

Jurisprudence on Sexual Offences and Proposals to Close the Gaps for the Prosecution of Rape in the Sudan



*Call to reform laws that deny victims of
sexual violence access to justice under the law*

Muna Eltayeb M. Eltayeb
With contribution from Equality Now

Jurisprudence on Sexual Offences and Proposals to Close the Gaps for the Prosecution of Rape in the Sudan

First published 2014 by Equality Now
<http://www.equalitynow.org>
Copyright ©2014 Equality Now

All rights reserved. Redistribution of the material presented in this work is encouraged by the publisher, provided the original text is not altered and that the original source is properly and fully acknowledged and that the objective of redistribution is not for commercial gain. You may contact the publisher if you wish to reproduce, redistribute or transmit, in any form or by any means, this work or any part thereof.

Developed by Dr. Muna Eltayeb M. Eltayeb
With contribution from Equality Now

Distributed by Equality Now
www.equalitynow.org



Cover design: James Chunguli
Design and Layout: James Chunguli
Printed by: Pafido Enterprises



NEPAD Planning and Coordinating Agency
Agence de Planification et de Coordination du NEPAD



ABOUT THE AUTHOR AND THE CONTRIBUTOR

Dr. Muna Eltayeb M. Eltayeb is the Head of Legal Department at Al Jazeera Sudanese Jordanian Bank-Khartoum. She is a Lawyer by profession before all Criminal and Civil Courts, was Personal Assistant of Sudan representative of United Nation office of the High Commissioner of Human Rights (OHCHR) Khartoum office, Legal Advisor for China Petroleum Engineering and Construction Corporation (CPECC) Khartoum-, and she was Human Rights Officer at United Nations Mission in Sudan (UNMIS – Human Rights Unit). Dr. Eltayeb holds a PhD on international law (Sudan Obligations under international Human Rights Treaties) from the University of Khartoum, L.L.M on Commercial law (Legal Conditions of the World Bank Loans), L.L.B on law from the Faculty of law, University of Khartoum and a Post Graduate Diploma in Law from the University of Khartoum.

Equality Now is an international human rights organization, founded in 1992, working for the protection and promotion of the rights of women and girls worldwide. Equality Now's membership base, the Equality Action Network, is comprised of individuals and organizations in over 190 countries. Issues of concern to Equality Now include discrimination in law, sexual violence, trafficking of women and girls, female genital mutilation, and all other forms of violence and discrimination against women and girls. Equality Now also convenes the Solidarity for African Women's Rights (SOAWR) Coalition. This is a coalition of 44 civil society organizations across 24 states in the continent working to ensure that the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa remains on the agenda of policy makers and to urge all African leaders safeguard the rights of women through ratification and implementation of the Protocol (i.e. fulfilling their obligations under the Protocol).

The NEPAD Spanish Fund for African Women's Empowerment provides grants to projects in sub-Saharan Africa aimed at enhancing the empowerment of women and gender equality. It is a joint initiative of the New Partnership for Africa's Development (NEPAD) and the Spanish Government.

CONTENTS

About the author and the contributor	ii
Acknowledgement	v
Abbreviations	vi
Executive Summary	1
1. Legal Framework	3
I. Contextual Consideration of the Influence of Islamic Law and Legal Tradition	1
II. Crimes of Sexual Violence in the Sudanese Criminal Act, 1991	5
III. Instituting a Claim	6
IV. Evidentiary Requirements	7
V. Time Limit for Reporting an Incident	7
VI. Special Procedures for Child Victims of Sexual Assault	7
VII. Witness Protection	8
VIII. Classification of Sentences	8
IX. Compensation	8
X. Abortion	8
XI. Legal Definition of Adult	9
XII. Consent	9
2. Practices Emerging from Court Decisions	9
I. Definition of Rape	10
II. Medical Reports	10

III. Judicial Confession & the Burden of Proof: Rape & Adultery 11

IV. Eyewitness Testimony 12

V. Penetration 13

VI. Circumstantial Evidence 13

VII. Retraction of a Judicial Confession or False Accusations 15

VIII. The Judicial Rule of Tazir 15

IX. Immunity for State Officials 16

3. Conclusion: A Critical Analysis of the Criminal Act in the Context of Crimes of Sexual Violence 16

4. Recommendations 18

ACKNOWLEDGEMENT

Publication of this work was made possible due to the financial support of the NEPAD Spanish Fund for African Women's Empowerment. Equality Now is grateful for this and in addition, for the support provided towards the campaign and advocacy for change of discriminatory laws and practice in Africa.

Equality Now is grateful to Dr. Eltayeb M. Eltayeb who developed this piece and who has been an advocate for the end of all forms of discrimination against women and girls in her country. Her commitment to the protection of the rights of women and girls has seen her greatly involved in the campaign for change of the discriminatory laws and practice in the Sudan.

Our sincere appreciation also goes to Equality Now staff Antonia Kirkland, Jane Serwanga and Kimberly Brown, and volunteer Jena Emory, who contributed to the compilation and the coordination of this publication.

Faiza Jama Mohamed
Nairobi Office Director
Equality Now

ABBREVIATIONS

ACHPR African Commission on Human and Peoples' Rights

CESCR Committee on Economic, Social and Cultural Rights

ICCPR International Covenant on Civil and Political Rights

ICESR International Covenant on Economic, Social and Cultural Rights

NEPAD New Partnership for Africa's Development

Executive Summary

Women and girls in Sudan who have been subjected to gender-based sexual violence face continuing human rights violations because they are unable to access justice and have no adequate remedy or recourse in the justice system. In fact, they are often treated as criminals themselves under the Penal Code in violation of Sudan's international legal obligations. Sudan's Penal Code provisions on rape and adultery violate Articles 2 (non-discrimination), 3 (equality between men and women) of the International Covenant on Economic, Social and Cultural Rights. They also violate Articles 2(1) (non-discrimination), 2(3) (right to an effective remedy), 3 (equality between men and women) and 26 (equal protection under the law) of the International Covenant on Civil and Political Rights. Sudan is also not complying with the African Charter on Human and Peoples' Rights in continuing to discriminate against women and girls in this manner.

Equality Now's March 2014 Action 56.1: *Sudan: Change the law – encourage victims of sexual violence to access justice*, highlights the case of a 19-year-old pregnant and divorced Ethiopian woman who was lured to an abandoned property in Khartoum and brutally gang-raped by a group of seven men in August 2013. After learning of a film of the attack, 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.

