REFORMING SUDAN'S LEGISLATION ON RAPE AND SEXUAL VIOLENCE

Briefing Paper

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This Briefing Paper is published by REDRESS and KCHRED as part of the Criminal Law Reform Project in Sudan.[1] It has been prepared in response to a number of well-documented challenges in respect of how allegations of rape and other forms of sexual violence are handled in Sudan. These challenges include the absence of appropriate and effective mechanisms to protect victims and witnesses in rape and sexual violence cases and the failure of the competent authorities to carry out effective investigations and prosecutions into allegations of such crimes. These shortcomings stem in part from deficiencies in the definition of the criminal offence of rape and overly narrow evidentiary rules applicable in such cases.

I. The need to reform Sudanese legislation on rape and sexual violence

Rape and other forms of sexual violence are some of the worst possible assaults on the physical, psychological and sexual integrity of victims, who are predominantly women but also, in some instances, men. These crimes tear at the fabric of personal relationships, families, communities and societies at large. The heinous nature of rape is recognised in the fact that it constitutes an international

[1] The Criminal Law Reform Project is a joint initiative of REDRESS and KCHRED aimed at advancing the process of bringing Sudanese law into conformity with the National Interim Constitution and international standards as stated in article 27 of the Sudanese Bill of Rights. For any information on the project and/or this position paper, please contact: **Ms. Ishraga Adam, Project Coordinator; Khartoum Center for Human Rights and Environmental Development, Sahafa Zalat St - White new flat, located in the South West Corner of the Saha Shaabia,- Aldeim, Khartoum, Sudan, Email: ishragha_adam@yahoo.com, Mobile: + 249 9 122 341652.**

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crime under certain circumstances and a criminal offence in national legal systems around the world. In Sudan, the criminal offence of rape and some forms of sexual violence (gross indecency) have been recognised in each of the Sudanese criminal acts in force to date (1925, 1974, 1983 and 1991).

A high number of rape cases have been reported in Sudan in situations of conflict and there have been reported instances of rapes in ordinary (non conflict-related) situation.[2] Despite this, there have only been a few cases in which perpetrators have been held to account. A series of shortcomings in law and practice have contributed to the lack of protection of victims and to the impunity which has resulted.

The Government of Sudan has taken a number of steps to combat violence against women.[3] However, to date, measures have yet to be taken to reform the provisions of the Penal Code pertaining to rape and sexual violence, and the rules and procedures applying to the prosecution of such crimes.

II. The prohibition of rape under international law

Rape is recognised as a serious criminal law offence in countries around the world. It has been recognised as an aggravated and specialised form of assault used not only to create physical pain and suffering, but also to degrade the victim and the victims' family and community and to demonstrate through violent means, control over them. As was held by Bangladesh's High Court in the case of *Al Amin & Others v. Bangladesh*, which concerned the acquittal of a suspect in a rape case and the lack of appeal by the state prosecution:

"Rape violates a victim's fundamental right to life and their human dignity… Given A's [the victim's] reliability as a witness and the fact that the evidence clearly established that she had been the victim of rape, the appellants' acquittal was perverse, unreasonable and unfounded, and proper punishment should have been imposed."[4]

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2 *Final report on the situation of human rights in Darfur* prepared by the United Nations Experts Group on Darfur, presided by the Special Rapporteur on the situation of human rights in Sudan and composed by the Special Representative of the Secretary-General for children and armed conflict, the Special Rapporteur on extrajudicial, summary on arbitrary executions, the Special Representative of the Secretary-General on the human rights defenders, the Representative of the Secretary-General on human rights internally displaced persons, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and consequences, UN Doc. A/HRC/6/19, 28 November 2007, p.47.

