

# NOREF Report

## From impunity to prosecution? Sexual violence in Sudan beyond Darfur

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### Executive summary

Serious shortcomings in Sudanese laws and practices contribute to the lack of protection of victims of rape in Sudan. There is need for comprehensive legal reform, particularly of Sudan's Criminal Law of 1991. The categorisation of rape as a form of adultery does not result only in the virtual impossibility of convicting a rapist, but may even lead to the incrimination of the female victim of rape instead. This is particularly problematic considering the widespread use of sexual violence in the Darfur conflict. One of the encouraging consequences of the international attention on war rapes in Darfur is that women activists are increasingly positioning sexual violence against women as a concern on the national political agenda. Several legal reform initiatives are under way within the country

among both state and non-state actors alike. The comprehensiveness of the reforms suggested differs in substance, but there is a consensus among both government and civil society actors that there is a need to differentiate between rape and adultery in current law. This consensus is extremely important, especially considering the sensitive and increasingly politicised and polarised debate on the topic. Although women face serious challenges in the Sudanese legal system, it is important to highlight how women activists are launching reform initiatives in order to bring justice to rape victims and to end the system of impunity for rapists. International donors can contribute a great deal in terms of supporting these reform initiatives and facilitating dialogue forums.

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## Introduction

In 1993 the United Nations (UN) General Assembly defined violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women”.<sup>1</sup> The UN reference to gender-based violence (GBV) acknowledges that such violence is rooted in gender inequality and is often tolerated and condoned by laws, institutions and societal norms. Sexual violence is a form of GBV that encompasses rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, trafficking, inappropriate medical examinations and strip searches. This study specifically deals with sexual violence focusing primarily on rape. *In Sudan, rape has occurred not only in armed ethnic conflicts in the country, but as a form of political oppression under the pretext of threats to national security, as well as in the everyday lives of ordinary women and men, and girls and boys.* This necessitates an engagement in the prevention of such crimes, the protection of victims of sexual violence and the prosecution of perpetrators of such violence that goes beyond the strong international focus on the ongoing war rapes in Darfur. Sudanese authorities and the international community have so far failed to protect, prevent and prosecute these crimes in Darfur and beyond. *A central key to achieving justice for victims of rape is to reform the current legal system and ensure that the prosecution of perpetrators is part and parcel of a long-term strategy for providing protection against and preventing sexual violence.* A series of shortcomings in Sudanese law and practice have contributed to the lack of protection of victims of sexual violence and to the impunity that has resulted. A combination of interlocking legal, institutional, social and political barriers have resulted in a lack of reporting, investigation and prosecution.

This study does not aim to establish the prevalence of sexual violence in Sudan, because no reliable statistics are available. Some scattered reports on rape and sexual violence in Darfur have been released primarily by humanitarian actors, but there is no system of systematic nationwide

data collection. The political environment of intimidation has resulted in little sharing of data among international, national and local stakeholders. Actors are reluctant to share information even among UN agencies because of security concerns. Humanitarian intervention within the field of GBV is particularly politicised and international organisations working in the area of sexual violence risk expulsion from the country. Even Sudanese organisations have been expelled from Darfur and/or shut down by the government. It is difficult to conduct fieldwork in such a highly polarised political environment without putting informants at risk of expulsion, arrest and intimidation. Fieldwork for this study was conducted in Khartoum, Sudan in May 2011 and September 2011 in co-operation with researcher Samia al-Nagar.<sup>2</sup> We interviewed a range of civil society organisations (CSOs), UN agencies and government institutions. Additionally, scholars, observers and journalists were interviewed. For the reasons stated above, all interviewees remain anonymous in this brief.

## International law and humanitarian intervention in Darfur

Today, sexual violence is recognised as a violation of human rights and international humanitarian law in relevant human rights conventions and in the Geneva Conventions. But in the 1974 UN Declaration on the Protection of Women and Children in Emergencies and Armed Conflicts and in the 1979 Convention on the Elimination of All Forms of Discrimination against Women, sexual violence is not specifically mentioned. The 1993 UN Declaration on the Elimination of Violence against Women addressed sexual violence in the family, community and as perpetrated by the state, but failed to address sexual violence in conflict zones. In 1994, however, the UN Human Rights Commission established a special rapporteur on systematic rape and sexual slavery during periods of armed conflict. With the Rome Statutes, sexual violence became a major international crime liable to prosecution at the International Criminal Court (ICC). Sexual violence has furthermore been recognised as a “weapon in war” and a threat to

<sup>1</sup> UN (United Nations), Declaration on the Elimination of Violence against Women, December 20th 1993, <http://www.un.org/documents/ga/res/48/a48r104.htm>.