This case, as well as others mentioned in this publication highlights the overwhelming challenges women and girls face in obtaining justice in Sudan for rape and sexual violence. The victim herself sometimes 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). Further troubling was the fact that the prosecutor threatened to include another charge under section 146 which deals with adultery and which criminalizes pregnant unmarried women. At one point, the victim faced a death sentence by stoning for the crime of adultery as the prosecutor debated her marital status before affirming that she was divorced.

Currently, Equality Now is also monitoring the case of a girl who was at the time 14 years old when raped and became pregnant as a result of her attack, only to be later charged and sentenced for the crime of adultery because she came forward and reported her rapist.

As detailed in this publication there is urgent need for legal reform to the Criminal Act of 1991, especially with regards to Articles 145, 146, and 149 referring to adultery and rape, respectively. The limited definition of rape in Article 149 creates confusion and misunderstanding when interpreted by the courts, and therefore needs to be modified to introduce a broader definition of rape that clearly distinguishes it from adultery and adequately addresses marital rape.

Presently, when a woman or girl reports that 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. 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.

In June 2014, in consultation with Sudanese partners Equality Now wrote to the United Nations Human Rights Committee, concerning the need for legal reform in Sudan. Following its July 2014 session with the Government of Sudan, the Human Rights Committee made the following recommendations to the government of Sudan:

- (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. (CCPR/C/SDN/CO/4, 12, *Advance Unedited Version*)

Following Equality Now's calls on Government of Sudan officials and its June 2014 submission to the Human Rights Committee, Sudan has since provided the young Ethiopian woman with medical attention. Equality Now continues to advocate with its partners for legal reform to prevent future violations and will continue to refer the issue to other treaty monitoring bodies, such as the Committee on Economic, Social and Cultural Rights, and the African Commission on Human and Peoples' Rights so as to push the Government to honour its legal commitment under various human rights instruments, with the aim of ensuring legal reform and justice for victims of sexual violence.

In the same vein, Equality Now will continue to engage relevant government officials and to encourage them to hasten this legal reform process.

Equality Now hopes that this publication will create awareness about the existing laws and their negative impact on women and girls' access to justice, while also serving as an advocacy tool for reform of the laws that are described below.

1. LEGAL FRAMEWORK

Sudan's domestic legal framework is guided by the interim constitution of 2005, which is predicated upon and guided by the principles of the "supremacy of the rule of law... accountability, equality, respect and justice." The Constitution's Bill of Rights ensures that "Every human being has the inherent right to life, dignity and the integrity of his/her person, which shall be protected by law" and that "all persons are equal before the law and are entitled without discrimination...to the equal protection of the law."

In addition to the fundamental rights enshrined in the Constitution, Sudan is party to several international instruments that speak to its positive obligation to safeguard human rights, to prevent sexual violence, to prevent victims from being criminalized and to ensure that men and women are treated equally before the law. Specifically, the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CRC) echoes these rights and the obligations of the Sudanese government.¹

Sudanese law and jurisprudence on sexual offences is heavily influenced by religion, custom, tradition and culture. While the Constitution together with Sudan's international obligations promotes gender equality, the applicable laws governing sexual offenses, the Criminal Act (1991) and the Criminal Procedure Act (1991), often illustrate – in practice and in interpretation – the common experience of serious gender oppression and the inability of many women and girls to access meaningful justice. These factors contribute to the entrenchment of a culture of impunity for crimes of sexual violence, which demands urgent legal reforms in order to adequately address gender-based violence in Sudan.

I. Contextual Consideration of the Influence of Islamic Law and Legal Tradition

Before delving into the prevailing legal framework, it is important to briefly note the underlying Islamic legal traditions, which heavily influence the Sudanese criminal justice system. In the publication, *Criminalizing Sexuality*, scholar Ziba Mir Hosseini dissects Islamic legal tradition, and notes the multiplicity of positions and opinions in the applicability of Islamic law, and defines the elements of Islamic Legal Tradition as 1) *Shari'a*, 2) *Fiqh*, and 3) *Qanun*.² *Shari'a* refers generally to the religious values necessary to direct one's life, in concrete and functional terms, and includes legal norms enforceable by the state. *Fiqh* literally translates to "understanding" and encompasses the process of Muslim scholars deriving legal rules from sacred Islamic texts (the Qur'an and the Sunna). *Qanun* refers to cases where Islamic texts are silent, and Muslim authorities have right to pass legislation in accordance with *Shari'a*.

Central to Islamic teachings, are the principles of justice, equity, human dignity, God-consciousness, love and compassion. Justice is fundamental to the practice of Islam and integral to the application of *Shari'a* - but "what justice requires and permits, its scope and manifestation in laws, and its roots...have been the subject of contention and debate."³

In the modern sense, Islamic Criminal law emanates from three categories of rules, including 1) *hadd/hudud*; 2) *qisas*; and 3) *tazir*.⁴ Depending on the Islamic school of thought or doctrine, Hadd/hudud means the “limits prescribed by God” and includes between 5 to 7 offenses that carry a fixed punishment. The sexual offense in this category considered in this publication is the crime of *zina*. A *qisas* offense means “just retaliation,” and encompasses the crimes of homicide and infliction of severe bodily harm short of death. *Tazir* offenses are considered a residual category that covers criminal actions considered “sinful or destructive of public order but are not punishable as *hadd* or *qisas*.”⁵ *Tazir* crimes and punishments are generally understood as necessary to achieve the “practical objectives of maintaining public order and morals.”⁶ *Tazir* punishments can be imposed for crimes of other categories when their restrictive punishment cannot be imposed due to strict procedural requirements.

The Sudanese laws discussed below largely emanate from Islamic legal tradition, but in order to understand the need for robust legal reforms, it is important to recognize the complexity of that “centuries-old, human-made *fiqh* interpretations, which can be criticized from within the framework of Islamic principles, in accordance with the changing realities of time and place and contemporary notions of justice.”⁷ Furthermore, it is imperative to consider the conflict between the systems of values shaped by 1) “pre-modern cultural and religious practices” or 2) “contemporary ideals of human rights, equality and personal freedom”, which is not just limited to Islamic contexts – but “shades into the animated and on-going debate between universalism and cultural relativism.”⁸

It is also important to recognize the historical context that predicates their revival throughout many predominantly Muslim and Arab countries, including Sudan. In her feminist examination of the resurgence of Shari’a law, Hosseini notes that 1979 can be considered a “turning point in the politics of religion, culture and gender” - as it was the year the United Nations adopted the Convention on the Elimination of all forms of Discrimination Against Women, giving gender equality a global legal mandate, and was the year political Islam triumphed in Iran under the popular revolution, and the “ambit of *fiqh* was extended in Pakistan to criminal law, with the introduction of the *hudud* Ordinances.”⁹ In the years that followed, *fiqh* based criminal laws were revived in codified form in several countries, including Libya, Pakistan, Iran and Sudan (both the Penal Code, 1983, and the Criminal Act, 1991). These emerging legal texts “criminalised - and thus politicised - areas of sexual and moral behaviour that previously had not been the concern of the state, and thus facilitated the enforcement of their authoritarian and patriarchal interpretations of the law.”¹⁰