3 In 2005, a State Plan to Combat Violence against Women was adopted and a new unit was created in the Ministry of Justice that is in charge of implementing the plan. In June and July 2007, two workshops on combating violence against women and on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa were held in collaboration with UNMIS in which changes to Sudanese rape laws were recommended. A further workshop on rape legislation took place in Khartoum in June 2008. A number of measures were announced by the Government of Sudan in 2007, stipulating a policy of zero tolerance against sexual violence and a commitment to the prosecution of perpetrators, provision of medical care, implementation of Criminal Circular 2 that relates to form 8 concerning medical examinations, and increasing the number of women police officers.

4 *Amin & Others v. Bangladesh*, High Court, Judgment of 10 December 1998, 51 DLR (1999) 154, 19 BLD

In addition to its recognition as a crime in penal codes around the world, rape which is perpetrated by officials of the state or in which it can be said that the state has facilitated, acquiesced or enabled others to commit rape, is absolutely prohibited under international human rights law as a form of torture.[5] Even where no official is involved in the rape, states have a positive obligation to protect persons subject to their jurisdiction from violations of their physical, psychological and sexual integrity, and, to this end, to prevent and repress rape through adequate criminal legislation and other measures.[6]

Rape and other forms of sexual violence have also been recognised as offences under international humanitarian law applying in times of both internal and international armed conflict.[7] Rape may in certain circumstances also constitute the crime of genocide, crimes against humanity or war crimes.[8]

A series of resolutions by the UN Security Council and declarations by UN bodies have condemned rape and sexual violence against women as forms of torture, international crimes and as violations in their own right.[9] Victims of rape and other forms of sexual violence have the right to an effective remedy and reparation under international law, which includes both the right to have complaints effectively investigated and the right to have access to justice with a view to obtaining appropriate and effective forms of reparation, including compensation, rehabilitation and guarantees of non-repetition.[10]

(HCD) (1999) 307, (1998) 2 CHRLD 453.

5 *Aydin v. Turkey*, (57/1996/676/866, 25 September 1997), para. 83; *Maslova and Nalbandov v. Russia*, (Application no. 839/02, 24 January 2008), para. 107; *V.L. v. Switzerland*, CAT/C/37/D/262/2005, 22 January 2007, para.8.10.

6 *M.C. v. Bulgaria* (Appl. No. 39272/98, 4 December 2003), para.153; Committee on the Elimination of Discrimination against Women, General Recommendation No. 19 (llth session, 1992).

7 See articles 50, 51, 130 and 147 of the four Geneva Conventions of 1949 respectively; article 27 of Geneva Convention IV relative to the Protection of Civilian Persons in Time of War; article 75 and 76 (1) of the 1. Additional Protocol relating to the Protection of Victims of International Armed Conflicts, 1977, and, in relation to non-international armed conflicts, Article 3 common to the Geneva Conventions and Article 4 of the 2. Additional Protocol to the Geneva Convention of 1977.

8 *Prosecutor v. Musema*, (Case No. ICTR-96-13-A, Judgment, 27 January 2000,), para. 933; *Prosecutor v. Furundzija*, Case No. IT-95-17/1-T, Judgement, ICTY TC, 10 December 1998; *Prosecutor v. Delalic*, Case No. IT-96-21-T, Judgement, 16 November 1998; *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment, 2 September 1998); *Prosecutor v. Musema* (Case No. ICTR-96-13-A, Judgment (AC), 16 November 2001); and *Prosecutor v. Semanza* (ICTR-97-20-T, Judgment, 15 May 2003).

9 UN Declaration on the Elimination of Violence Against Women, GA Res 48/104, 20 December 1993 and UN Security Council Resolution 1325 (2000) on Women and Peace and Security.

10 This right is recognised both in treaty law, such as article 2 (3) of the ICCPR and articles 1 and 5 of the African Charter on Human and Peoples' Rights binding on Sudan. See also the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN Doc.A/RES/60/147, 16 December 2005.