<sup>2</sup> The background for the study builds on research conducted on the intersection between Islamic law and gender politics. Liv Tønnessen conducted 12 fieldwork missions in Sudan between 2006 and 2011.

international peace and security in UN Security Council resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010) on women, peace and security. These UN Security Council resolutions recognise that systematic sexual violence can be used as a tactic of war and requires a serious political and security response. The International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda reinforced the status of sexual violence as a war crime and a crime against humanity. These tribunals have also recognised that acts of sexual violence can constitute torture, inhumane treatment and, in certain circumstances, genocide.

In 2005 the UN High Commissioner for Human Rights published the report *Access to Justice for Victims of Sexual Violence*, which described sexual violence in general and rape in particular in Darfur. According to the report, rape is perpetrated by armed elements in the region and “the Government appears either unable or unwilling to hold them accountable. To date, most perpetrators have not been brought to justice”.<sup>3</sup> The report of the International Commission of Inquiry on Darfur, established by the UN secretary-general in October 2004 pursuant to Security Council resolution 1564,<sup>4</sup> has thoroughly documented crimes against humanity in Darfur. The commission of inquiry concluded that the government of Sudan and the *janjaweed* (pro-government militias) were responsible for widespread and systematic violations of international human rights law and international humanitarian law, which may amount to war crimes and crimes against humanity. The commission of inquiry found that throughout Darfur, government forces and militias conducted rape and other forms of sexual violence in a widespread and systematic manner. According to the UN Office of the High Commissioner for Human Rights, the majority of victims of sexual violence are women and girls who live in camps for internally displaced people.<sup>5</sup>

On July 14th 2008 the chief prosecutor of the ICC, Luis Moreno Ocampo, alleged that President Omar al-Bashir bore individual criminal responsibility for genocide, crimes against humanity and war crimes in Darfur. Ocampo charged that rape in Darfur has been committed systematically and continuously. An arrest warrant for Bashir was issued on March 4th 2009 indicting him on five counts of crimes against humanity (murder, extermination, forcible transfer, torture and rape) and two counts of war crimes (pillaging and intentionally directing attacks against civilians). The court ruled that there was insufficient evidence to prosecute him for genocide.<sup>6</sup> The indictment acknowledges the sexualisation of violence in Darfur and thereby demonstrates that war rapes are not only about women and gender, but also about race and culture.<sup>7</sup> Indeed, rapes in ethnic conflicts “are being done by some men against certain women for specific (political) reasons”.<sup>8</sup>

This indictment has had dramatic repercussions for the humanitarian presence in Darfur and particularly on GBV programming in the area. Shortly after ICC judges handed down the warrant for the president’s arrest, the Sudanese government expelled 13 international NGOs (INGOs) and closed down three national NGOs.<sup>9</sup> Ten of these groups had worked in Darfur and between them employed nearly 40% of Darfur’s aid workers. Among the expelled organisations were many providing life-saving health-care, psychosocial, and livelihood support to women and girls. Numerous international staff were given 48 hours to leave the country, and their exits were marked by intimidation and threats. Subsequently, the kidnapping of five Médecins Sans Frontières (MSF) staff members in mid-March from their North Darfur office by armed

6 ICC (International Criminal Court), Warrant of Arrest for Omar Hassan Ahmad al-Bashir, ICC-02/05-01/09-01, The Hague, ICC, 2009.

7 Sondra Hale, “Rape as a marker and eraser of difference: Darfur and the Nuba Mountains (Sudan)”, Laura Sjoberg & Sandra Via, eds, *Gender, War, and Militarism: Feminist Perspectives*, Santa Barbara, Denver & Oxford, Praeger, 2011, pp 105-114.

8 Catherine MacKinnon, “Rape, genocide, and women’s human rights”, *Harvard Women’s Law Journal*, vol 17, 1994, p 10.

9 The 13 international NGOs were Action Contre la Faim, CARE International, the Co-operative Housing Foundation, the International Rescue Committee, MSF Holland and MSF France, the Mercy Corps, the Norwegian Refugee Council, Oxfam GB, the Planning and Development Collaborative International, Save the Children UK, Save the Children U.S. and Solidarités. The national NGOs were the Amal Centre for Rehabilitation of Victims of Violence, the Khartoum Centre for Human Rights Development and Environment, and the Sudan Social Development Organisation.

3 UN Office of the High Commissioner for Human Rights, *Access to Justice for Victims of Sexual Violence: Report of the United Nations High Commissioner for Human Rights*, July 29th 2005, <http://www.unhcr.org/refworld/publisher,OHCHR,,46cc4a650,0.html>.

4 Commission of Inquiry on Darfur, *Report to the United Nations Secretary-General, Pursuant to Security Council Resolution 1564 of 18 September 2004*, UN doc. S/2005/60, February 13th 2005, <http://www.sudantribune.com/Full-text-of-the-UN-SC-resolution,8773>.

