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Liv Tønnessen

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## Enemies of the State: Curbing Women Activists Advocating Rape Reform in Sudan

Liv Tønnessen<sup>1</sup>

### Abstract

Sudanese women activists launched a legal campaign in 2009 calling attention to how the country's Sharia-based Criminal Act of 1991 produced impunity for sexual assault in the Darfur conflict. After years of mobilization, Sudan enacted rape reform in 2015. While on the surface a success story, extensive interviews conducted in Khartoum suggest that this regime-controlled rape reform is more about the struggle of an authoritarian state to keep an emerging independent women's movement under control, rather than the protection of rape victims in Darfur. By situating the reform within the broader political dynamics of the International Criminal Courts' (ICC) arrest order against Sudan's president for the use of rape as a war tactic in Darfur, it becomes clear that this pushed an already pressured head of state to clamp down on independent women's groups advocating rape reform. Women activists were framed as collaborators of the ICC and an enemy of the Sudanese state. The immediate implication of targeting women activists is that the regime has silenced critical voices pointing to the limitations of the rape reform as well as those actors most likely to watchdog its implementation. The long-term implication is that it weakens the foundation for generating further policy changes on violence against women.

*Keywords:* Women's Movement, Rape, Legal Reform, Islamic Law, Sudan

### Introduction<sup>2</sup>

Sudanese women activists launched a legal campaign in 2009, calling attention to how the country's Sharia-based Criminal Act of 1991 produced impunity for rape in the Darfur conflict in which the use of sexual violence as a war tactic has been widespread (see, for example, International Commission of Inquiry on Darfur 2004; United Nations High Commissioner for Human Rights 2005). Through the proxy of local Arab militias, known as *Janjaweed* or devils on horseback, the Sudanese regime has sexually attacked women and children from the African ethnic groups in Darfur since the eruption of the conflict in 2003 (ICC 2009). According to Sudanese women activists, the Criminal Act of the current Islamist regime does not clearly differentiate

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1 Liv Tønnessen (PhD) is a senior researcher at Chr. Michelsen Institute (CMI) in Bergen, Norway. Tønnessen is a political scientist researching women, politics and Islam in the Middle East and Northern Africa with a specialization on Sudanese politics. She has conducted extensive fieldwork in Sudan since 2006 and has lectured at Ahfad University for Women. Tønnessen is heading several research projects, among them *Engineering Gender Equality: The Effects of Aid to Women's Political Representation* funded by the Norwegian Research Council. She is also the lead researcher on Sudan in several research projects, most recently *Political determinants of sexual and reproductive health: Criminalisation, health impacts and game changers* funded by the Norwegian Research Council and *Women and Peacebuilding in Africa* funded by Carnegie and the Norwegian Ministry of Foreign Affairs.

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between rape and the crime of *zina*, that is sexual intercourse outside of a valid marriage contract; a moral crime prescribed in Islamic legal texts. Since rape is categorized as *zina* without consent, rape victims risk being prosecuted for *zina*; a crime punishable by stoning to death for married offenders and 100 lashes for unmarried offenders. This constitutes a serious legal obstacle for rape victims in Darfur and beyond.

After years of women's legal mobilization, Sudan followed a range of African countries by enacting a rape reform in February 2015. The regime introduced a reform in which a new definition of rape appears clearly de-linked from *zina*. It came as a surprise to many observers, but has nonetheless been celebrated as a great achievement. While on the surface a success story, I understand this largely regime-controlled rape reform as an authoritarian state's struggle to keep an emerging independent women's movement under control, rather than protection of rape victims in Darfur and beyond. By situating the reform within the broader political dynamics of the International Criminal Courts' (ICC) arrest order against Sudan's sitting president for widespread and systematic rape of women and children in Darfur (ICC 2009), it becomes clear that this pushed Omar al-Bashir to severely clamp down on independent women's groups advocating rape reform. The 2015 reform materialized within a political environment of escalated state repression initiated against both international and national NGOs. Al-Bashir's immediate response to the ICC indictment was to expel 13 international and shut down three Sudanese NGOs.<sup>3</sup> Sexual violence became particularly politicized post-ICC and women's groups and NGOs working on rape reform were hit particularly hard. Not only did the reform process exclude women activists who initiated the campaign, but they were also framed as collaborators of the ICC and branded enemies of the state.

The Islamist regime's targeting of an emerging independent women's movement has both short- and long-term implications. The short-term implication is that the regime has silenced the voices pointing to the several limitations of the 2015 rape reform as well as those actors most likely to watchdog its implementation. The long-term implication is that the suppression of an independent women's movement weakens what the literature (see, for example, Htun and Weldon 2012; Tripp et al 2009) identifies as critical for generating further policy change on violence against women.