III. The Bill of Rights and rape

The Bill of Rights, which forms an integral part of the Interim National Constitution of 2005, contains a number of rights that enshrine, a right to be free from rape and a right to have the state take all possible steps to provide protection against rape. The right to life, dignity and the integrity of his/her person guaranteed in Article 28 must be read to encompass freedom from acts of rape, which can be life-endangering and are invariably a violation of the dignity and the sexual integrity of a person. Notably, Article 28 stipulates that these rights should be protected by law, which imposes a positive obligation on the state to enact the requisite legislation to ensure that such rights are not violated, be it by state agents or private individuals. Similar considerations apply with regards to the right to be free from torture or cruel, inhuman or degrading treatment guaranteed in Article 33.

Article 31 enshrines the right to equality before the law and equal protection of the law. This right arguably entails a duty to define the crime of rape and sexual violence, as well as evidentiary rules pertaining to it, such as the gender and number of witnesses, in such a way that women are treated equally and are not disadvantaged by the practical application of the law. Article 32 (5) imposes a duty on the state to "protect the rights of the child as provided in the international and regional conventions ratified by the Sudan," in particular provisions in the Convention on the Right of the Child that protect children against sexual abuse.[11]

IV. Reform of rape legislation in Sudan

a. Experiences of other countries

Repressing sexual violence is one of the core tasks of any criminal law in light of its function to maintain peace and order in a society and to protect its members from harm. However, in many countries criminal rape legislation has failed to provide for effective punishment and to act as deterrent. The legislation pertaining to investigation, prosecution and trials in rape cases frequently results in victims of rape being exposed to further trauma in the course of proceedings. These shortcomings, coupled with a better understanding of rape, its consequences and the difficulty of holding perpetrators accountable, has prompted many countries to initiate and carry out legislative reforms so that rape laws better reflect these realities.

Reform of rape legislation has not been limited to particular legal systems or geographical areas of the world. In Africa, for example, a number of states have enacted legislation with a view to combating rape more effectively, such as Botswana, Lesotho, Liberia, Kenya, Namibia, South Africa, Tanzania and

11 Articles 19 (1), 34 and 39 of the UN Convention on the Rights of the Child.

Zimbabwe.[12] Several states have initiated and carried out similar reforms in Asia, including notably Pakistan and the Philippines, and elsewhere, such as Australia; on the American continent; and in Europe, including recently in the United Kingdom.[13]

b. Elements of the criminal offence of rape

2.1. Definition of rape

2.1.1. Rape and adultery

We propose that rape should not be defined with reference to adultery, as in the current criminal offence of rape.[14] Rape is of an entirely different nature to the *hadd* crime of adultery. While both rape and adultery concern sexual intercourse that is considered unlawful, the latter *hadd* crime is, in contrast to rape, characterised by the consensual nature of the sexual act taking place between adults.

The reference to adultery in the rape definition seemingly results in the application of evidentiary rules pertaining to this *hadd* crime, namely the requirement of four male witnesses to the act of penetration or a confession, to what should be considered a *ta'zir* crime. The admissible types of evidence in t*a'zir* crimes are subject to the.discretion of the legislature. In cases of rape, this may include the use of testimonies by the victim and other female witnesses where present, and of circumstantial evidence, such as forensic evidence. There is no apparent reason to subject the *ta'zir* crime of rape to the evidentiary rules of *hudud* crimes.

From a legal policy perspective, the current rape legislation has failed to provide adequate protection for women, which can to a large degree be attributed to the difficulties arising from the reference to adultery in the definition of rape. The step of separating the criminal offence of rape from adultery is bound to increase the likelihood of women complaining about rape and the prospects of successful investigations and prosecutions because it would broaden the types of admissible evidence. In so doing, the state would be exercising greater diligence in seeking to fulfil its positive duty, arising both as a matter of constitutional law and international law, to repress and prevent violations such as rape.

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12 See in particular comparative study contained in Legal Assistance Centre, *Rape in Namibia, An Assessment of the Combating of Rape Act 8 of 2000*, 2006, pp.539 et seq.
13 See *International, regional and national developments in the area of violence against women, 1994 to 2003*, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights Resolution 2002/52, Addendum 1, UN Doc. E/CN.4/2003/75/Add.3, 27 February 2003.
14 Article 149 of the 1991 Criminal Act.