5 This does not exclude men and boys as victims of sexual violence, but thus far few reports from Sudan have documented this.

men has exacerbated the security threats that humanitarian relief workers face from parties to the Darfur conflict. In the middle of 2008 Sudanese authorities halted women-support programming and closed health-service facilities in several Darfur locations. One of the expelled organisations, MSF, published a report in 2005 on the widespread use of sexual violence in Darfur and reported treating nearly 500 rape survivors from October 2004 to early February 2005.<sup>10</sup> In reaction to the report, the government arrested two senior staff members of MSF Holland,<sup>11</sup> “accusing the organization of publishing false information, undermining Sudanese society, and spying”.<sup>12</sup> Some humanitarian workers saw the INGO expulsions as a signal to other NGO actors to stop engaging in protection and GBV work. According to the UN Population Fund (UNFPA), Sudan:

The gaps left by the expulsion of 13 NGOs following the announcement of the arrest warrant for President Al Basher in March 2009, remain. One of the most significant impacts in IDP [internally displaced persons] camps was the closure of women centers. Many IDP women were deprived of the only available safe space, where they were able to obtain specialized services such as psychosocial support, awareness raising, literacy courses, health education, empowerment and livelihood activities. The national NGOs, community based organizations ... and women and youth centers are lacking the technical capacity for overall management, proposal writing and financial management. ... The expulsion of the INGOs has significantly reduced the capacity for monitoring and referrals, as well as diminished the reporting capacity on GBV issues.<sup>13</sup>

Since the ICC indictment, work on GBV has proven difficult for both international and Sudanese organisations. In August 2010 Sudan expelled aid officials for distributing “rape-detection devices” in Darfur.<sup>14</sup> As a result, responding to the needs of rape victims has become sporadic and insufficient, because of government intimidation.<sup>15</sup> Humanitarian agencies have openly admitted their reluctance to provide health care for survivors of rape because of their concerns about drawing the attention of the Sudanese authorities. Basically, organisations working within the area of GBV have to make the difficult choice between remaining in the country and providing some care or working openly to support survivors of sexual violence and risking expulsion. “After the expulsions, the message was clear: work on GBV, and you’ll be kicked out.”<sup>16</sup>

## Caught between rape and adultery: legal gaps and limitations

One of the encouraging consequences of the international focus on war rapes in Darfur is that women activists – albeit with limited room for manoeuvre – are increasingly positioning GBV as a concern on the Sudanese national political agenda. For the first time, rape is talked about in the public debate and there is an increasing awareness among women activists of the problem of sexual violence in Sudan. Women’s activism in Sudan has a long and rich history, but issues of sexual violence have for long been silenced. After the ICC warrant of arrest and the increasing number of humanitarian reports of the prevalence of rape in the armed conflict in Darfur, women activists are using the opportunity to advocate for a radical reform of the system of impunity with regard to rape, which for them has been an intrinsic part of not only the Darfur conflict, but also wars in the past; patterns of political oppression; and the everyday lives of men and women, and girls and boys. Sudanese activists point to law reform as

10 MSF (Médecins Sans Frontières), “The crushing burden of rape: sexual violence in Darfur”, briefing paper, Amsterdam, March 8th 2005.

11 Peter Moszynski, “Sudan arrests aid worker for ‘crimes against the state’”, National Center of Biological Information, June 11th 2005, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC558277/>.

12 Fahima A. Hashim, “Sudanese civil society strategizing to end sexual violence against women in Darfur”, Salah M. Hassan & Carina E. Ray, eds, *Darfur and the Crisis of Governance in Sudan: A Critical Reader*, Ithaca, Cornell University Press, 2009, p 234.

13 UNFPA, “Strategic GBV cluster priorities”, unpublished document, September 2009.

14 *Sudan Tribune*, “Sudan expelled aid officials over rape-detection devices”, August 17th 2010, <http://www.sudantribune.com/Sudan-expelled-aid-officials-over,35994>.

15 Interviews with members of national and international organisations, 2011.

16 *Sudan Tribune*, “Why aid for Darfur’s rape survivors has all but disappeared”, October 19th 2009, <http://www.sudantribune.com/Why-aid-for-Darfur-s-rape,32836>.

extremely important in this regard. Currently, under the umbrella of a new network calling itself the Section 149 Alliance, women's groups are working together to push for the reform of the articles in Sudan's Criminal Law that cover rape and adultery. They are looking at law and prosecution as the key to jump starting multiple changes in people's beliefs and practices in society and thereby prevent GBV and protect women against violence generally and sexual violence specifically in the long term.

