

EQUALITY NOW

New York: 250 West 57 Street, #1720, New York, NY 10107, USA • Tel: +1 212-586-0906 • Fax: +1 212-586-1611 • Email: info@equalitynow.org
London: 1 Birdcage Walk, London SW1H 9JJ, UK • Tel: +44 (0) 20-7304-6902 • Fax: +44 (0) 20-7973-1292 • Email: ukinfo@equalitynow.org
Nairobi: PO Box 2018 - 00202, Nairobi, Kenya • Tel: +254 20-2719-832 • Fax: +254 20-2719-868 • Email: equalitynownairobi@equalitynow.org

Committee on Economic, Social and Cultural Rights (CESCR)
Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva
Switzerland
By E-mail and Post: cescr@ohchr.org;
Mailing address - CESCR Secretariat 8-14 Avenue de la Paix CH 1211 Geneva 10 (Switzerland)

Re: Sudan – 54th Pre-sessional Working Group of the Committee (1-5 December 2014)

30 September 2014

Distinguished Committee Members,

We respectfully submit this letter in advance of the Committee on Economic, Social and Cultural Rights (the Committee's) discussion of Sudan at its 54th Pre-sessional Working Group of the Committee (1-5 December 2014). This letter will focus on continued violations against women and survivors of gender-based sexual violence in the Sudan in violation of Articles 2 (non-discrimination), 3 (equality between men and women) and 8 (right to form trade unions) of the International Covenant on Economic, Social and Cultural Rights.

Equality Now is an international human rights organization with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network comprised of individuals and organizations in over 190 countries.

In August 2013, as highlighted in our March 2014 Action 56.1: *Sudan: Change the law – allow victims of sexual violence to access justice*, and described in our 13 June 2014 submission to the Human Rights Committee, a 19-year-old pregnant and divorced Ethiopian woman was lured to an empty property in Sudan and brutally gang-raped by a group of seven men, aged 19 to 22. Immediately following the attack, a police officer found the distraught victim, but did not file a formal complaint of rape because it was a public holiday and the police station was closed. Disturbingly, the rapists filmed the attack, which later surfaced via social media in January 2014. After learning of the film, the authorities ultimately arrested everyone involved, *including the victim*. Sudan's Attorney General has—without legal basis—consistently blocked her from filing a rape complaint on the basis that she was under investigation for the criminal offense of offending public morality. At one point, she even faced a sentence of death by stoning for adultery, as the prosecutor debated her marital status before affirming that she was divorced.

This case highlights the overwhelming challenges women face in obtaining justice in Sudan for rape and sexual violence. After being arrested, and despite being close to giving birth, the young woman was held in police cells and, until recently, been consistently denied placement in a medical facility. Upon their confession, three of the perpetrators were convicted of adultery, two of indecent acts, and one of distributing indecent material; their sentences consisted of lashes and fines. The seventh was freed due to insufficient evidence. The victim, however, was found guilty of committing gross indecency under section 151 of the Criminal Act, described as “whoever commits any act contrary to another person's modesty, or does any sexual act with another person not amounting to adultery, or sodomy.” She was sentenced to one month in prison and levied a hefty fine of 5000 Sudanese Pounds (approximately \$900 USD). Her sentence was suspended due to

her pregnancy, and she was placed on probation for six months. Further troubling, after sentencing under section 151, the prosecutor threatened to also file criminal charges under section 146 referring to adultery, which criminalizes pregnant unmarried women. At the same time, the state was pursuing immigration charges against the woman.

There is urgent need for legal reform to the Criminal Act of 1991, especially of Articles 145, 146, and 149 referring to adultery and rape, respectively. Article 149 defines rape as "sexual intercourse, by way of adultery, or sodomy, with any person without his consent." This limited definition creates confusion and misunderstanding when interpreted by Sudanese courts, and needs to be modified to introduce a broader definition of rape that clearly distinguishes rape from adultery and adequately addresses marital rape. Presently, when a woman or girl reports she has been raped, she exposes herself to possible prosecution. Effectively, a victim has to prove her own innocence by demonstrating that the encounter was non-consensual and the evidentiary burden is overwhelming. (Many judges require that four competent men testify on the victim's behalf, a requirement that is nearly impossible to obtain.) If she fails to do so, she is liable to be prosecuted for adultery, also known as *zina*. The punishment for *zina* is 100 lashes if the woman is not married and execution by stoning if she is married. The law lacks clear guidelines on its interpretation and implementation, which allows judges wide discretion that is often unjust to victims seeking redress through the criminal justice system. In this case, even with filmed evidence of the rape, the victim was still found guilty of immoral acts. All these factors, combined with the traumatic stigma and fear of community reprisals, often deter women and girls from reporting crimes of sexual violence and make it very difficult for them to achieve justice even if they do.