2.1.2. The definition of the act of rape

All Sudanese criminal laws to date have defined rape as sexual intercourse by way of penile penetration into the vagina or anus.[15] Penile penetration into the mouth and penetration of the genital organs or anus with objects fall outside the definition of rape, despite the fact that these acts can constitute similar harm, humiliation and degradation to the victims. Such acts can only be prosecuted as gross indecency, an offence that does not capture the seriousness of the crime of rape and carries inadequate punishments.[16]

We propose that the definition of rape in Sudanese law be changed so as to include penile penetration into the mouth and penetration of the genital organs or anus with objects. Both of these acts constitute assaults that violate the sexual autonomy of the victim in the most serious manner similar to penile penetration into the vagina or anus. Broadening the definition of rape along these lines would bring it in conformity with international jurisprudence and legislation from other states. In addition, it would extend protection to those who may fall victim of such forms of rape and, by so doing, would be an exercise of the positive obligation of the state to protect individuals from such crimes.

2.1.3. Consent as an element of the definition of rape

We propose that the word “voluntary or uncoerced agreement” be used to define consent in Sudanese legislation.

The current definition of consent in the Sudanese Criminal Act as acceptance appears to be based on the concept of one party making an offer and the other party accepting the same. The concept of agreement implies a broader meaning of a shared understanding and an act entered into mutually. The wording “voluntary or uncoerced agreement” would better capture the nature of genuine consent.

We propose that the circumstances in which consent is absent should be more clearly elaborated upon in Sudanese legislation.

The lack of consent should cover all situations in which a voluntary or uncoerced agreement is not present. The current definition of the lack of consent in the Sudanese Penal Code encompasses the elements of compulsion, mistake of facts, inability to give genuine consent and statutory rape. It also recognises that any acceptance of a victim in custody or under the authority of the offender is

15 Article 316 of the 1925 and the 1974 Criminal Act, article 317 of the 1983 Criminal Act and article 149 of the 1991 Criminal Act.
16 Article 151 of the 1991 Criminal Act. See on the effective prosecution of rape and the need for adequate punishments, *M.C. v. Bulgaria*, (Appl. No. 39272/98, 4 December 2003), para.153; *Nikolova and Velichkova v. Bulgaria* (Application no. 7888/03), 20 December 2007, para.63 and *Kepa Urra Guridi v. Spain*, Communication No. 212/2002, U.N. Doc. CAT/C/34/D/212/2002 (2005), para. 6.7.

invalid. The definition of when sexual intercourse is non-consensual seemingly captures most circumstances. However, it would be beneficial to clarify further the situations where consent is lacking or invalid. .

For example, it may be appropriate to distinguish between acts of penetration that have been committed without the consent of the victim and those committed with the consent of the victim, whereby the "consent" is not deemed valid as a matter of law. The first category would comprise in particular the use of force and coercion as well as situations where the offender is taking advantage of the inability of the victim to give genuine consent (a state of intoxication, psychological illness, physical disabilities, being asleep or otherwise unconscious). Invalid consent would comprise in particular intimidation, threats, abuse of power, use of fraudulent means and the purported 'consent' given by minors.

2.2. Sexual intercourse with minors and rape

We propose that the age of consent for sexual intercourse in Sudanese criminal legislation be set at 16 years of age irrespective of any signs of physical features of puberty. Any sexual intercourse with a person below that age would automatically constitute rape.

Under the Sudanese Criminal Act, sexual intercourse with a minor under the age of fifteen constitutes rape because such minor is by law not capable of giving consent. Sexual intercourse with a person between the age of fifteen to eighteen years constitutes rape only if the person has not reached the physical signs of puberty (or if it is non-consensual The reference to the signs of physical features as a factor in determining the existence of consent should be removed from the criminal law because it raises a number of concerns:

- The objective of the law is to protect minors against sexual intercourse with adults. The state of a child's development depends on both physical and psychological factors. Using the physical signs of puberty as the criterion for a person's capacity to give consent results in lesser protection for someone over the age of fifteen simply because he or she has the physical signs of puberty irrespective of his or her mental development. This is compounded by the absence of any other offence that protects persons over the age of fifteen who are considered to show physical signs of puberty from sexual intercourse with adults. It would thus be more appropriate to set a specific age applying to all minors.
- The reference to the physical signs of puberty introduces an element of legal uncertainty. Judges may interpret the visible state of development differently and defendants are likely to plead the existence of physical signs of puberty as a defence. The reference to a specific age of consent would remove this uncertainty.