The 1991 Criminal Law is considered the most important law needing reform. It defines rape as sexual intercourse without consent in articles 145(2) and 148(1). Sexual intercourse is defined as penetration of the vagina or anus, thereby excluding forced penetration of the mouth and penetration of the genital organs with objects like gun barrels. Article 149 of the Criminal Law defines rape in the following way:

(1) There shall be deemed to commit the offence of rape, whoever makes sexual intercourse, by way of adultery, or sodomy, with any person without his consent. (2) consent shall not be recognized when the offender has custody or authority over the victim. (3) Whoever commits the offence of rape, shall be punished, with whipping a hundred lashes, and with imprisonment, for a term, not exceeding ten years, unless rape constitute the offence of adultery, or sodomy, punishable with death.

The 1991 Criminal Law treats any sexual contact outside a legal marriage as a crime. This is defined as *zina* in Islamic law (*sharia*), i.e. as unlawful sexual intercourse or adultery. According to the this law, the punishment for unlawful sexual intercourse is 100 lashes if the offender is not married (fornication) and stoning to death if the offender is married (adultery). Both men and women can be penalized for *zina* according to the letter of the law, but research shows that in practice women are as a rule discriminated against when it comes to both the evidentiary rules in force and the application of the law.<sup>17</sup>

The reference to *zina* in the definition of rape in

article 149 of the 1991 Criminal Law "renders the prosecution of rape difficult if not impossible".<sup>18</sup> The reference to *zina* entails that rape is categorised as a form of *zina*, namely *zina bil jabr*. *Zina bil jabr* means "consensual means "consensual extramarital intercourse by force". The reference to *zina* in the definition of rape has serious consequences for the victims. (1) Where a woman or a man is unable to prove that they did not consent to sexual intercourse, they risk being charged with the crime of *zina* because they have confessed to sexual penetration before/outside of marriage. (2) Since *zina* is not sufficiently differentiated from rape in the existing legislation, rape needs to be proved according to the rules of evidence applying to adultery. This requires at least one of the following: (a) a confession that is not retracted before the verdict; (b) four "righteous" male (not female) witnesses who witnessed the penetration; or (c) pregnancy. The evidentiary rules applying to adultery (*zina*) are based on the rationale that there should be incontrovertible evidence for the drastic punishment envisaged.<sup>19</sup> If applied to rape, however, the evidentiary rules effectively contribute to impunity. The presumption of *zina* on grounds of pregnancy puts women and girl defendants in a disadvantageous position compared to men and boys accused of the same offence.<sup>20</sup> Further, not only is the evidence of female witnesses not taken into consideration, but it is effectively impossible to have a situation where four righteous male witnesses who witnessed the penetration testify in rape cases. And if four male witnesses were in fact present,

18 Redress, "Reforming Sudan's legislation on rape and sexual violence", position paper, September 2008, p 23.

19 Ziba Mir-Hosseini & Vanja Hamzic, *Control and Sexuality: The Revival of Zina Laws in Muslim Contexts*, London, Women Living Under Muslim Laws, 2010, p 29.

20 Sidahmed "Problems in contemporary applications of Islamic criminal sanctions", 2001. Sudan follows the Maliki School of Islamic jurisprudence where the pregnancy of unwed girls and women is considered evidence of adultery. In the other three schools of Sunni Islamic jurisprudence, pregnancy does not constitute proof of *zina*. See Mir-Hosseini & Vanja Hamzic, *Control and Sexuality*, 2010. Furthermore, article 48(1) of the Criminal Procedure Law of 1991 instructs the police to fill out a document called Form 8 to record findings of medical examination (whether there has been recent loss of virginity or bleeding, or the presence of sperm). The government justifies this by stating "that if victims of sexual violence do not complete the Form 8 and as a consequence of the assault they become pregnant, they will not have the evidence to prove that they were raped and could be charged with the capital crime of adultery". As a consequence, even in situations where the rape is not reported to the police, unmarried women who become pregnant are at risk of being charged with adultery (*zina*). See UN Office of the High Commissioner for Human Rights, *Access to Justice for Victims of Sexual Violence*, 2005.

17 Abdel Salam Sidahmed, "Problems in contemporary applications of Islamic criminal sanctions: the penalty for adultery in relation to women", *British Journal of Middle Eastern Studies*, vol 28, no. 2, 2001, pp 187-204.

their testimony would raise serious questions about their involvement in the rape itself. Legally, women are being trapped between rape and zina. Because rape is associated with *zina*, the law itself “re-victimizes the victim”,<sup>21</sup> because the perpetrators are almost guaranteed impunity according to the current Criminal Law.

