

Strategic Initiative
for Women in the
Horn of Africa



SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW (UPR) OF SUDAN
SITUATION OF WOMEN'S RIGHTS IN SUDAN

MARCH 2021

Background

In the last UPR round (2016), Sudan accepted 180 recommendations and noted 64,¹ but the former government of Omar Al-Bashir (1989-2019) and the new Transitional Government of Sudan (2019-ongoing) have both failed to deliver to the Sudanese people, and to Sudanese women, in particular. In 2016, Al-Bashir's government stated that after the 2015 elections, the country was "undergoing a continuous process of implementation and promotion of human rights according to its international commitments and according to the Bill of Rights contained in the Constitution," and that it was committed to complying with international law through many efforts including "ratifying a series of UN Conventions on areas of human trafficking and smuggling, women's representation and refugee protection."² Since 2016, the successive governments have not ratified CEDAW and the Maputo Protocol or reformed the legal framework to prohibit gender-based discrimination.

Between 2016 and 2018, the human rights situation deteriorated as tightening civic space, widespread corruption and a deteriorating economic situation instigated protests in 2016³ and early 2018. Scores were imprisoned and tortured in January 2018.⁴ The situation grew dire and protests against the deteriorating living conditions and political deadlock broke out in several states in mid-December 2018. Protests spread to other states before finally reaching Khartoum on Christmas day. Activists and a coalition of professional associations, the Sudanese Professional Association (SPA) sustained the protests on the ground between December 2018 and April 2019, but the crackdown on peaceful protestors was unprecedented. Over 100 protestors were shot dead, thousands were imprisoned and women were threatened and subjected to sexual and physical violence.⁵ In April 2019, the Al-Bashir government was ousted in a military coup and the Transitional Military Council (TMC) was established. The TMC continued to crackdown on protests, killing more peaceful protestors in May 2019. On June 3rd 2019, the military launched an attack to dismantle a peaceful sit-in outside the military premises in Khartoum and other cities. After a few hours, over 120 protestors were killed, nine hundred were injured⁶ and over 70 were raped or gang-raped, according to reports from a doctor's committee.⁷ Dozens remain missing.⁸

¹ Universal Periodic Review (UPR). (2016). 2RP: Responses to Recommendations & Voluntary Pledges. SUDAN: Second Review: Session 25. September 2016. <https://www.upr-info.org/sites/default/files/document/sudan/session_25_-_may_2016/recommendations_and_pledges_sudan_2016.pdf>

² Ibid.

³ Human Rights Watch (HRW). (2016). Sudan: Students, Activists at Risk of Torture. May 2016. <<https://www.hrw.org/news/2016/05/25/sudan-students-activists-risk-torture>>

⁴ Human Rights Watch (HRW), Amnesty International (AI), the Al Khatim Adlan Centre for Enlightenment and Human Development (KACE), & the African Centre for Justice and Peace Studies (ACJPS). (2018). Sudan: Stop Abuse of Peaceful Demonstrators. 29 January 2018. <<http://www.acjps.org/sudan-stop-abuse-of-peaceful-demonstrators/>>

⁵ Abdalaziz, S., Elbagir, N., & Nasir, S. (2019). They Tried to Use Rape to Silence Women Protesters. It Didn't Work. Retrieved from: <https://edition.cnn.com/2019/05/17/africa/sudan-protests-asequals-intl/index.html>.

⁶ Human Rights Watch (HRW). (2020). "Sudan: Justice for June 3 Crackdown Delayed." 2 June 2020. <<https://www.hrw.org/news/2020/06/02/sudan-justice-june-3-crackdown-delayed>>

⁷ Mohammed Salih, Z. & Burke, J. (2019). 'Sudanese Doctors Say Dozens of People Raped during Sit-in Attack.' *The Guardian*. 11 June 2019. <<https://www.theguardian.com/world/2019/jun/11/sudan-troops-protesters-attack-sit-in-rape-khartoum-doctors-report>>

⁸ Al-Amin, M. (2020). "Report Due Soon on Probe of Missing Sudanese Protesters". Voice of America. 21 Feb 2020. <https://www.voanews.com/africa/report-due-soon-probe-missing-sudanese-protesters>