Hosseini also aptly notes that the complexity of the varying considerations that influence the application of criminal laws, which is especially applicable in the Sudanese context:

Religious beliefs and practices are not only shaped by the cultural contexts in which they originate, function and evolve, but they also influence cultural phenomena. Law, too, not only controls behaviour but is shaped by religious as well as cultural practices; and all these beliefs and practices are in turn subject to relations of power – rulers, governments, structures of inequality. The meanings of laws and

*religious practices also change with shifts in the power relations in which they are embedded, and through interaction with other cultures and value systems. In other words, we must recognize that laws and religious practices are not fixed, unchanging and uniform, but rather they are the products of particular social and cultural circumstances, and of local and wider power relations.*¹¹

Due to the complex and important influence of Islamic legal tradition on the Sudanese criminal justice system, it is important to contextualize these concepts throughout the forthcoming analysis of legislation, jurisprudence and practice in Sudan around the issue of sexual violence.

II. Crimes of Sexual Violence in the Sudanese Criminal Act, 1991

Part XV of the Criminal Act deals with *Offences of Honour, Reputation and Public Morality*, and outlines most forms of sexual violence, including, adultery (*Zina*), sodomy, rape, incest,¹² gross indecency, practicing prostitution,¹³ running a place for prostitution,¹⁴ and seduction.¹⁵ Other forms of sexual violence are described in Part XVI of the Criminal Act dealing with *Offences Against Personal Liberty*, and include the crimes of abduction,¹⁶ kidnapping,¹⁷ and forced labour.¹⁸

At the core of the debate for reforms in the Criminal Act are the legal definitions of rape, adultery, sodomy and gross indecency.

a. Rape

Section 149 of the Criminal Act defines the offence of rape as “whoever makes sexual intercourse, by way of adultery, or sodomy, with any person without his consent.” Furthermore, “Consent shall not be recognized, when the offender has custody or authority over the victim.” The punishment prescribed by Section 149 is as follows:

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 constitutes the offence of adultery, or sodomy, punishable with death.

b. Adultery (Zina)

The crime of Adultery is articulated in Section 145 of the Criminal Act, which reads:

- (1) There shall be deemed to commit adultery:
 - (a) every man who has sexual intercourse with a woman, without there being a lawful bond between them;
 - (b) every woman, who permits a man to have sexual intercourse with her, without there being a lawful bond between them;
- (2) Sexual intercourse takes place by the penetration of the whole glans, or its equivalent into the vulva.
- (3) There shall not be deemed, to be lawful bond, marriage which, by consensus is ruled void.

The punishment for Adultery as defined in 146(1) as:¹⁹

- (a) execution, by lapidation, where the offender is married (muhsan);
- (b) one hundred lashes, where the offender is not married (non-muhsan).

Further, the “male, non-married offender may be punished, in addition to whipping, with expatriation for one year.” Section 146(3) defines a muhsan as “having a valid persisting marriage at the time of the commission of adultery; provided that such marriage has been consummated.”

c. Sodomy

Section 148 of the Criminal Act defines Sodomy as “every man who penetrates his glans, or the equivalent thereof, in the anus of a woman, or another man’s, or permits another man to penetrate his glans or its equivalent, in his anus.” The punishment proscribed for the crime of sodomy is whipping (100 lashes), and may also include a term of imprisonment not exceeding five years.

d. Gross Indecency

Gross Indecency is described under Section 151 of the Criminal Act 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, and he shall be punished, with whipping, not exceeding forty lashes, and he may also be punished, with imprisonment, for a term not exceeding one year, or with fine.” Furthermore, “Where the offence of gross indecency is committed in a public place, or without the consent of the victim, the offender shall be punished, with whipping, not exceeding eighty lashes, and he may also be punished, with imprisonment, for a term not exceeding two years, or with fine.”

III. Instituting a Claim

The legal requirements for reporting any criminal suit, including an incident of sexual violence, are outlined by Section 33 and 34 of the Criminal Procedure Act 1991. The key provisions note that:

- a. A criminal suit shall be initiated, upon taking cognizance by either the General Criminals Police or the Prosecution Attorney, or upon presentation to either of information or complaint of criminal activity.
- b. Information related to the criminal offense can be presented by 1) any person entrusted with preserving security and public order; or 2) any person, for whom a public right relates and has been violated.
- c. A complaint shall be presented by the person, against whom, or within whose responsibility the offence has been committed, or by whoever deputizes for him. Where the person, against whom the offence has been committed is a child, or suffering from mental infirmity, their guardian may present the complaint, on his behalf.
- d. A case is opened by presenting a claim before the police, approved by the prosecutor concerned.

- e. Where necessary, reference from the police to hospital is made after filling a Form (8), which details the incident but also is a special medical form to be completed by the examining doctor in relation to possible court proceeding. Upon examining the victim, the examining doctor also prepares a medical report with their findings.
- f. If there is additional relevant evidence, it can be added to the report.
- g. The claimant's case is then presented to the police and prosecution, who upon receipt, are to carry out investigations in order to determine the credibility of the case. If the prosecutor finds no prima facie evidence, then the case is dismissed immediately.
- h. When sufficient evidence exists, a warrant of arrest for the accused will be issued and the accused will be arrested following investigations.

Furthermore, the victim has the option of commencing civil proceedings in addition to criminal proceedings, or, as an alternative to criminal proceedings.

IV. Evidentiary Requirements

Evidentiary requirements for crimes of sexual violence include: 1) Statement of the complainant; 2) Witnesses statement; 3) Medical report; and 4) Any other admissible evidence.

Section 8 of the Evidence Act provides that all evidence must be relevant in proving or disproving both the facts in issue and/or the facts related thereto, provided that, the admissibility of such facts, is not prohibited by the provisions of the Act.

The Act also allows for the use of evidence of corroboration, and under Section 12 provides that the court may, within the limits stated in the Act, evaluate these items of evidence and rely on any of them as the court may deem fit.

V. Time Limit for Reporting an Incident

Section 38 of the Criminal Procedure Act provides that no criminal suit shall be initiated with respect to offences having *Tazir* penalties, where the period of limitation has elapsed, commencing from the date of discovery of the offence, namely:

- a. *Ten* years with respect to any offence the commission of which is punishable with death, or imprisonment for ten years, or more;
- b. *Five* years with respect to any offence the commission of which is punishable with imprisonment for more than one year; and
- c. *Two* years, with respect to any other offences.