2.3. Marital rape

We propose that Sudanese legislation be amended to recognise that non-consensual sexual intercourse within marriage constitutes rape as a means of strengthening the protection of women against sexual violence under all circumstances.

The criminalisation of marital rape has been the subject of intense debates in recent decades because it is a widespread but often unacknowledged form of domestic violence in many if not all countries. Historically, the offence of rape excluded non-consensual sexual intercourse within marriage because one of the objectives of the punishment for rape was to protect family honour. In addition, there was an implicit understanding that marriage entailed a general consent to sexual intercourse irrespective of the actual will of the spouse, normally the wife, in any given situation. This understanding of the nature of rape has undergone considerable changes around the world. As recognised in international jurisprudence and reflected in national laws, the offence of rape is now considered to protect the "sexual autonomy" of the victim. The legal bond of marriage does not remove the sexual autonomy of a spouse in any given situation with the result that the other spouse, usually the man, is not allowed to coerce sexual intercourse. Most of the recently enacted national anti-rape laws stipulate, either explicitly or implicitly, that non-consensual sexual intercourse within marriage constitutes rape.[17]

2.4. Punishment for the crime of rape: Aggravating and mitigating circumstances

We propose that any newly introduced or amended offence of rape in Sudanese criminal law be subject to a minimum punishment of at least five years imprisonment and a maximum punishment of life imprisonment. Any lower minimum punishment would not adequately reflect the seriousness of the offence of rape. If no minimum punishment was determined by law, judges would be free to impose more lenient sentences, which would be bound to undermine the positive obligation to repress rape effectively. Recent reforms of rape legislation in several countries have been characterised by an increase in punishments as existing penalties were perceived to be inadequate in light of the seriousness of the offence of rape.[18]

We propose that the law specifies the factors that constitute aggravating circumstances to guide the discretion of judges in determining adequate punishment. Alternatively, the law may stipulate the maximum punishment

17 Namibia, Zimbabwe, Lesotho, Swaziland, South Africa, UK.
18 For example in Namibia and South Africa.

applicable to particular circumstances of rape, for example a maximum punishment of 15 years imprisonment for rape by one or two persons or by persons in a position of authority, of 20 years imprisonment for rape resulting in grievous bodily harm and of life imprisonment for rape resulting in death.

3. Prosecution of rape

3.1. Immunities

We propose that the provisions in Sudanese laws granting conditional immunity to officials be repealed, in particular in so far as they relate to torture and rape. This would help to bring Sudanese legislation in conformity with the Bill of Rights in the Interim National Constitution and applicable international standards according to which immunity legislation is incompatible with the right to an effective remedy and the duty of the state to investigate allegations of torture and rape effectively.[19]

3.2. Statutes of limitation

We propose that any revised offence of rape is not made subject to any prescription, namely that the crime of rape can be prosecuted irrespective of when it was committed. Rape is a crime that frequently leaves its victims severely traumatised. There are many instances, such as the rape of children or the rape of women in vulnerable positions, where the victims have been too afraid, ashamed or inhibited to bring a complaint about the rape out of concern of the expected repercussions. It may take years if not decades before a rape victim may be willing to come forward and give testimony. The prosecution of rape cases after a long period of time poses unique evidentiary challenges. However, this is a practical difficulty that can be addressed in a given case. It should not be a consideration that denies victims access to criminal justice at the very time when they are finally capable of doing so. On balance, the interest of society to repress rape and to prosecute the perpetrators years after the crime must override the objective of gaining legal certainty by precluding investigations after the passage of a fixed time.