According to the Government's *Second Periodic Report of State Parties due in 2003*, "Voluntary organizations and associations can be easily formed and registered in accordance with straightforward procedural requirements ..." (E/C.12/SDN/2, 18 Sept. 2013, ¶118). Equality Now is concerned, however, about the recent forced shutdown of Salmah Women's Resource Centre (SWRC) without prior notice and due process. SWRC's core focus is on mobilizing and empowering women and women's groups in order to influence policy and overcome structural, political and legal obstacles to the advancement of women's rights. On 24 June 2014, the Ministry of Justice issued a decree deregistering the organization as a non-profit, ordering its immediate liquidation, and the appointment of a five-person committee to oversee the Company's dissolution process. The decree failed to give any reason for the decision and the same day all properties found in possession of SWRC, including the personal belongings of its staff, were seized. Reports speculate that the legitimate and peaceful human rights activities of SWRC's director, Ms. Fahima Hashim, prompted the government to shut down the organization, which conspicuously occurred shortly after her appearance as a speaker at the Global Summit to End Sexual Violence in Conflict held in London from 10 to 13 June 2014. She also coordinated the February 2014 One Billion Rising in Sudan, in which 700 women participated to speak out against violence against women. We, together with other civil society organizations, are concerned that these actions will signal a new chapter of political repression against civil society in Sudan, characterized by harassing and obstructing the work of independent organizations that promote human rights and democratic values.

Sudan is obligated in its interim Constitution of 2005 to ensure that men and women are treated equally under the law and to prevent sexual violence victims from being criminalized. Article 33 of the interim constitution guarantees the right to be free from cruel, inhumane or degrading treatment. Sudan's positive obligation towards these fundamental human rights are also embodied in regional and other international instruments Sudan has ratified, including the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights. Furthermore, the closing of SWRC clearly violates the right of civil society to exercise their constitutional right to freedom of association, and their right to establish associations and of Article 27-4 of the Interim Constitution of 2005, which prohibits any infringement of the rights and freedoms enshrined in the Bill of Rights.

We note the Human Rights Committee's recommendations (CCPR/C/SDN/CO/4, ¶12) in July 2014 to the government of Sudan that it,

(a) **Ensure adequate protection of women against violence in legislation, including by swiftly amending articles 145 and 149 of the 1991 Criminal Code as well as by criminalizing domestic violence and marital rape;**

(b) **Increase its awareness-raising activities about the negative effects of violence against women and reinforce its training activities for State officials, in particular judges, prosecutors and police, in order to ensure that they are able to respond effectively to all forms of violence against women;**

(c) **Facilitate the reporting of rape and ensure that all cases of violence against women are promptly and thoroughly investigated; perpetrators brought to justice and adequately sanctioned; and that victims have access to adequate reparations and means of protection, including access to specialized shelters or centres.**

To date, however, there has not been any indication of change or actual reform of the Penal Code or its implementation.

We note that the government of Sudan does not address these issues in its *Second Periodic Report of State Parties due in 2003* (E/C.12/SDN/2, 18 Sept. 2013). We hope the Committee will join the Human Rights Committee in emphasizing the urgent need for the Sudanese government to undertake these measures.

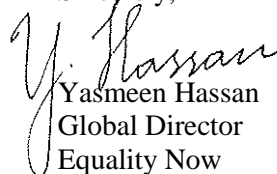
Suggested Questions for the List of Issues

We would respectfully urge the Committee to raise with the Sudanese government in its List of Issues the following questions with regard to violations of the Covenant addressed in this letter:

- What are the government's plans for officially dropping the criminal charges of adultery against this young mother who was raped, particularly as the rapists have already been found guilty?
- What government policies are in place to ensure that survivors of sexual violence can access medical, psychological and other support services, especially in light of the particularly difficult situation experienced by the Ethiopian woman highlighted above?
- What are the immediate plans of the committee established at the Ministry of Social Welfare, Women Center for Human Rights to revise the Criminal Act and the discriminatory Personal Status Code?
- What are the government's plans to respect the legitimate status of registered non-profits so that they can continue their invaluable work, especially in light of the situation highlighted above regarding SWRC?

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 Director
Equality Now