Furthermore, the running of the limitation period shall cease whenever the criminal suit is initiated.

VI. Special Procedures for Child Victims of Sexual Assault

Section 9 of the Criminal Act provides that "A child who has not attained puberty shall not be deemed to have committed an offence, provided that care and reform measures set out in this Act may be applied to a child who has completed seven years of age, as the court

may deem suitable.” Thus, child victims of sexual assault cannot be charged for a criminal offence, in the same manner as adult female victims. Also, the Ministry of Justice appoints attorneys on the behalf of minors.

More specifically, Chapter X of the 2010 Child Act (Sections 54 – 83), prescribes special procedures relating to the protection of child victims of sexual assault, including: the creation of the Family and Child Protection Unit of the National Police with specific obligations and competencies to ensure justice for children, as well as appropriate social services and child arrests; the establishment of the Child Prosecution Attorneys Bureau, which is tasked with safeguarding the rights of the child while supervising the investigations conducted by the Family and Child Protection Unit, and in the prosecution of offenses against children; the establishment of a Child Court to be composed of magistrates with specific knowledge pertaining to the rights of children, governed by special procedures in cases concerning child victims and child prosecution.

VII. Witness Protection

There are also challenges in the absence in the law of adequate and effective mechanisms to ensure protection for witnesses who testify in rape and sexual violence cases. Article 4(e) of the Criminal Procedure Act provides that witnesses should not be subject to “any injury or ill-treatment” and Article 156 “imposes a duty on the courts to protect victims against intimidating or injurious questioning.”²⁰ Section 35 of the Evidence Act, 1994 provides that: a witness shall not be subject to any legal responsibility as result of his testimony except in the case of perjury, or an admission contravening a *Shari’a hadd*.

VIII. Classification of Sentences

The classification of sentences in the Sudanese Criminal Act are prescribed stemming from the *Shari’a* legal principles of *hadd*, *qisas*, and *tazir*, described above, in accordance with the type of crime committed and the perceived seriousness of the offense in order to have a deterrent effect on the perpetrator. According to the Criminal Act, when a conviction is obtained for *Offences of Honour, Reputation and Public Morality*, the sentences to be given to the perpetrators include: imprisonment, whipping, fines, forfeiture of premises, and the death sentence.

IX. Compensation

The victim can apply for compensation through civil procedure under the Civil Procedure Act, 1991, or by an application in the Criminal Court itself. With regards to the cost of the case, the financial burden rests with the State. The victim must pay the financial costs to a lawyer, if he or she opted to have a lawyer.

X. Abortion

Abortion is considered an offence under Section 135 of the Criminal Act. However, there are special circumstances where abortion is permitted as in the following situations:

- a. Where the miscarriage is necessary to save the mother's life;
- b. Where the pregnancy, is the result of rape which has occurred before not more than ninety days and the pregnant woman has desired the miscarriage thereof; or
- c. Where it is proven that the unborn child had died in his mother's womb

Evidence is required to satisfy these special circumstances e.g. medical reports, or evidence proving rape.

XI. Legal Definition of Adult

Section 3 of the Criminal Act describes an adult as "a person whose puberty has been established by definite natural features and has completed fifteen years of age. Whoever attains eighteen years of age shall be deemed an adult even if the features of puberty do not appear." Illustrating a potential conflict of laws, section, 40(2) of the Personal Act for Muslims, 1991 dictates that the minimum age for marriage is 10 years.

XII. Consent

Consent according to the interpretation and explanation Section 3 of the Criminal Act means acceptance, and it shall not be deemed consent when given by:

- a. A person under the influence of compulsion or mistake of fact, where the person doing the act knows that the consent was given as result of such compulsion or mistake; or
- b. A person who is not an adult; or
- c. A person unable to understand the nature or the consequence of that to which he has given his consent by reason of mental or psychological instability.

2. PRACTICES EMERGING FROM COURT DECISIONS

It is rare for sexual violence cases to be presented for prosecution before formal courts for a myriad of reasons, including the discriminatory nature of the laws, which dissuades victims from coming forward for fear they may be accused of adultery.

Furthermore, according to Section 149(3) of Criminal Act, if the conviction of rape is established against a married man or woman the punishment of rape will be amended to the severe punishment of adultery, which is death. This may create a diminishing factor of conviction of rape, namely some of the judges tend to apply flexibility in weighing of evidence and always reach a conclusion, which can be considered as favorable or merciful to the accused.

Below are some examples of case law, both unreported and reported cases, from the *Sudan Journal of Judicial Decisions*, which illustrate problematic and unjust application and interpretation of the Criminal Act and the Criminal Procedure Act.

I. Definition of Rape

In the case of ***Sudan Government v. Y.O. Abd El Azeem 2003***, Yousif was accused of raping the victim and the medical report confirmed the rape by finding semen at the opening of the victim's vagina. The victim was considered not to have had mental capacity to consent. An eyewitness confirmed that he saw the accused lie on top of the victim while he was undressed. The accused was convicted of *rape* under Section 149 of the Criminal Act by the first court.

On appeal, the General Criminal Court amended the judgment of the first court from *rape* to the *gross indecency* under Section 151 Criminal Act. The accused then challenged the finding of the General Criminal Court before the Court of Appeal. The Court of Appeal confirmed the decision of the first court, reinstating the conviction of *rape*. The accused then appealed to the High Court.

The High Court discussed the following points in their judgment:

- They stated that penetration is one of the main elements to establish a case of rape, and discussed the different interpretation of penetration in Islamic schools of thought regarding penetration.
- They ruled that the medical report did not confirm penetration, as it only confirmed that there was semen at opening of the victim's vagina, and that this was not enough to confirm penetration in order to constitute the offense of rape under Section 149.
- That the consent of the victim was not considered, because of the mental capacity of the victim.

In addition, questions were raised regarding violations of Criminal Procedure. The judge did not read the medical report before the representatives of the prosecution and the defense, so as to register their denial or acceptance, which contradicted Section 162(2) of the Criminal Procedure Act.

In this case, despite the presence of a medical report, eyewitness testimony, and the mental capacity of the victim preventing consent, the High Court *still* rejected the conviction of *rape* under Section 149 of the Criminal Act, and amended the charges to *gross indecency* under Section 151. The three judges of the High Court confirmed the decision.

As demonstrated in the above case, the definition of rape is problematic in its application due to the narrowly defined parameters. Furthermore, it is worrying that conclusive medical evidence can be rejected in its entirety due to non-adherence to Criminal Procedure by judicial officials in the lower courts.