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19 See in particular UN Human Rights Committee, *General Comment 20 Concerning Prohibition of Torture and Cruel Treatment or Punishment (Art. 7)*, 10 March 1992, para.14. and General Comment 31, *The Nature of the General Legal Obligation imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para.18. See further Concluding observations of the UN Human Rights Committee: India, UN Doc. CCPR/C/79/Add.81, 4 August 1997, para.21: "The Committee notes with concern that criminal prosecutions or civil proceedings against members of the security and armed forces, acting under special powers, may not be commenced without the sanction of the central Government. This contributes to a climate of impunity and deprives people of remedies to which they may be entitled in accordance with article 2, paragraph 3, of the Covenant."

3.3. The position of victims and witnesses in rape cases: Protection, counselling and victims' rights

We propose that the legislation pertaining to rape cases provide for the establishment of special procedures and programmes designed to protect victims of rape and other forms of sexual violence. Such programmes should equally include provision for counselling and medical treatment. The relevant law should prescribe procedures applicable in cases of rape and sexual violence that provide for appropriate complaints mechanisms, specialised questioning, confidentiality, protective measures and evidentiary rules designed to avoid re-traumatisation. Applicable procedures should also provide persons alleging rape with a right to participate in proceedings and to make victim impact statements.[20]

3.4. Evidentiary issues

We propose that the offence of rape is not made subject to the rules of proof applying to the crime of adultery, namely the requirement of four male witnesses to the act of penetration or a confession. The current evidentiary standard does not allow the prosecution to draw on valuable evidence, such as victims' statements and forensic evidence which are the most typical evidence used in rape cases in other countries. The high evidentiary threshold for rape in Sudanese legislation is on the face of it detrimental to the effective prosecution of rape cases. In practice, there have been few convictions for rape and the current legal framework effectively has resulted in impunity. In addition, the law should stipulate a set of evidentiary principles pertaining specifically to cases of sexual violence, which should include the validity of the victims' testimony, the types of medico-legal evidence (the law should also facilitate access to the requisite medical examinations), and presumptions to be applied when determining whether there was lack of consent, namely that consent cannot be assumed.

4. Right to an effective remedy and reparation for victims of rape

We propose that victims of rape be provided with an effective civil remedy under Sudanese legislation. Existing laws do not constitute an effective avenue for claiming adequate reparation for human rights violations, including rape.[21] For this reason, statutory law should stipulate a specific right to reparation for such violations as a way of implementing the fundamental right to litigation (article 35 of the Bill of Rights) and the right to a remedy as provided in international law (article 27 (3) of the Bill of Rights).[22] Such law, which may take the form of an

20 See for example Rule 96 of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, Article 68 of the Rome Statute of the International Criminal Court (ICC) and Rule 71 of the Rules of Procedure and Evidence of the ICC.
21 See REDRESS/SOAT, *National and International Remedies for Torture, A Handbook for Sudanese Lawyers*, March 2005, pp.35 et seq.
22 See Article 27 (4) of the Bill of Rights: "Legislation shall regulate the rights and freedoms enshrined in this Bill and shall not detract from or derogate any of these rights."

amendment to the Criminal Code or the Civil Transaction Act or a separate act, should vest victims with a right to adequate compensation, rehabilitation and other forms of reparation as appropriate. In addition, any barriers to effective access to justice for rape victims should be removed, in particular immunities. Suits in rape and sexual violence cases should not be subject to unduly short terms of limitation periods (e.g., no less than ten years) or, ideally, any limitation periods. The National Human Rights Commission to be established should be vested with the power to recommend compensation in rape cases falling within its mandate. The state should establish or financially support centres that provide treatment and rehabilitation for victims of rape.