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In August 2019, the TMC signed a constitutional declaration with the Forces for Freedom and Change (FFC) to enter into a power-sharing deal for a three-year transitional period (now a 4.5 year period, as a result of the agreement signed in October 2020). In theory, the declaration prioritizes women and Article 7 in the mandate of the transitional period vows to “guarantee and promote women’s rights in Sudan in all social, political, and economic fields, and combat all forms of discrimination against women, taking into account provisional preferential measures in both war and peace.”⁹ It also sets the participation of women at the legislative council at a minimum of 40% and sets out to establish a Women and Gender Equality Commission. Moreover, Article 48 of the declaration outlines equality in all aspects of life and protection as per international and regional agreements, including combating harmful traditions and providing free healthcare for mothers.¹⁰

The legislative council has yet to be formed and the Women and Gender Equality Commission continues to be deprioritized.¹¹

Between April and July 2020, the Ministry of Justice pushed through a number of legal reforms to the criminal act and the Ministry announced that it repealed the public order articles which were disproportionately used against women to regulate their dress-codes and behavior in the private and public spheres. The reality, however, is that the public order police continue to threaten the lives and livelihoods of women, and the public order articles have merely been modified and remain discriminatory. The new reforms have prohibited lashing as a punishment, but lawyers confirm that people continue to be lashed.¹²

Ratification of international and regional conventions and protocols

-Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

-Sudan accepted and noted several recommendations on ratifying CEDAW in 2016, however, this process has stagnated for years. In 2017, the parliament put forward the signing and ratification of CEDAW for discussion with the ruling regime at the time alongside a larger package of draft amendments to the constitution and legal frameworks. However, civil society and women’s groups were not consulted. In 2018, the Ministry of Justice announced that it would sign and ratify CEDAW with reservations, however, the position was not genuine and stemmed from a belief by Sudanese officials that the international community was blocking Sudan’s membership in the World Trade Organization (WTO) due to its refusal to ratify CEDAW and the Rome Statute of the International Criminal Court.¹³

⁹ Constitution Net. (2019). “Draft Constitutional Charter for the 2019 Transitional Period.” <<https://constitutionnet.org/sites/default/files/2019-08/Sudan%20Constitutional%20Declaration%20%28English%29.pdf>>

¹⁰ Ibid.

¹¹ Interview with WHRD. (2021). Khartoum. Phone interview. 14 March 2021.

¹² SIHA Network. Focus Group Discussion (FGD). (2021). Conducted 9 March 2021.

¹³ Sudan Tribune. (2018). “A preacher critiques the government's approach to sign CEDAW.” <<https://www.sudantribune.net/الاعلان-الحكومة-الاتجاه-لتوقيع-سيادو>>. June 2018. Retrieved from <<https://www.sudantribune.net/الاعلان-الحكومة-الاتجاه-لتوقيع-سيادو>>

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-In 2019, 2020 and 2021, different officials from the Sudanese government including the Minister of Justice¹⁴ confirmed that Sudan would ratify CEDAW. In 2020, the former Minister of Social Development and Labor stated that they were in the process of ratifying the Maputo Protocol, but that process has also stagnated. According to a Ministry official, the decision to ratify CEDAW and the Maputo Protocol are now in the hands of the Council of Ministers.

Recommendations:

- 1) Sign and ratify CEDAW immediately and without reservations.
- 2) Ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) immediately and without reservations.
- 3) Review national legislation and repeal gender-discriminatory laws.

Sudan - The Muslim Personal Law Act of Sudan, 1991 (also known as Family Law)

-In 2016, Sudan accepted recommendations to “harmonize domestic legislation with Sudan’s international obligations in the area of protection of women,” to prevent child marriage, ensure equal rights in all spheres of life and empower and enhance women’s role in political, economic and social fields.¹⁵

-In July 2016, Sudan established a committee to revise the personal status laws¹⁶ that are discriminatory to women. Activists pushed for the revision of the age of marriage, which according to the 1991 personal status laws is as young as 10 or younger with a court permit. Moreover, while girls can be married off at 10, they cannot file a complaint until they are 18 years old. In 2018, an 11-year old child who was regularly beaten by her 40-year-old husband was divorced by court because her father did not seek the court’s permission for her marriage. In 2018, Noura Hussein, another child bride, was sentenced to death by hanging for killing her husband after he raped her with the help of his male relatives. S.M, a girl who was married at the age of 13 was subjected to violence and marital rape before she managed to escape to continue her education. Women lawyers working on her case report that she has since been captured and is now chained inside her family house. A 13-year-old girl married to a 70-year-old man tried to commit suicide unsuccessfully. She ran away and became homeless for four months before her case was handled by lawyers.¹⁷ The personal status laws stipulate a wife’s obedience to her husband and this undermines the legal fight against marital rape and even domestic violence as sexual intercourse is considered obedience, and disobedience justifies domestic violence.¹⁸