II. Medical Reports

For the period of 1991 through 2005, per Article 48(1)(c) of Sudan's Criminal Procedure Act, all victims of sexual violence who intended to report the crime and pursue charges were required to complete a "Form 8" at the police station prior to

receiving medical treatment.²¹ Due to international pressure, the law was changed in 2005 allowing victims to first access medical attention, yet many victims are still facing barriers in reporting sexual violence due to confusion or as a deliberate tactic to prevent the reporting of rape. It is reported that many doctors “still refuse to provide a medical exam until the form is procured from the police, for fear of reprisal.”²²

As noted in the case above, some judges tend to dismiss certain documentary evidence in its entirety, including medical reports due to non-adherence to proper admission procedure.

See the case of Sudan Government v. Y.O. Abd El Azeem 2003 discussed above.

III. Judicial Confession & the Burden of Proof: Rape & Adultery

There are cases where courts have confused the reporting of sexual assault or rape, as a judicial confession against the complainant to substantiate a charge against the victim for adultery. Because the current law does not distinguish between the crime of rape and the crime of adultery, this confusion causes the devastating intertwining of rape and adultery, which has serious consequences for survivors of sexual violence seeking justice through the Sudanese Criminal Justice system. The difference between the two crimes lies in the consent element, which presents a difficult problem for victims of rape who attempt to come forward and have to prove that the rape was nonconsensual. If the woman is unable to prove the consent element, she has admitted to sexual intercourse outside of marriage and can be convicted of adultery.

It is this burden of proof that is the most significant impediment to victims in establishing a case of rape against perpetrator. In addition to challenges noted above regarding the medical report, the Law of Evidence requires the complainant to prove the offence has been committed by the accused. This is based on the general principle of law that the accused person is considered innocent until the contrary is proven. This rule prevails without exception in rape cases.

Even when a rape victim fails to prove his or her case, judges can sometimes then convict the rape victim with adultery. In ***Sudan Government v. Al Haja El Hesien Suliman, 1988*** the victim got pregnant as a result of rape and filed a complaint with the police that two men raped her as she was collecting dates from the farm. However, she did not immediately inform her family about the incident for fear of scandal and shame, which is typical in cases of survivors of sexual violence. In this case, the victim was unable to meet the overwhelmingly high evidentiary burden and despite having reported the crime of rape, the first court convicted her with adultery and sentenced her to death by stoning. Luckily in this instance the High Court rejected the conviction and found that the complainant’s confession should be taken in totality or rejected in totality.

Further discouraging reporting of sexual violence in this context are the high penalties associated with the crime of adultery/*zina*, which can include one hundred lashes, or death by stoning (for married women). Unlawful pregnancy is ample grounds for adultery under the Evidence Act.

In the unreported case of ***Sudan Government v. S.A. Mohamed, 2004***, the complainant, Samia is a mother and a wife. She reported to the authorities that she was raped by the accused many times under the threat of death, which resulted in an unlawful pregnancy. Her husband was abroad at the time of the incident. The accused is a relative and in her husband's absence, would spend the night with Samia and her children as their guardian. The first court convicted her of adultery on the basis of her statement admitting to unlawful pregnancy. The Court of Appeal rejected the conviction of adultery due to insufficient evidence. But in the end, Samia failed to prove her case of rape and consequently, the High Court convicted her with adultery on the basis that the sexual intercourse was repeated, and she had not filed a complaint in a timely manner, which the court considered to amount to consent.

IV. Eyewitness Testimony

In the practice of Sudanese courts, the prosecution often fails to prove its case where there is no eyewitness to testify on behalf of the victim. Eyewitness evidence is considered informally to be the most compelling form of evidence in establishing a case of rape.

In ***Sudan Government v. Ebrahim Abd Elgadir Ibrahim, 1978*** a victim of rape filed a complaint after the birth of a child resulting from an unlawful pregnancy. The victim alleged that the accused raped her without her consent. The accused was convicted of rape by the first court, but the Court of Appeal rejected the conviction. On further appeal, the High Court considered the following points:

- There was no medical report confirming the rape.
- The first prosecution witness, stated in testimony evidence, that the accused mentioned that the complainant used to visit him in his house.
- The second prosecution witness, stated in testimony evidence that she saw the complainant and the accused sleeping on one bed together, although fully dressed.

The testimony of both witnesses was considered to be against the complainant/victim. The High Court held that the statement of the complainant needed corroboration, and that her evidence was not sufficient to constitute a crime of rape and therefore rejected the conviction of rape against the accused.

In the case of ***Sudan Government v. M. O. Gabreel, 2004***, the victim was a boy of ten years. His mother presented the complaint, and testified that she had sent her son to the shop, but the child stayed out for long, prompting her to go and look for him. She saw him walking out of a dark shop and immediately suspected that he had been raped. She took him to the police station and filed a complaint. The medical report indicated that the surrounding area of the boy's anus was red and there was semen on his clothes. The first court and the Appeal Court convicted the accused with the crime of rape under Section 149 of the Criminal Act. However, the High Court, with consent of three judges changed the conviction to gross indecency under Section 151 of the Criminal Act for the following reasons:

- The victim said that he had had sexual intercourse with the accused three times therefore it was not rape.

- There was no direct evidence confirming penetration by the accused because the medical report did not explain the penetration of the perpetrator's penis inside the anus of the child.
- The evidence of the child needs corroboration (despite medical evidence).
- Defense witness confirmed that there was a group of people sitting in front of the shop, which would create difficulties for the accused to commit such an offence.

This decision was made despite the fact that the victim was a 10-year-old child, thus incapable of consent, and that the medical report together with the child's statement should have been sufficient evidence to indicate that the crime of rape had occurred.

Further troubling regarding the issue of eyewitness testimony. This requirement stems from the Qur'anic requirement that a conviction for the crime of adultery/*zina*, requires that the sexual act to have been witnessed by four competent men. Many judges require that four competent men testify on the victim's behalf, an evidentiary burden that is nearly impossible for rape victims. Even in the rare case four men were present during a rape, the victim must then coerce them to testify before the court. A Sudanese human rights attorney explained, "The problem with Article 149 is that it mixes up the crimes of adultery and rape," which is "why the judges use the standard of four witnesses to prove it. Where there is strong evidence of sexual violence, we shouldn't have to meet the evidentiary burden for adultery."²³

V. Penetration

According to the practice of Sudanese courts, convictions for rape often fail where there is no proof of penetration. Partial penetration is not sufficient to constitute a crime of rape, but will instead be considered gross indecency. Furthermore, the definition of penetration is limited in that it does not address the use of other body parts aside from the penis or the use of inanimate objects.

