asked her to prepare coffee – that is how it starts. The girls are afraid and they say yes – and then they are asked to cook, and clean, and finally they become theirs.**” (...)*

***A former trainer at Sawa military training centre told the Commission that the sexual abuse of young women in Sawa military training camp was “normal.” (...)***

*A victim of such violence explained: “Not only can we not report it, it is part of our culture not to be able to say this. We are oppressed everywhere. We are oppressed in our homes, in society, in the **military. I cannot report it to another officer, because it is my superior doing this to me. I cannot talk about it with other people. If I reported it and the case went to court, the whole neighbourhood would know. Then it would bring shame to the family. No one would marry the girl. No one will marry a raped girl. The officers do it because they know this, they know that no one will report it because of the social shame and self-***

**ensorship of women.** A woman cannot live in our society and be known to be a rape victim. **If anyone reported this, we would be punished.** The punishment was very severe, for example, they forced us to carry buckets of water very far, tied arms and legs behind them and left them in the sun. There is no system of reporting. Women just try to avoid it in their own way.” (...)

*i. Shame, stigma and ostracism*

1331. The Commission received several accounts describing the immense stigma that attaches to victims of sexual violence in Eritrea. The shame victims feel and stigma that may attach to them if the harm they have suffered is known can result in ostracism from their families and communities. **It can place a victim at further risk of violence and even death from a family member who perceives the victim's experience to stain or degrade the family's honour.** The shame and stigma also prevents women and girls from being able to access medical and other services they may need. **As a woman's virginity and chastity are highly regarded in much of Eritrea, victims of sexual abuse often consider the most severe consequence as being unable to marry.** Ostracised from her community and without marriage prospects, women are left with few options to survive, the most common ones being to engage in transactional sex or leave the country.» Source: UN Human Rights Council (UNHRC), Advance Version of the Report of the detailed findings of the Commission of Inquiry on Human Rights in Eritrea, 5 juin 2015, p. 17, 187-190, 346-348, 379-380, 385-388: [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 Women, 2016 (1):**

**«Prevalence Data on Different Forms of Violence against Women:**

**Lifetime Physical and/or Sexual Intimate Partner Violence :Official National Statistics Not Available**

**Physical and/or Sexual Intimate Partner Violence in the last 12 months : Official National Statistics Not Available**

**Lifetime Non-Partner Sexual Violence : Official National Statistics Not Available**

*Child Marriage :41 %*

*Female Genital Mutilation/Cutting :83 %»* Source: UN Women, Global Database on Violence against Women – Eritrea, 2016: <http://evaw-global-database.unwomen.org/en/countries/africa/eritrea>.

**UN Women, 2016 (2):**

**«Between 2009 and 2012 there were 302 cases in which women filed charges or complaints in courts against sexual assaults they encountered. The cases brought to the court included rape, sexual outrage and seduction, adultery, and bigamy.»** Source: UN Women, Global Database on Violence against Women – Women Filing Charges against Sexual Assault - Eritrea, 2016: <http://evaw-global-database.unwomen.org/en/countries/africa/eritrea/2009/women-filing-charges-against-sexual-assault>.

**US Department of State (USDOS), 3 mars 2017:**

*«The COI reported sexual violence against women and girls was widespread in military training camps, the sexual violence by military personnel in camps and the army amounted to torture, and the forced domestic service of women and girls in training camps amounted to sexual slavery. In a March 2015 report, the Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern regarding reports of women in national service frequently being subjected to sexual violence, including rape. (...)*

**Rape and Domestic Violence: Rape is a crime punishable by up to 10 years in prison if convicted. Conviction of gang rape or rape of a minor or an invalid is punishable by up to 15 years in prison. Conviction of sexual assault is punishable by six months to eight years in prison. The law does not specifically criminalize spousal rape. No information was available on the prevalence of rape, which citizens seldom reported to officials. (...)**

**Sexual Harassment: There is no specific law against sexual harassment. Cultural norms often prevented women from reporting such incidents. There was no record of any person ever being charged or prosecuted for sexual harassment.**

**Early and Forced Marriage: The legal minimum age for marriage for both men and women is 18, although religious entities may condone marriages at younger ages. According to the 2010 Population and Health Survey, 41 percent of women ages 20-24 were married before 18 and 13 percent before 15. Girls in rural areas were particularly at risk for early marriage.»** Source: US Department of State (USDOS): Country Report on Human Rights Practices 2016 - Eritrea, 3. März 2017, p. 3, 18-20: [www.state.gov/j/drl/rls/hrrpt/2016/af/265252.htm](http://www.state.gov/j/drl/rls/hrrpt/2016/af/265252.htm).