¹⁴ Sudan Tribune. (2019). “Sudanese justice minister pledges to end discrimination”. Sudan Tribune. 19 Oct 2019. <<https://sudantribune.com/spip.php?article68337>>

¹⁵ Universal Periodic Review (UPR). (2016). 2RP: Responses to Recommendations & Voluntary Pledges. SUDAN: Second Review: Session 25. September 2016. <https://www.upr-info.org/sites/default/files/document/sudan/session_25_-_may_2016/recommendations_and_pledges_sudan_2016.pdf>

¹⁶ Interview with K.A. (2021). Phone interview. 15 March 2021.

¹⁷ SIHA Network. Focus Group Discussion (FGD). (2021). Conducted 9 March 2021.

¹⁸El Nagar, S. & Tønnessen, L. (2017). “Family law reform in Sudan: Competing claims for gender justice between sharia and women’s human rights.” CMI report. December 2017.

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-Domestic violence is widespread and deadly in Sudan. In February 2020, a 25-year-old mother of four, Raqia Al-Rasheed, was struck on the head with a sword by her husband. He was released on bail while she lives with a permanent disability. Al-Rasheed survived years of domestic violence, afraid to sleep knowing her husband might murder her,¹⁹ but domestic violence is not listed as a crime in the 1991 criminal act, making it difficult for her to pursue justice. Moreover, women have to bring witnesses to support their claims in the case of serious bodily damage. The domestic violence shadow pandemic that accompanied the covid-19 lockdown has made the need for a legal reform to the domestic violence article in the personal status law more critical.²⁰ Media reported that a woman in South Darfur state was killed by her husband during the lockdown.²¹

-In October 2020, the Minister of Justice formed a committee to propose a draft law on personal status for Muslims. The committee only includes representatives from Khartoum and is only responsible for the law for Muslims. No committee was formed to revise the law for Non-Muslims. The committee works in a polarizing environment which makes potential reforms to the law highly unlikely. Two members of the committee have faced slander campaigns and were declared apostates by religious groups. One lawyer in the committee told SIHA that fake screenshots were circulated to his village to implicate him.

Recommendations

- 1) Provide physical protection to members involved in the committee to revise the personal status laws.
- 2) Support the committee by adding more members with experience in drafting laws to improve its capacity and speed up the process.
- 3) Ensure that the committee represents the diversity of Sudan and takes into consideration cross-ethnic and cross-religious marriages.
- 4) Prioritize the welfare of girls by raising the minimum age of marriage to 18 years.
- 5) Ensure that there is a strong domestic violence article.
- 6) Ensure that there is legislation that protects women's access to and control over economic assets and resources.

¹⁹ Al-Saadi, F. (2020). "I slaughtered my wife" Sudanese woman subjected to killing attempt and the police conspires." ذبحتُ زوجتي...! سودانية < تعرّضت لمحاولة قتل والشرطة تتهاون > Raseef 22. 26 May 2020. Retrieved from <https://raseef22.net/article/1078424-...سودانية-تعرّضت-لمحاولة-قتل-والشرطة-تتهاون>

²⁰ Save the Children. (2021). "Shadow Pandemic: Domestic Gender-Based Violence in Sudan During COVID-19 Quarantine". 5 Jan 2021. <https://web.facebook.com/watch/?v=206865784476384>

Tønnessen, L. 7 El Nagar, S. (2020). "COVID-19 and the urgent need to protect Sudanese women against violence". Bergen: Chr. Michelsen Institute (Sudan Brief 2020:5) 4 p. <https://www.cmi.no/publications/7276-covid-19-and-the-urgent-need-to-protect-sudanese-women-against-violence>

²¹ Ayin Network. (2020). "Women in Corona lockdown in Sudan deadly attacks and victims avoid the law." نساء السودان في حجر "كورونا" .. "اعتداءات" < قاتلة وضحايا يتجنبن القانون > June 2020. Retrieved from <https://3ayin.com/assaults/> The Strategic Initiative for Women in the Horn of Africa (SIHA Network)

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- 7) Build a protection-based infrastructure such as building the capacity of the Family and Child Unit to provide immediate support to survivors of violence and establish safe houses for survivors of SGBV.