In the case of ***Sudan Government v. Sidig Edris Shanato, 1975***, the accused tried to insert his penis into the vagina of a young female child, but failed to do so. He then tried to open her vagina using his fingers and entered part of his penis into it, injuring the child's vagina. The medical report failed to confirm whether the wound was from his fingers or from his penis. The first court convicted him of rape under Section 319 of the Criminal Law, 1974. The accused appealed to the High Court and the Court raised the question of whether the penis of the accused entered the child's vagina or whether it was only his fingers. Because the medical report did not confirm penile penetration, the court convicted him of attempted rape under Section 317/93 of the former Criminal Law, 1974.

VI. Circumstantial Evidence

According to the practice of Sudanese courts, the accused can prove his case if he or she has sufficient evidence to contradict evidence towards a conviction. Circumstantial evidence like a medical examination can be rebutted because most judges require corroboration for this kind of evidence. The cases below deal with this situation.

In the case of ***Sudan Government v. A. R. Mohamed, 2004***, the victim was a fifteen-year-old girl who accompanied the accused to a party. The accused asked her to go with him to his house so that he may change his clothes. While at his house, the victim said that the accused gave her a bottle of juice that she later suspects was mixed with a drug. He then raped her. The victim told her mother about the incident, and they filed a complaint with the police immediately. The accused confessed that he engaged in sexual intercourse, but argued that it was done with the victim's consent. The medical report confirmed that the hymen was ruptured and there was semen in the victim's vagina. The accused was convicted with rape by the first court, which was confirmed by the Court of Appeal. On further appeal, the judges of the High Court discussed the case. The first judge raised the following points in his decision:

- The medical report did not explain the exact time of the rupture of the hymen whether it was new or old.
- Argued that a woman, who attends a party with a strange man and then goes with him to his house after midnight, has thus agreed to have sexual intercourse with that man.

The second judge discussed the following in his deliberations:

- Penetration was confirmed by the confession of the accused and by the medical report.
- The consent of the victim was not admissible because the evidence did not confirm that she was an adult because her puberty was not established. As discussed above, under Section 3 of the Criminal Act, an *adult* is defined as a person whose puberty has been established by definite natural features and has completed fifteen years of age.
- Therefore he decided to convict the accused with rape and to confirm the decision of the first court and appellate court.

The third judge raised the following points in his decision:

- That the rape can be proved by circumstantial evidence if it is corroborated. In this case the prosecution succeeded in providing corroborated evidence, which negates the innocence of the accused. Therefore he confirmed the conviction of the rape.

Due to a majority vote, the High Court confirmed the conviction of rape, but this case illustrates the complexities and problems at play when judicial officers are given too much leeway to interpret and apply the law.

In the case of ***Sudan Government v. Mohamed Ibrahim Adam, 1972***, the accused raped a ten-year-old girl. The following evidence was provided:

- The statement of the victim.
- A medical report, which confirmed the rape.
- Evidence of the victim who recognized the accused during the identification line-up.

- Evidence of a second witness who said that, he saw the victim on the ground and she was bleeding.
- Eyewitness testimony of a seven-year-old girl, who had seen the accused committing the offence.
- There was also evidence that demonstrated that the accused had been convicted previously of rape charges.

The accused was convicted with rape by the first court. The Court of Appeal found that although the medical report was not read before the accused, it was admissible, and therefore confirmed the conviction of the rape due to the corroborating evidence that strengthened the complainant's case.

VII. Retraction of a Judicial Confession or False Accusations

Retraction of a judicial confession is at times admissible based on practice of Sudanese courts. The case of ***Sudan Government v. Ibrahim Salih and others, 1971***, illustrates discretionary challenges in the allowance of such evidence. The accused were two boys aged fifteen and fourteen years, who allegedly raped a girl of fourteen years. The evidence presented was as follows:

- The medical report prepared by a medical assistant confirmed the rape.
- A retracted judicial confession by one of the accused.
- The co-accused helped each other in committing the offence.
- The mother of the victim testified that her daughter was bleeding and she was covered with sand after the incident.
- The victim recorded a statement immediately after the rape.

The first court accepted the above evidence and found the accused guilty of the crime of rape. The Court of Appeal noted that the retraction of a judicial confession is not sufficient evidence to establish a case of rape; it needs to be corroborated. On further appeal, the High Court considered that the first court committed a legal error by accepting the retracted Judicial Confession without corroboration. It also found that the medical report prepared by the medical assistant was inadmissible, because a doctor should have prepared it – not a medical assistant. However, the Court confirmed the conviction of rape on the basis of the statement of the victim.

VIII. The Judicial Rule of Tazir

With regard to the crime of adultery/*zina*, although the Criminal Act fails to mention punishment by *tazir* rule, when some judges doubt whether the accused has committed adultery or when the required evidence is insufficient, the practice of some is to use the rule of Islamic chastisement, *tazir*, and not *hudud*, as illustrated by the case ***Sudan Government v. S. A. Mohamed, 2004***. In this case the High Court judge decided that the allegation of rape creates doubt in the evidence of adultery. Therefore when the adultery as *hudud* crime fails, but the accused will be punished by *tazir*. The present definition of consent to disprove rape is not comprehensive, and does not include all the circumstances

included in Sudan's previous Criminal Act. As illustrated, without clear judicial guidelines governing judicial application of the Criminal Act, inconsistencies and injustice remain a real possibility.

IX. Immunity for State Officials

Together, Article 33 of the National Security Forces Act, 1998, Article 8 of the Armed Forces Act, 1986, and Article 46 of the Police Forces Act, 1986, provides those with requisite government affiliation - whether state officials, police, or security officials - immunity for crimes of sexual violence (and other serious human rights offenses), leaving no recourse for victims. Sudan's Minister of Justice noted in 2012 that an astounding "25 per cent of the country's population enjoys immunity from prosecution for all crimes."²⁴

3. CONCLUSION: A CRITICAL ANALYSIS OF THE CRIMINAL ACT IN THE CONTEXT OF CRIMES OF SEXUAL VIOLENCE

Based on the analysis above illustrating both the relevant provisions of the prevailing legal framework, as well as the injustice and irregularity of the courts' practice and jurisprudence stemming from the criminal adjudication of crimes of sexual violence, it is clear that comprehensive legal reforms are necessary to ensure justice for all survivors and victims of sexual violence in Sudan.

