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Re: Sudan – Consideration of State Reports at CCPR 124th Session (8 October – 2 November 2018)

7 September 2018

Distinguished Committee Members,

We respectfully submit this letter in advance of the Human Rights Committee’s consideration of State Reports at its 124th session from 8 October – 2 November 2018. Equality Now would like to raise its concerns regarding the perpetuation of sexual violence against women and adolescent girls, including under the laws of Sudan, in violation of the equality provision of Article 3 and the non-discrimination principle under Article 26 of the International Covenant on Civil and Political Rights. Despite recent amendments to the Sudanese Criminal Code of 1991, Article 149 fails to specifically criminalize marital rape. We are also concerned about the lack of enforcement of current rape provisions of the Criminal Code and the need for the Sudanese government to 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 since 1992, including through our membership network comprised of individuals and organizations in over 190 countries. This communication is in reference to Equality Now’s action, “Justice for Noura: Stop the Execution of Noura Hussein”,¹ and report, “The Global Rape Epidemic: How Laws Around the World are Failing to Protect Women and Girls from Sexual Violence” (2017).²

Marital rape

In 2014, this Committee recommended that Sudan “**ensure[s] 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.**”³ In February 2015, Sudan amended Article 149 of its Criminal Code to include a more precise and expansive definition of rape. Under 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 victim⁴. We commend Sudan for this amendment, which will help to prevent sexual violence against Sudanese women. However, because the amended law does not include a specific prohibition of marital rape, it therefore still allows for perpetrators of marital rape to enjoy

¹ Available at https://www.equalitynow.org/_justicefornoura_stop_the_execution_of_noura_hussein

² Available at https://www.equalitynow.org/the_global_rape_epidemic_campaign

³ Available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSDN%2fCO%2f4

⁴ 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

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impunity when the provision is not interpreted broadly by the authorities. (Further, the amended Article 149 creates legal uncertainty as it inadvertently conflates the offence of rape with “adultery” and “sodomy”. This is because the penalty for rape, set out under Article 149(2), remains unchanged and still refers to rape by way of those acts. There is therefore a continued risk of rape complainants facing prosecution for adultery or sodomy.) The Committee on the Elimination of Discrimination against Women (CEDAW) has recommended that all nations ensure that the definition of sexual crimes includes marital and acquaintance or date rape.⁵

Noura, a Sudanese girl, was forcibly married at 16 years of age to an older man. Despite her protestations, her new husband raped her whilst three of his male relatives held her down. When he attempted to rape her again, Noura fought back, fatally stabbing him with a knife in self-defense. Since marital rape is not specifically criminalized in Sudan, it was unclear whether the Criminal Code’s provisions on self-defense applied to the case. On 10 May 2018, Noura was sentenced to death by hanging. 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) to be paid to the deceased’s family as blood money. However, as of this date, Noura’s fight for justice is still not over, as the state prosecutor has appealed against the removal of the death sentence and instead called for the reinstatement of the death penalty.

Enforcement of current rape provisions to protect women and girls

Despite the Sudanese Government’s assertion in their State Party Report that there is no impunity for perpetrators of rape in Sudan,⁶ a lack of enforcement and implementation of the rape provisions in Sudan’s Criminal Code of 1991 as amended remains a barrier to holding perpetrators accountable. Noura’s story is not unique. 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 by their “husbands,” who are not subsequently prosecuted. Failure to further amend to specifically criminalize marital rape and to enforce existing provisions will only result in further wrongful prosecution of rape survivors like Noura or no justice for others.

In 2014, this 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.**”⁷ 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.**”⁸ 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

As noted in this committee’s List of Issues, there is a need for Sudan to take all measures to eliminate harmful practices, such as child, early, and forced marriage.⁹ 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

⁵ Available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35

⁶ Human Rights Committee, Fifth periodic report submitted by the Sudan under article 40 of the Covenant, due in 2017, par. 45, U.N. Doc. CCPR/C/SDN/5 (Oct. 11, 2017).

⁷ Available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSDN%2fCO%2f4

⁸ Available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSDN%2fCO%2f3-4

⁹ Human Rights Committee, List of issues in relation to the fifth periodic report of the Sudan, par. 7, U.N. Doc. CCPR/C/SDN/Q/5 (May 3, 2018)

marriage by allowing male guardians to conclude the marriage of pubescent girls. Such laws only serve to increase girls' risk of child marriage and further abuse, including early and forced pregnancy, domestic violence, poverty, and limited education and career opportunities.

In 2014, this Committee 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.¹⁰ In 2015, the Committee on Economic, Social, and Cultural Rights (CESCR) also 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.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. The adoption of such laws will serve to protect women and girls by ensuring that they are free from sexual violence and child marriage.

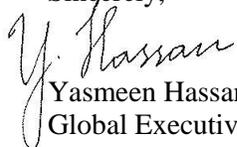
Suggested Recommendations for the State Party

We would respectfully urge the Committee to recommend to Sudan with regard to violations of the Covenant addressed in this letter to:

- Comprehensively 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.

Thank you very much for your kind attention, and please do not hesitate to contact us if we can provide further information.

Sincerely,



Yasmeen Hassan
Global Executive Officer

¹⁰ Available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSDN%2fCO%2f4

¹¹ Available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fSDN%2fCO%2f2

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