5. Other offences relating to sexual violence

Ideally, the reform of the criminal law on rape and sexual violence would result in a comprehensive revision that would bring Sudanese legislation in line with the Bill of Rights, international treaty obligations and best practices from other countries. To this end, such reforms should encompass a much broader set of offences. This would include, for example other forms of sexual assault, the protection of children, mentally disabled and other vulnerable persons from sexual violence, female genital mutilation and trafficking in human beings for use in the sex trade. The reform of rape provisions only would be incomplete because it would not capture a number of other forms of sexual violence, which also need to be repressed.

We propose the enactment of new offences of sexual assault, which would cover a series of acts of sexual violence, such as non-consensual touching, as well as offences relating to sexual activities with children and mentally disabled persons.

The offence of gross indecency in article 151 of the Criminal Act that effectively serves as a catch-all offence for all unlawful sexual acts not amounting to adultery, sodomy or rape, is clearly inadequate because it does not sufficiently distinguish between various forms of sexual harassment. It also stipulates punishments of a maximum of eighty lashes or imprisonment of up to two years that are clearly inadequate in cases of serious sexual assault or harassment that does not amount to rape.

V. Set of Recommendations

Taking into consideration the provisions of the Bill of Rights, Sudan's obligations under international law and best practices from other countries, we propose that Sudanese legislation on rape and sexual violence be reformed. Such reforms may either take the form of an amendment to the criminal act (repealing and inserting the relevant new provisions) or the adoption of a separate anti-rape and sexual violence act. Such legislation should entail changes in the definition of the

offence of rape and the insertion of new offences, such as sexual assault, sexual harassment and may also include the offence of trafficking, female genital mutilation, and sexual offences against children and mentally disabled persons.

We propose that the criminal offence of rape be changed as follows:

- There should be no reference to adultery in the definition of rape
- The act of rape should, in addition to sexual intercourse of a woman or man, include penile penetration of the mouth and penetration of sexual organs with an object
- The definition of consent should be clarified. Consent should be defined as a "voluntary and uncoerced agreement." The circumstances indicating lack of consent should include, without being limited to, situations where the victim is:

  - subjected to violence or threats at the time or immediately before the act;
  - in detention;
  - asleep or unconscious; or
  - intoxicated;
  - mentally or physically disable and hence unable to communicate consent in a given situation.

- In order for the punishment for rape to reflect the seriousness of the crime, we propose a maximum punishment of life imprisonment. Aggravating circumstances, such as abuse of authority, infliction of bodily harm, multiple rape, gang rape, vulnerability of the victim (children, mentally and physically disabled persons), should be specifically listed to guide the sentencing discretion of the judge.

We propose that the legislation governing the prosecution of rape cases be reformed as follows:

- Immunity: abolishing legislation that grants conditional immunity to members of the armed forces, security forces and police forces
- Statutes of limitation: there should be no limitation periods for the criminal offence of rape
- Victims and Witness Protection: establish an effective system of victims and witness protection in rape cases
- Procedural position of victims: provide specific procedural rights for victims of rape in line with international best practice
- Evidentiary issues: permit the use of the victim's statement and circumstantial evidence as sufficient to secure a conviction for rape.

We propose that the legislation governing the rights of rape victims to an effective civil remedy and reparation be reformed as follows:

- Right to reparation: recognising expressly victim's right to reparation for violations of human rights, including rape, which should comprise adequate forms of reparation
- Immunity: abolishing legislation that grants conditional immunity to members of the armed forces, security forces and police forces
- Statutes of limitation: substantially extend existing statutes of limitation in civil cases to provide victims with effective access to justice
- Special Commissions and centres: set up commissions vested with the power to provide compensation and other forms of reparation to rape victims, and establish or financially support centres for rape victims.

In addition, we propose to recognise a criminal offence of sexual assaults that covers non-consensual physical acts of a sexual nature, such as touching and kissing, which fall short of the definition of rape. The offence should be subject to adequate punishments.

Furthermore, we propose to recognise a criminal offence of sexual harassment that covers other acts of a sexual nature, such as offensive remarks of a sexual nature, which fall short of the definition of rape and sexual assaults. The offence should be subject to adequate punishments.