The number of unreported cases on sexual offences against women illustrates a dire situation in Sudan where impunity for crimes of sexual violence is rampant. Whether due to the lack of legal protection for victims, ill treatment from police offices or authorities, or difficulties faced by the victim in proving their case before the court, impunity converges with numerous barriers to oftentimes prevent meaningful justice for survivors of sexual violence in Sudan. In addition to the tremendous odds faced by victims, including victimization by the very system that is meant to serve them, rape survivors in Sudan are also subjected to community and familial pressures not to report, and are fearful of reprisals if when the crime has been reported. Rape and crimes of sexual violence carry harsh cultural stigmas for victims, which further deters them from reporting of these crimes to the police. Often Sudanese society ignores crimes of sexual violence, which might be considered shameful, often, sacrificing the victims without allowing them a fair chance at justice. These experiences are compounded by the fact that many survivors lack adequate awareness of their rights and a sound understanding of and trust in the criminal justice system.

Many reforms to the Sudanese legal system are necessary in order to ensure that the system can adequately serve its function in addressing and combatting sexual violence. At the root of the problem is both Sudan's weak criminal legislation combatting sexual violence and the legal system, which is flawed in the way it deals with sexual violence. The most prevalent challenges for consideration by Sudan for reform are the issues of:

- ***The Definition of Rape:*** The definition of rape as defined by Section 149 is limiting and does not encompass all forms of rape that may occur, including marital rape, rape by inanimate objects, or other body parts. Further, because Section 149(1) links rape to adultery and sodomy, it creates confusion and misunderstanding in the interpretation and application of the law, muddles the distinct difference between the crimes of rape versus adultery or sodomy, and can lead to confusion in the evidentiary requirements applied for each crime. In line with this, the vaguely defined necessary element of rape is penetration, and often there have been varying interpretations and contradictions on the issue and what is necessary to constitute penetration.
- ***The Crime of Adultery/Zina:*** The crime of adultery/*zina* under Section 145 is similar to the crime of rape, except for the consent element, which carries near impossible evidentiary burdens sometimes arbitrarily applied and/or informed by Islamic tradition, not the Criminal Procedure or Evidence Act (e.g. four male witnesses). The crime of adultery/*zina* lacks an exception for survivors of rape or sexual violence, thus exposing victims to prosecution upon reporting.
- ***Attempted Rape and Sexual Harassment:*** The current Criminal Act does not adequately account for attempted rape. Also, the crime of gross indecency as articulated under Section 151 is vaguely defined and does not adequately address serious forms of sexual harassment, nor does it provide adequate sentencing to serve as a deterrent for such crimes.
- ***Evidence: Burden of Proof on Survivors:*** Absent a confession from the perpetrator, the burden of proof lies with the complainant/victim to prove the crime of rape. Due to the lack of clear distinctions between the crimes of rape and adultery/*zina*, victims of sexual violence who report forced non-consensual sexual intercourse for the crime of rape, and who are then unable to prove the rape due to the burdensome evidentiary standards, are often subjecting themselves to adultery charges. The charge of adultery is sometimes even charged in addition to the charge of rape for the perpetrator.
- ***Arbitrary Sentencing & Diminishing Rape Convictions:*** According to Section 149(3), if a conviction of rape is established against a married man or woman, then the punishment of rape will be amended to the severe punishment for adultery, which is death by stoning. Cruel and inhumane severe punishments result in diminishing rape convictions due to judicial hesitancy to levy a death sentence, so there is discretion exercised by judges in weighing evidence and in reaching conclusions that can sometimes be considered favorable for the accused. The judiciary is obliged to strictly apply the law with fixed and specific punishment for each crime separately in order for the law to serve its deterrence effect.
- ***Medical Reports/Form 8:*** There exists significant confusion around the proper procedure for survivors of sexual violence as it pertains to accessing medical attention and lodging a formal complaint with the authorities, especially as to whether a Form 8 is required in order to seek medical care after enduring an attack.

- ***Insufficient Procedural Guidance:*** The criminal procedure and evidentiary requirements related to the prosecution of crimes of sexual violence is unclear and varies in its application and interpretation, depending on the judge. This includes procedure at every level, from investigation to prosecution. There are also concerns pertaining to evidentiary inconsistencies amongst courts as to the permissibility of corroborative circumstantial evidence in crimes of sexual violence. Due to the wide discretion being exercised by judges, it is clear that there are gaps in the existing procedural guidance around crimes of sexual violence.
- ***Entrenched Gender Discrimination:*** It is apparent that cultural biased and discriminatory practices permeate the criminal justice system.
- ***Conflicting Decisions Regarding Child Victims:*** There appears to be ambiguity around the legal definition of a child in the prosecution of sexual offenses, especially stemming from the issue of consent for children victims.
- ***Insufficient Support for Victims and Witnesses of Sexual Violence:*** There exists inadequate protection, support and counseling for survivors of sexual violence during both the pre-trial and trial phases. Furthermore, there are insufficient formal measures to protect witnesses who come forward to testify on behalf of a victim.

While it is necessary to critically analyze Sudan's current criminal justice system and why it is unable to address sexual violence adequately, it is also important to note that positive and progressive reforms in Sudan are possible within a context that bridges the gaps between weak legislation, Islamic legal tradition, and human rights gender equality. These reforms should aim at enhancing protection and support for potential victims and survivors of sexual violence, while also increasing the accountability of perpetrators.

4. RECOMMENDATIONS

A comprehensive and holistic approach to legal reform should be adopted in order to best address how the Sudanese criminal justice system deals with sexual violence. These reforms should align with principles embodied in the Interim National Constitution's Bill of Rights, international law, and comparative best practices from similar jurisdictions that have recently reformed, such as Pakistan. This approach should also include adequate training and sensitization of relevant stakeholders, both governmental and non-governmental. Necessary legal reforms should address concerns in the current criminal legislation, while also including the addition of necessary further offenses. These specific issues recommended for attention include, but are not limited to:

- Revision of the definition of rape, which should be free of reference to adultery and sodomy, and should expand the definition to include marital rape, rape by inanimate objects or via other body parts, and should address the definition and scope of penetration more expansively. In tandem with these reforms, the Evidence Act should be amended so as to eliminate confusion between the level of proof required for the crimes of rape and adultery.