This is further complicated by the fact that other laws encourage impunity, namely the National Security Forces Act of 1999, article 33(b); the Police Act of 2008, article 45(2); and the Armed Forces Act of 2007, article 34(1). Members of the Sudanese police, security forces or armed forces are granted conditional immunity against acts committed in the course of their duties. This is particularly important considering that these government security agencies are among the perpetrators of rape. Recently, a video featured Safiya Ishag, a young female activist who told her story of being mass raped and subjected to torture by members of the national intelligence and security forces following her participation in student demonstrations in Khartoum. While she was being raped, she was verbally harassed by the perpetrators, who called her “promiscuous” and a “communist”, and accused her not being a decent girl, which indicates the political motivation behind the rape. Safiya is a member of a student group called Girifna, which translates as “we are fed up”, and the demonstration she attended aspired to bring the Arab Spring to Sudan.<sup>22</sup> After Safiya reported the rape and circulated her story on YouTube, women politicians in the opposition were arrested and questioned by security police on allegations that they “invented” the rape story as a means to undermine the government.<sup>23</sup> Journalists who defended Safiya and called for political changes in the country were arrested and are currently undergoing trial.<sup>24</sup> Safiya’s case has focused attention on the fact that rape does not only occur in armed ethnic conflicts in the country

whereby the government is raping by proxy through the *janjaweed* militias in Darfur, but it is also used as a means of political oppression and silencing oppositional voices.

Most international and Sudanese attention to legal justice for rape victims targets the Criminal Law, but this report argues that there is a need for comprehensive legal reform in this area. Not only are the laws ensuring impunity in need of revision so that the police, security forces and armed forces can be prosecuted for rape, but there is also a need to take the Muslim Family Law (MFL) of 1991 into consideration. Here we are moving into the domain of marital rape. Marital rape is not recognised as a criminal offence in the 1991 Criminal Law. Additionally, sections 91–95 of the MFL stipulate a wife’s obedience to her husband. Article 91 stipulates that “a wife is required to obey her husband if the husband has paid her the *mahr* (dowry), it is proved that she is financially secure with him, and that he provides her with suitable housing with all basic furniture in a good neighbourhood”. The wife should obey her husband on proof that these conditions are fulfilled, otherwise she will be declared disobedient and consequently lose her right to receive maintenance. As a direct consequence of the stipulations on obedience, marital rape does not exist within the law. If the conditions stipulated are met, the wife is not allowed to deny her husband sexual intercourse. An Islamist informant explains:

Some consider it rape when a husband has sexual intercourse with his wife when she does not consent. In Islam we do not consider it as a rape. In Islam there is a contract between the man and the woman. To give adequate support (*nafaqa*) is obligatory for the husband. The other part of the contract is that a woman should obey. Therefore, a woman cannot refuse sex. It is obligatory for her.<sup>25</sup>

A qualitative research report on a series of interviews conducted with 150 married women in Khartoum State about the nature of sexual life inside the marriage found that 43% of the interviewed women were subject to forced sex

21 Interview with activist, 2011.

22 Girifna, “Rape of a Sudanese activist by the Sudanese national security forces”, February 23rd 2011, [http://www.girifna.com/blog-girifna/?page\\_id=1696](http://www.girifna.com/blog-girifna/?page_id=1696). See also YouTube, “Safia Ishag’s rape”, February 23rd 2011, [http://www.youtube.com/watch?v=Mb2960uQfg4&feature=player\\_embedded](http://www.youtube.com/watch?v=Mb2960uQfg4&feature=player_embedded).

23 Sudan Views: The Voice of the Sudanese People, “Family of Safia, alleged victim of rape, moves legal action against investing in the claims”, March 27th 2011, [http://sudanviews.net/index.php?option=com\\_content&task=view&id=4404&Itemid=26](http://sudanviews.net/index.php?option=com_content&task=view&id=4404&Itemid=26).

24 Interviews with activists, 2011.

25 Interview with Islamist activist, Khartoum, 2011.

and violent sex.<sup>26</sup> The project leader goes on to say that “I am 100% convinced that rape is widely practised within families in Sudan. It is legalised by the Muslim Family Law and according to this law no woman can claim that she has been raped by her husband”.<sup>27</sup> But because this is such a sensitive subject, statistical data is very difficult, if not impossible, to obtain. Interviews conducted in 2011 with Khartoum state police and activists within various CSOs revealed that marital rape is considered a problem, but that there is chronic under-reporting due to shame, societal suspicion of adultery, legal gaps, the lack of female police officers and the lack of women protection units at police stations, among other things.