Women's leadership and political empowerment

-In 2016, the government approved a recommendation to improve women's representation in leadership positions, however, this has not materialized into opportunities. Currently, women represent less than 25% of the ministerial positions and only two of 17 state governors are women even though women's groups continue to nominate and promote qualified women.

Recommendations

- 1) Ensure the implementation of the National Action Plan for the Implementation of the UN Security Council Resolution 1325 on women peace and security (NAP 1325) which was launched in June 2020 by the Minister of Social Development and Labor.
- 2) Ensure that women get 50% representation at the legislative council level.
- 3) Ensure that the revised personal status law has no article(s) placing legal constraints on women's labor (e.g., requiring a husband's consent).

Sexual and Reproductive Health Rights

-Sudan accepted recommendations to take measures to reduce maternal mortality and also provide "comprehensive and non-discriminatory health services to women and girls who have experienced sexual violence."²² However, little has changed, and in fact, the situation is more restrictive for women.

-In 2016, the Ministry of Health developed a research paper on the use of misoprostol to reduce postpartum hemorrhage and the research was not made public and the government continued to restrict the availability of this registered drug inside hospitals because it is also used for safe abortions.

-Article 135 of the 1991 Criminal Code states that abortion is only allowed if it is life-saving or in cases of rape (only within the first trimester). However, most rape cases do not go to court, making legal abortions "almost impossible to obtain."²³ This leaves women, including rape survivors, vulnerable to prosecution for abortion. In 2018, a young woman was arrested during

²² Universal Periodic Review (UPR). (2016). 2RP: Responses to Recommendations & Voluntary Pledges. SUDAN: Second Review: Session 25. September 2016. <https://www.upr-info.org/sites/default/files/document/sudan/session_25_-_may_2016/recommendations_and_pledges_sudan_2016.pdf>

²³ Tønnessen, L. & El Nagar, S. (2019) "The Politicization of Abortion and Hippocratic Disobedience in Islamist Sudan". October 2019. <<https://www.hhrjournal.org/2019/10/the-politicization-of-abortion-and-hippocratic-disobedience-in-islamist-sudan/>> The Strategic Initiative for Women in the Horn of Africa (SIHA Network)

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an abortion procedure in an apartment and was threatened with a five-year sentence if she did not lead them to the supplier of the misoprostol she was using.²⁴

Recommendations:

- 1) Reform Article 135 of the 1991 Criminal Code to ensure that women have access to safe abortion.
- 2) Revise the National Strategy on Reproductive Health in line with international and regional human rights treaties.

Legal amendments are problematic

-Between April and July 2020, the Ministry of Justice debuted legal amendments, including 35 amendments to the Criminal Act and other amendments to the 1991 Criminal Procedures Code, the 2007 Sudan's Political Parties Act, the 2010 National Security Act, the 2010 Traffic Law, the Passports and Immigration Act and the 2017 General Prosecution Act.²⁵

-In April 2020, the government amended Article 141 to criminalize FGM/C and impose a prison sentence on midwives, doctors and families thus fulfilling the recommendations accepted in 2016. Very few cases have been recorded under Article 141 in recent months, but lawyers explain that outside Khartoum, the implementation of the law is very lenient and families travel outside Khartoum to subject their daughters to FGM/C.

-In July 2020, there was an amendment to Article 79 on alcohol sale to allow non-Muslims to sell and purchase alcohol. This amendment is problematic because alcohol-sellers (nearly all women working informally) would be responsible for inquiring about the religion of their clients, which would be a difficult position considering the power dynamics and widespread religious discrimination in Sudan. The Article also discriminates based on religion and disregards equal citizenship as religion is not visible on the national ID card, meaning the police will start inquiring about a defendant's religion, which opens up space for further discrimination. According to a source affiliated with the Omdurman Women's Prison, alcohol-sellers remain a significant percentage of the women prisoners.

-Article 152, a loose article on "indecent clothing" previously gave officers authority to judge whether women's dress was indecent and resulted in thousands of women being arrested, fined and lashed every year. The 2020 amendment, unfortunately, continues to present an opportunity for violence against women as it now focuses on indecent or sexual behavior which again empowers police officers to make a judgment on the behavior of women in public spaces.²⁶

²⁴ Ibid.

²⁵ A Collaborative Civil Society Statement in Response to The Law of Various Amendments (Abolishing and Amending Provisions Restricting Freedom) – Exposing 'a wolf in sheep's clothing.' August 2020. <https://sihanet.org/a-collaborative-civil-society-statement-in-response-to-the-law-of-various-amendments-abolishing-and-amending-provisions-restricting-freedom-exposing-a-wolf-in-sheeps-clo/>

²⁶ Ibid.