- Revision of the definition of consent in order to make it more comprehensive, supportive and helpful to victims.
- Establish clear guidelines for medical reports that are more victim friendly.
- Provision of a rape exception for the crime of adultery/*zina*, clearly distinguishing it and noting the inability for survivors to be charged with the crime after coming forward to report a rape. In the same note, render a woman's testimony regarding her rape inadmissible to prove adultery/*zina*.
- Codification of other forms of sexual violence including attempted rape and sexual harassment, illustrating international best practices.
- Provision of clear sentencing guidelines to be strictly adhered to by the judiciary. This includes ascribing aggravated punishment for perpetrators of rape, taking into account the psychological impact on victims.
- Clarification of the criminal procedure and evidentiary requirements related to the prosecution of crimes of sexual violence. This includes ensuring equal weight to testimony given to both men and women, and removing the requirement (used by some judges) that a woman present four male eyewitnesses to corroborate her rape claim.
- Removal of immunity provisions for authorities when they are involved in cases of sexual violence.
- Ensuring adequate support for survivors in accessing the criminal justice system through the establishment of special procedures for crimes of sexual violence and the responsible mandate by the police, prosecution and the judiciary. Similarly, establish an effective system of protection for victims and witnesses in cases involving sexual violence.
- Adequately addressing the right to reparation and remedy for survivors of sexual violence.
- Extension of existing statutes of limitations for crimes of sexual violence.

(Endnotes)

- 1 Sudan ratified the African Charter on Human and People's Rights (ACHPR) on 18 February 1986, ratified the International Covenant on Civil and Political Rights (ICCPR) on 18 March 1986, and ratified the Convention on the Rights of the Child (CRC) on 3 August 1990.
- 2 Ziba Mir Hosseini, *Criminalizing Sexuality: Zina Laws as Violence Against Women in Muslim Contexts*, Violence is Not Our Culture (March 2010), available at <http://www.zibamirhosseini.com/documents/mir-hosseini-article-criminalizing-sexuality.pdf>.
- 3 *Id.* at 7.
- 4 Mark Cammack, *Islamic Law and Crime in Contemporary Courts*, 4 BERKELEY J. MIDDLE E. & ISLAMIC L. (2011).
- 5 *Id.* at 5.
- 6 *Id.* at 6.
- 7 Ziba Mir Hosseini, *Criminalizing Sexuality: Zina Laws as Violence Against Women in Muslim Contexts*, Violence is Not Our Culture (March 2010), at 8.
- 8 *Id.* at 9.
- 9 *Id.* at 9.
- 10 *Id.* at 10.
- 11 *Id.* at 7.
- 12 *Incest* is defined by Section 150 of the Criminal Act as follows:
 - (1) There shall be deemed to commit the offence of incest, whoever commits the offence of adultery, or sodomy, or rape with any person being one of his ascendants, or descendants, or spouses, or with his brothers, or sisters, or any of the issue thereof, or the maternal, or paternal uncle or aunt.
 - (2) Whoever commits the offence of incest shall be punished, with the penalty prescribed for the offence constituted by his act. In cases others than those punishable with death, he shall be punished, with additional penalty of imprisonment, for a term, not exceeding five years.
- 13 The offence of *practicing prostitution* is embodied in Section 154 of the Criminal Act and reads:
 - (1) There shall be deemed to commit the offence of practicing prostitution, whoever is found in a place of prostitution so that it is likely that he may exercise sexual acts, or earn there from, shall be punished, with whipping not exceeding a hundred lashes, or with imprisonment for a term, not exceeding three years.
 - (2) Place of prostitution means any place designated for the meeting of men, or women, or men and women between whom there are no marital relation, or kinship, in circumstances in which the exercise of sexual acts is probable to occur
- 14 The offence of *running a place of prostitution* as described in Section 155 of the Criminal Act is as follows:
 - (1) Whoever runs a place for prostitution, or rents premises, or allows their use, knowing that it is used as a place for prostitution, shall be punished, with whipping not exceeding a hundred lashes, and with imprisonment for a term, not exceeding five years, and an order may be made for the closing of the premises, or forfeiture thereof.
 - (2) Whoever is convicted, for the second time, under the provisions of sub-section (1) shall be punished, with whipping not exceeding a hundred lashes, and with imprisonment for a term, not exceeding ten years, together with forfeiture of such place.

-
- (3) Where the offender is convicted, for the third time, he shall be punished, with death, or life imprisonment, together with forfeiture of the premises.
- (4) In all cases the forfeiture of the premises shall not be passed, unless the premises are owned by the offender, or used under his knowledge.
- 15 The crime of *seduction* is defined by Section 156 of the Criminal Act as follows: Whoever seduces any person by inducing, taking or assisting in taking, or abduction of such person, or hiring him to commit the offence of adultery, or sodomy, or obscene practicing prostitution, or gross indecency, or obscene acts, or acts contrary to public morality, shall be punished, with whipping, not exceeding a hundred lashes, or with imprisonment, for a term, not exceeding five years, and if the person so seduced is a minor, or a person of unsound mind, he shall be punished with whipping not exceeding a hundred lashes, and with imprisonment, for a term, not exceeding seven years.
- 16 *Abduction* is embodied in Section 161 of the Criminal Act:
- (1) Whoever abducts any person below puberty, or insane person, by taking, or inducing him, in order to remove him away from the custody of his lawful guardian, without the consent of such guardian, shall be punished, with imprisonment, for a term, not exceeding seven years, and he may also be punished with fine.
- (2) The provisions of the sub-section (1), shall not apply to any person who alleges the right of custody, or guardianship, or trusteeship, or any lawful authority.
- 17 *Kidnapping* in Section 162 of the Criminal Act: *Whoever kidnaps any person, by compelling him, or by any means of deceit, induces him to leave a certain place, with intent to commit an offence on his person, or his liberty, shall be punished, with imprisonment, for a term, not exceeding ten years, or with fine, or both.*
- 18 *Forced Labour* as defined in Section 163 is: *Whoever commits, forced labour, on any person, by unlawfully compelling him to work, against his will, shall be punished, with imprisonment, for a term, not exceeding one year, or with fine, or with both.*
- 19 Section 146(4) proscribes a separate punishment for those guilty of adultery in the Southern States, which includes imprisonment and/or a fine.
- 20 *Reforming Sudan's Legislation on Rape and Sexual Violence*, Position Paper, REDRESS, KCHRED (September 2008), available at: http://www.redress.org/downloads/country-reports/Position%20Paper%20Rape%205%20SEPT%2008%20_3_.pdf.
- 21 *Survivors Speak Out: Sexual Violence in Sudan*, Nobel Women's Initiative (November 2013), available at: <http://nobelwomensinitiative.org/wp-content/uploads/2013/12/Survivors-Speak-Out-Sudan-web.pdf>.
- 22 *Id.* at 18.
- 23 Adrienne L. Fricke and Amira Khair, *Laws Without Justice: An Assessment of Sudanese Laws Affecting Survivors of Rape*, Refugees International (June 2007), at 7, available at <http://www.refintl.org/sites/default/files/Lawswoutjustice.pdf>.
- 24 *Id.* at 19.