Sexual intercourse with a child is considered statutory rape whether it occurs with or without the consent of the child.<sup>28</sup> However, it is not considered rape when the child (aged 10-18) is married. According to the MFL, the age of consent for marriage is puberty, which is interpreted as being as young as ten years of age. According to the law, both parties have to consent to marriage. However, the woman needs a male guardian (father/brother/uncle) to validate the marriage (article 25). Overall, children and young girls have better protection in rape cases under the current laws than do adult women. But this does not in any way prevent the raping of young girls. Interviews with Sudanese police at the Family and Child Protection Units in Khartoum State in 2011 reveal that cases of rapes of girls (between the ages of five and nine) are reported weekly and that the perpetrator is usually known to the family (a teacher, neighbour, uncle, etc.).<sup>29</sup> A female lawyer states: “We hardly ever receive cases of rape with adult women, but many with

children.” In order to tackle this complex issue, “[w]e need a legal reform. We need to be allowed medical tests inside the court. We need to train judges and police on rape. ... There is a huge amount of cases. You hear about it every day.”<sup>30</sup>

## Government efforts

The government of Sudan has taken a number of steps to combat violence against women and girls, and it is extremely important to consider them. In 2005 a state plan to combat violence against women was adopted and a new Violence against Women (VAW) Unit was created at the Ministry of Justice. In 2007 several workshops were held on combating violence against women and on the Protocol to the African Charter on Human Rights and People’s Rights on Rights of Women in Africa (better known as the Maputo Protocol). The workshops were held in collaboration with the UN Mission in Sudan, and changes to Sudanese rape laws were recommended. The government announced a number of measures. It has condemned sexual violence against women and reaffirmed a zero tolerance policy for such crimes. It has also declared its commitment to the prosecution of perpetrators. On August 18th 2007 the minister of justice issued a declaration on the measures for the elimination of violence against women in Darfur. The declaration also reinforced the implementation of Criminal Circular 2 of 2005 allowing women in Darfur to legally seek medical care without filling out Form 8 – the police form that has to be filled in when violence is being reported. Here it is important to note that women are in fact denied medical treatment at government hospitals if they have not filled in Form 8. It is also important to note that Criminal Circular 2 is only applicable in Darfur and not in the rest of the country.<sup>31</sup> In other words, legal barriers exist that effectively prevent victims of violence from receiving vital medical treatment.

The VAW strategy aims to combat violence against women through several means involving

26 The report has not been published.

27 Interview with project leader, 2011.

28 According to the 1991 Criminal Law, children who have reached the age of ten and have been charged with committing an offence can be punished with whipping by up to 20 lashes. The Child Act of 2010 defines a child according to international standards, i.e. below 18 years of age. The Criminal Law has yet to be reformed in accordance with the Child Act.

29 This must be understood in light of the definition of the child in the 1991 Criminal Law, which sets puberty at the age of ten. Even if the Child Act of 2010 were put in place, the Criminal Law has not been amended and there is a lack of awareness of the change in the definition of the child and in implementation. The female lawyer interviewee admitted that she suspects that this is a contributing factor and that older girls, particularly after they reach puberty, feel shame and stigma, and that the reaction from the family and the community is that the girl is at fault and not the perpetrator.

30 Interviews with government officials, 2011.

31 The health consequences of brutal and violent rapes can result in bleeding, fistulas, incontinence, infections and psychological trauma. The fact that many Sudanese women and girls are circumcised puts them further at risk of health complications. Many women do not seek medical treatment due to both social stigma and legal barriers.

family and child protection units. Following the ratification of the Child Act of 2010, these units were established in all northern Sudanese states. According to the national strategy, the government should “ensure that all Family and Child Protection Units provide comprehensive services to women as well as children by the end of 2011”.<sup>32</sup> However, up to the present, the majority of these units operate merely as child protection units, meaning that they take care of girls and boys who are victims of rape and sexual abuse, but not adult victims of rape. There are three units in Khartoum State, one of which the author visited during fieldwork in 2011. Adult women who approach these units in Khartoum are rejected and sent to the police station to fill out Form 8.<sup>33</sup>

The second positive step taken in the strategy is to train police on international humanitarian law, human rights and criminal investigation. However, the strategy has unfortunately overlooked the need to reform the laws that guarantee the police, security forces and armed forces impunity in the line of duty. It is further a stated objective to increase the number of female police officers in the belief that women will feel more comfortable reporting sexual violence to female officers. This is a positive development, but it should be noted that a “formal” inclusion of women in the police based on essentialist understandings is no guarantee in itself. Women are not only victims of violence, but can be agents of violence.<sup>34</sup>

The third positive objective stated in the national strategy is to “train health personnel on the comprehensive treatment packages of the victims of violence according to the protocol for clinical management of rape cases”.<sup>35</sup> It is not a stated objective to make Criminal Circular 2 national. Moreover, post-rape treatments are not specifically defined and discussed. Should the morning-after pill to prevent pregnancies after rape be allowed? According to an interviewee,