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-Article 154 on prostitution was amended, whereby the new article defines a place of prostitution as “any place designated for the meeting of men and women between whom there is no marital relationship, or kinship, in circumstances in which the exercise of sexual acts is probable to occur.” This law has been used to arrest and prosecute women who were present in the same room or office space with unrelated men.²⁷ Moreover, the 2020 amendment defines sexual services as a service with or without a fee within the absence of a legal relationship, meaning, there is no distinction between prostitution and unmarried consensual sexual relationships.²⁸

Recommendations

- 1) Reform the criminal act to ensure that there are no discrepancies with international laws and conventions.
- 2) Develop a mechanism to follow-up on the implementation of Article 141 of the criminal law on FGM/C.
- 3) Revise the amended articles in the criminal law to respect women’s rights.
- 4) Provide extensive training for police officers on human rights and understanding of the law.

Sexual Violence

-In the 2016 UPR Review, there were several accepted recommendations on protection and reparation for women survivors, to ensure health services to survivors of sexual violence and to criminalize violence against women, including marital rape. In the last four years, no law, policy or strategy has been put in place to demonstrate a commitment to combating SGBV.

-Sexual violence continues to be on the rise. In 2019, during the dismantlement of the sit-in outside the army headquarters in Khartoum, hospitals recorded at least 70 cases of rape and gang-rape at the hands of military and RSF soldiers.²⁹ In September 2019, as per decree (63) from the Council of Ministers, the Prime Minister, established an independent investigation committee on the June 3rd massacre without specifically referring to sexual violence as one of the subjects under investigation. The initially all-men committee was formed without the expertise of women lawyers and activists.

²⁷ SIHA Network. (2015). “Third Class Citizens: Women and Citizenship in Sudan- a paper on women’s struggle for equal citizenship in Sudan”. September 2015. <<https://www.cmi.no/file/3217-Third-Class-Citizens-Womens-Struggle-for-Equal-Citizenship-in-Sudan-002.pdf>>

²⁸ A Collaborative Civil Society Statement in Response to The Law of Various Amendments (Abolishing and Amending Provisions Restricting Freedom) – Exposing ‘a wolf in sheep’s clothing.’ August 2020. <https://sihanet.org/a-collaborative-civil-society-statement-in-response-to-the-law-of-various-amendments-abolishing-and-amending-provisions-restricting-freedom-exposing-a-wolf-in-sheeps-clot/>

²⁹ Mohammed Salih, Z. & Burke, J. (2019). ‘Sudanese Doctors Say Dozens of People Raped during Sit-in Attack.’ *The Guardian*. 11 June 2019. <<https://www.theguardian.com/world/2019/jun/11/sudan-troops-protesters-attack-sit-in-rape-khartoum-doctors-report>>

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-Survivors of SGBV continue to suffer if they give birth as a product of rape. DNA is not considered a legitimate tool for proving paternity in Sudan, which often leaves mothers struggling to access official documents for their children.

-The new amendments kept Article 145 and Article 146 on adultery indicate that lashings have not ended as claimed by the government. Article 149 on rape was amended to include a stricter punishment, but the phrase “without prejudice to the Hudud punishment of adultery” was added, which alarmingly confuses rape with adultery.³⁰

Recommendations

- 1) Ensure that the committee to investigate the June 3rd massacre also investigates mass rape and provides necessary reparations for survivors.
- 2) Ensure the provision of non-discriminatory health services to women and girls in the case of sexual violence.
- 3) Amend the criminal procedural law which hinders the implementation of Article 149 on rape.
- 4) Ensure resources are allocated and support is provided for the police and court system outside of Khartoum particularly in the conflict region of Darfur.
- 5) Remove Articles 145 (fornication) and 146 (punishment for adultery), which continue to provide legal basis for flogging and death penalties for consensual sexual relations, and the systemic criminalization of women.

³⁰ A Collaborative Civil Society Statement in Response to The Law of Various Amendments (Abolishing and Amending Provisions Restricting Freedom) – Exposing ‘a wolf in sheep’s clothing.’ August 2020. <https://sihanet.org/a-collaborative-civil-society-statement-in-response-to-the-law-of-various-amendments-abolishing-and-amending-provisions-restricting-freedom-exposing-a-wolf-in-sheeps-clot/>
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