



CSW Communications Procedure
Human Rights Section
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Re: Communication on the need for the Government of Sudan to amend Article 149 of its 1991 Criminal Code to criminalize marital rape, enforce current rape provisions, and enact laws that prevent all forms of sexual violence, including child, early and forced marriage

Dear Commission Members,

Pursuant to Economic and Social Council resolution 76 (v) of 5 August 1947, as amended by Economic and Social Council resolution 341 (XI) of July 1950¹, we submit this communication² on the need for the Government of Sudan to amend Article 149 of its 1991 Criminal Code to criminalize marital rape, enforce current rape provisions, and enact laws that prevent all forms of sexual violence, including child, early and forced marriage.

Equality Now is an international human rights organization with ECOSOC status working to promote the equality of women and girls worldwide. This communication is in reference to Equality Now's action "Justice for Noura: Stop the Execution of Noura Hussein"³ and report "The Global Rape Epidemic: How Laws Around the World are Failing to Protect Women and Girls from Sexual Violence" (2017).⁴

Specifically criminalize marital rape

In February 2015, Sudan amended Article 149 of its 1991 Criminal Code to replace the formerly vague reference to "sexual intercourse" with a more precise and expansive definition of rape. In the new law, rape is defined as sexual contact by way of penetrating any part of the body or any object into the vagina or anus of the victim⁵. We commend Sudan for this amendment, which will help to prevent sexual violence against Sudanese women; however, despite this positive development, the law may still allow

¹ The Economic and Social Council has reaffirmed the mandate of the Commission on the Status of Women to receive communications on the status of women in its resolutions 1983/27 of 26 May 1983, 1992/19 of 30 July 1992, 1993/11 of 27 July 1993 and decision 2002/235 of 24 July 2002.

² Equality Now hereby waives any claim of confidentiality to which we may be entitled in the communication process.

³ Available at https://www.equalitynow.org/_justicefornoura_stop_the_execution_of_noura_hussein

⁴ Available at https://www.equalitynow.org/the_global_rape_epidemic_campaign

⁵ Available at http://www.acjps.org/wp-content/uploads/2016/03/Sudan%E2%80%99s-new-law-on-rape-and-sexual-harassment-One-step-forward-two-steps-back_-.pdf

impunity for perpetrators of rape because there is no prohibition of marital rape specifically.

Noura, a young Sudanese girl, was forcibly married off at 16 years of age to a significantly older man. Despite her protestations, her “husband” raped her. When he attempted to rape her again, Noura fought back, fatally stabbing him with a knife in self-defense. Since the crime of marital rape does not exist in Sudan, on 10 May 2018, Noura was sentenced to death by hanging as the law is not clear that the rape and self-defence provisions cover marital rape. Thankfully, due to international protest and a petition signed by over 1.3 million people, on 26 June Noura’s death sentence was replaced with five years of imprisonment and a financial penalty of 337k Sudanese Pounds (around \$18,400 US). However, as of this date, Noura’s fight is still not over, as the family of Noura’s husband is still insisting on the death penalty.

In 2014, the UN Human Rights Committee recommended that Sudan “**ensure adequate protection of women against violence in legislation, including by swiftly amending articles...149 of the 1991 Criminal Code as well as by criminalizing domestic violence and marital rape.**”⁶

Additionally, in 2017, the Committee on the Elimination of Discrimination Against Women (CEDAW) recommended that all nations ensure that the definition of sexual crimes includes marital and acquaintance or date rape.⁷ Failure to amend Sudan’s Criminal Code to account for marital rape will only result in further wrongful persecution of rape survivors like Noura.

Enforce current rape provisions to protect women and girls

Despite recent improvements to the Sudanese Criminal Code of 1991 rape provisions, lack of enforcement and implementation remain a barrier to holding perpetrators accountable. According to our partner in Sudan who has acted as an interlocutor before the police on behalf of victims, in recent years nearly twenty cases have been reported of children between the ages of four and eleven years-old being married off and brutally raped and the perpetrators have not been prosecuted.

In 2014, the Human Rights Committee urged Sudan to ensure that “**perpetrators [of rape] are brought to justice and adequately sanctioned, and that victims have access to adequate reparations and means of protection.**”⁸ In 2010, the Committee on the Rights of the Child (CRC) also recommended that Sudan “**take effective measures to protect children from grave violations of human rights, including rape and other sexual violence.**”⁹ Enforcement of existing rape provisions in the Sudanese criminal code will serve to better protect women and girls from such violence and give them access to justice when they are subjected to such violence.

Enact laws that prevent all forms of sexual violence, including child, early and forced marriage

Sections 25(c), 33, 34, 40(3), 51, 52, 91, and 92 of the 1991 Muslim Personal Law Act of Sudan provide that the contract of marriage for a woman, or girl, shall be concluded by a male guardian, confer different rights in marriage for men and women, and mandate wife obedience. These provisions also legalize the harmful practice of child marriage by allowing male guardians to conclude the marriage of pubescent girls. Such laws only serve to increase girls’ risk of child marriage and subsequent abuses including early and forced pregnancy, domestic violence, poverty, and limited education and career

⁶ Available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSDN%2fCO%2f4

⁷ Available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35

⁸ Available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSDN%2fCO%2f4

⁹ Available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSDN%2fCO%2f3-4

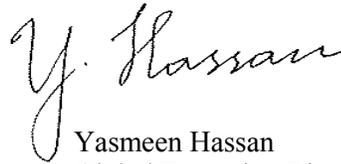
opportunities.

In 2015, the Committee on Economic, Social, and Cultural Rights (CESCR) urged Sudan to amend legal provisions that are discriminatory or have a discriminatory effect on the basis of sex as well as adopt a comprehensive anti-discrimination law that defines, prohibits, and punishes discrimination.¹⁰ In 2014, the Human Rights Committee also expressed great concern about “the persistence of discriminatory provisions in legislation” in Sudan and recommended a speedy review of domestic personal status laws in order to bring them into full compliance with international human rights standards.¹¹ The CRC further called upon Sudan to pass legislation at the federal level to expressly prohibit child marriage and ensure that such legislation is enforced in practice.¹²

Sudan has an international legal obligation as a party to multiple human rights treaties and is committed under the UN Sustainable Development Goals, particularly goals 5 and 10, to ensure that its laws are aligned with international and regional standards such that women and girls are free from sexual violence and child marriage.

Today, we file this communication to request that the Commission call upon the Government of Sudan to amend Article 149 of its 1991 Criminal Code to specifically criminalize marital rape, enforce current rape provisions, and enact laws that prevent all forms of sexual violence, including child, early and forced marriage. We also urge the Commission to refer this matter to the Economic and Social Council with a recommendation that it takes action to ensure Sudan completes these amendments to bring them in line with international and regional human rights standards.

Sincerely,



Yasmeen Hassan
Global Executive Director, Equality Now

¹⁰ Available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fSDN%2fCO%2f2

¹¹ Available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSDN%2fCO%2f4

¹² Available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSDN%2fCO%2f3-4