“the morning-after pill is included in the post-rape kits distributed in Darfur. It is not, however, allowed in other states in Sudan, because the government considers it against Islam. They claim that prostitutes will use it and that it is a form of abortion, which contradicts Islamic law”.<sup>36</sup>

The fourth positive objective is to “review policies and legislations pertaining to women and children” and to “enact strict legislations for combating violence against women and children”.<sup>37</sup> This is reinforced by the Bill of Rights in the National Interim Constitution of 2005. All national laws are to be reviewed and amended in accordance with the constitution, meaning that there is a national framework to advocate legal reforms of both the 1991 Criminal Law and the MFL. However, we are facing an unpredictable legal map in Sudan, as the country is in the process of drafting a new constitution after the secession of South Sudan in July 2011. Many observers are worried that the rights given to women in the National Interim Constitution will be taken away again. “Then” an interviewee says, “we will be back at square one. We fear that we will lose what we have gained in the 2005 constitution.”<sup>38</sup>

According to the VAW Unit, however, “this is an era of law reform”. And several government initiatives are indeed under way to reform the Criminal Law, i.e. within the VAW Unit (Council of Ministers), the Centre for Women’s Human Rights (Ministry of Social Welfare) and the Comprehensive Peace Agreement Commission established following the signing of the North-South peace agreement in 2005. The commission has the mandate to review all laws in accordance with the National Interim Constitution. However, although there is little communication among these initiatives, there does seem to be agreement across them that there is a need to differentiate between rape and adultery and to introduce medical evidence/ DNA in the courtroom in rape cases. But these reform initiatives do not, for example, include the criminalising of marital rape.

Generally, these government reform initiatives are characterised by a lack of consultation and

<sup>32</sup> VAW (Violence against Women) Unit, The National Plan for Combating Violence against Women and Children 2010-2011, 2010.

<sup>33</sup> Interviews with government officials, 2011.

<sup>34</sup> To give one prominent example, the International Criminal Tribunal for Rwanda found Pauline Nyiramasuhuko, the former minister of family and women’s development, guilty of genocide, conspiracy to commit genocide, crimes against humanity (including rape) and several other serious violations of the Geneva Conventions.

<sup>35</sup> VAW Unit, The National Plan for Combating Violence against Women and Children 2010-2011, 2010.

<sup>36</sup> Interviews with members of international organisations, 2011.

<sup>37</sup> VAW Unit, The National Plan for Combating Violence against Women and Children 2010-2011, 2010.

<sup>38</sup> Interview with activists, 2011.

transparency. There is little or no dialogue with CSOs and opposition political parties.<sup>39</sup> Public debate on the issue of sexual violence is allowed to a limited extent, but if one goes too far when criticising the government one risks being arrested and put on trial. For example, on May 29th 2011 the prosecutor of the Press and Publications Court initiated proceedings against Omar al-Garay of the Republican Brothers, together with a journalist and an editor, for publishing an article in a Sudanese newspaper entitled “Rape under sharia law”.<sup>40</sup> The article called for an investigation of the Safiya Ishag case mentioned previously and of the need to clearly differentiate between rape and adultery (*zina*). It also pointed to the un-Islamic nature of a supposedly Islamic government in being party to such an atrocity. Al-Garay’s arrest illustrates the sensitivity of the issue and the politicised and polarised nature of the debate. It also points to the undeniable fact that the government and opposition have conflicting views on what constitutes violence against women and how to combat it. Civil society is thus left with a feeling that “at the end of the day, the government does not have the political will” to initiate adequate reforms.<sup>41</sup>

Large parts of the opposition and many of the CSOs with which we have been in contact are working for a Sudan that provides citizenship for men and women based on equality in rights. The government, on the other hand, promotes a form of gender equity that is based on a patriarchal understanding of gender relations. There are major disagreements between the two on what constitutes proper gender arrangements in the country.

It is significant that at the higher political levels the government attempts to construct a dichotomy

between an Islamic model and a Western model, where women symbolically bear the responsibility of manifesting this representation. The pious, modern and modest Muslim woman is juxtaposed to the secular, promiscuous and atheist Western woman. The president’s adviser for legal affairs believes that if the country steps away from a religious framework and adopts a Western one, it will destroy “family values [and] legalise abortion, prostitution and homosexuality”.<sup>42</sup> The *zina* regulations to control women’s sexuality illustrate this dichotomy. In the West, the government claims, sexual freedom leads to sexual chaos and immoral women, whereas in Islamic societies, sexuality is constrained in order to protect women’s honour and morality. Against this backdrop, the VAW Unit postulates that if violence against women is indeed occurring in the country, it is simply because “people have turned away from religious teachings urging lenity towards women and children”, while simultaneously citing a Koranic verse stating that “whoever treats women kindly is a kind-hearted man and whoever treats them badly is a mean person”.<sup>43</sup> This highlights why “the issue of violence against women has been politicised” says an interviewee, because

this government believes that the Islamic project has created a good Muslim society. Obviously it has not. There is rape and other types of violence against women and this shows the failure of their project. By acknowledging the problems, they are simultaneously defeating their own project.<sup>44</sup>

And the reason why people turn away from religion, it is claimed, is because they are influenced by Western ideas that are foreign to the Sudanese identity and culture. The West and the UN oppose this backdrop constructed in terms of outside cultural imperialists threatening the position of Muslim women. This situation is further politicised by the fact that the national opposition is labelled “Western” and “secular” by the government when it advocates greater

39 In the process leading up to the passing of the Child Act of 2010, there was considerable more consultation and transparency. The National Council for Child Welfare headed by Gamar Habbani included opposition NGOs (e.g. the Babiker Badri Scientific Association for Women’s Studies) in the drawing up of the national strategy to eliminate FGM and in the process of drafting the law itself. This is an example of a law-making process that was inclusive and built on dialogue between the government and civil society. See Samia al-Nagar & Liv Tønnessen, “Sudan country case study: child rights”, UTV Working Paper no. 2011:3, 2011, commissioned by NORAD and SIDA.

40 Omar al-Garay, “Rape under sharia law”, *Ajras Alhurria*, March 6th 2011, [http://www.sudanile.com/index.php?option=com\\_content&view=article&id=24723:2011-03-06-05-56-30&catid=83:2009-01-08-08-12-53&Itemid=55](http://www.sudanile.com/index.php?option=com_content&view=article&id=24723:2011-03-06-05-56-30&catid=83:2009-01-08-08-12-53&Itemid=55).

41 Interview with activists, 2011.

42 Farida Ibrahim, in *Osrati* (“my family”, a monthly magazine published in Khartoum), cited in ICG (International Crisis Group), “Beyond victimhood: women’s peacebuilding in Sudan, Congo and Uganda”, <http://www.crisisgroup.org/en/regions/africa/horn-of-africa/112-beyond-victimhood-womens-peacebuilding-in-sudan-congo-and-uganda.aspx>.

43 VAW Unit, The National Plan for Combating Violence against Women and Children 2010-2011, 2010.

44 Interview with activist, 2011.

human rights for Sudanese citizens. In the opinion of a high-ranking opposition figure in Sudan, the Islamists are “smearing human rights as imperialist, as something alien to Sudanese culture”. But, he adds, Islamism is in fact the foreign ideology that treats women as second-class citizens, an approach that contradicts Sudanese culture and Islam itself. According to him, human rights stem from the five principles of freedom, justice, equality, peace and dignity, all of which “you can authenticate from Islamic sources”. Consequently, it is “not right to describe human rights as cultural imperialism”. In fact, the Bashir regime merely “smears human rights as alien in order to continue to oppress people. It is not about foreign domination or cultural specificity. They reject the human rights movement because it interferes with their authority.”<sup>45</sup>

Needless to say, the question of GBV in Sudan is highly polarised and politicised, but it is nonetheless important to differentiate the rhetorical strategy of high-ranking Islamists from what is actually happening at the lower levels of government institutions that implement policies. Here you will find institutions, units and organisations that receive funding from, co-operate with and are in dialogue with UN agencies such as the UNFPA, the UN Development Fund for Women and the UN Children’s Fund. The government therefore does not operate as a unitary whole and there are indications of both a generational gap whereby younger Islamist women are more sympathetic towards the human rights discourse and of a mismatch between the higher political levels and the places where UN projects are being implemented.

<sup>45</sup> Liv Tønnessen, *The Many Faces of Political Islam in Sudan: Muslim Women for and against the State*, Bergen, University of Bergen, p 233.

## Conclusion

Serious shortcomings in Sudanese laws and practices contribute to the lack of protection of rape victims. There is a need for comprehensive legal reform. Although such reform is not sufficient to combat rape specifically and sexual violence more generally, it is an important and necessary first step to improving the situation of women in Sudan. Several legal reform initiatives are under way within the country among state and non-state actors alike. The comprehensiveness of the reforms that have been suggested differs in substance, but there is a consensus among both government and civil society actors that there is a need to differentiate between rape and adultery in any proposed changes to the current law. This consensus is extremely important. And both parties appear to recognise that they at least agree on this lowest common denominator. Here it is important to recall that women from the government and civil society have worked together on several previous occasions. On the last occasion, they collectively and successfully pushed for a 25% quota for women in the 2008 National Election Law.<sup>46</sup> International donors can contribute a great deal in terms of supporting the reform initiatives and facilitating forums for dialogue.

<sup>46</sup> The quota reserves 25% of the seats in both national and state parliaments for women.