Fieldwork for this study was conducted in Khartoum, Sudan in May 2011, October 2012 and February/March, June/July, and November 2013 and October 2014. In total, 40 interviews were conducted in English and Arabic. The interviewees include international NGOs and UN agencies, representatives from political parties (both Islamist and from the opposition), and civil society organizations (both national and from Darfur), including two of the national NGOs that were expelled from Darfur in 2009 and women's groups, which have recently been shut down. I interviewed women activists based in Khartoum as well as in Darfur who were working as journalists, university employees, humanitarian workers, and politicians, members of NGOs, and lawyers who were working specifically with rape cases in Sudanese courts. The interviewees were recruited through a network of contacts that the author has developed over many years of field visits to Sudan starting in 2006. Through a gatekeeper at University of Khartoum, a Darfuri woman activist and scholar, I was able to reach a broad range of women activists from various areas of Darfur. Two group interviews were organized at the University of Khartoum in June and July 2013

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<sup>3</sup> Al-Bashir's immediate response to the ICC indictment was to expel 13 international and shut down 3 Sudanese NGOs, in particular targeting NGOs working on sexual violence. The Sudanese NGOs were Amal Centre for Rehabilitation of Victims of Violence; the Khartoum Centre for Human Rights Development and Environment; the Sudan Social Development Organization (SUDO).

and one workshop in November 2013 with activists from Darfur. The names of the interviewees remain anonymous because of the highly polarized political environment and the risk of putting informants at risk of intimidation, torture and arbitrary arrest.

### Theoretical Framework

In 2015, the Islamist regime reformed its Criminal Act after massive mobilization by Sudan's women's movement. This article defines women's movements as movements pursuing "women's gender interests... [and] make[ing] claims on cultural and political systems on the basis of women's historically ascribed gender roles" (Alvarez 1990: 23). A critical theoretical distinction can be made between women's movements which premise their visions on the minimization of differences between the sexes and those which argue for the enhancement of women's place in society through an appreciation of the differences between the sexes (Molyneux 1998:237). In Sudan, we see both movements exhibited. Islamist women closely associated with the state advocate for equity (*insaf*), which relies heavily on the idea of complementarity and biological differences between the sexes. Meanwhile, women activists, independent from the state, reject the idea of complementarity and argue for gender equality in both public and private spheres of law (Tønnessen 2011).

Following the rape reform, the Sudanese Islamist regime has clamped down on the country's emerging independent women's movement and monopolized intervention within the area of violence against women. An *independent* women's movement, sometimes with links to global and transnational feminist movements (Moghadam 2005; Ferree and Tripp 2006), has been identified as crucial in successfully pushing for legal changes in women's rights in general (Tripp et al 2009) and violence against women in particular (Htun and Weldon 2012: 560). When women's movements organize within broader political institutions such as political parties, or are entirely contained in the state, they must argue for the relevance of their concerns to these established, often patriarchal priorities (Weldon 2002). A changing resource base for African women's movements, mostly through the influx of aid, has led to the emergence of women's groups independent from state patronage networks and political parties (Tripp et al. 2009). While the Sudanese women's movement was historically intimately tied to political parties and/or the state, the entry of international donors, especially after 2005, has created an alternative funding base that has resulted in the emergence of independent women's groups (Hale 2015). Whether independent women's movements succeed in pushing for legal reform depends on whether state institutions are available for feminist involvement (Moghadam et al 2010; Okeke-Ihejirika et al 2002). In Africa, post-conflict countries are making more constitutional and legislative changes related to women's rights. The end of armed conflicts in various countries in Africa, including Sudan, has opened up new windows of opportunity for the legal mobilization of women (see, for example, Bauer and Britton 2006; Tripp 2015; Tripp and Hughes 2015). A new national interim constitution providing a bill of rights for women opened up a political space for Sudanese women activists to demand legal reform on a range of issues, including rape, immediately followed by, in particular, the signing of the Comprehensive Peace Agreement ending Africa's longest civil war between the north and the south of Sudan in 2005. The 2005 constitution included clauses on non-discrimination (article 31), gender equality (article 32 (1)) and affirmative action (article 32 (2)). Although women activists have mobilized for legal reform on a range of issues, only two reforms have materialized, the introduction of 25% reserved seats for women in national and sub-national legislative assemblies and the rape reform in 2015.

Sudan follows the general trend in many post-conflict settings in Africa where pieces of legislation have been enacted aiming at specifically combating sexual violence. For example, Rwanda enacted a GBV bill in 2006; in 2005, Liberia amended its criminal act to better protect women against rape; Sierra Leone developed legislation to deal with domestic violence in 2007; DRC Congo's penal code was amended in 2006 with the intention to prevent sexual violence. The intensified focus on sexual violence legislation in post-conflict Africa is largely attributed to major changes in international legal norms with the UN resolution 1325 at the forefront. In 2000, the UN Secretary-General in Resolution 1325 called attention to the disproportionate impact on women in armed conflict, including protection against sexual violence and ending impunity for such crimes.<sup>4</sup> In the past decade, the relationship between sexual violence and armed conflicts has received much international attention. An increased global awareness of the impact and implications of sexual violence has led to numerous attempts to address impunity through legal reform processes (Eriksson 2011). Sexual violence in the Darfur conflict received the attention of international humanitarian organizations (see, for example, MSF 2005 and Refugee Internationals 2006), which cooperated closely with both national and local NGOs. The international community provided vital funding for women's groups, operating independently from the state, to focus their activism on rape reform. But immediately after President Omar al-Bashir was indicted by the ICC for war crimes and crimes against humanity, he expelled several international NGOs from the country and shut down national NGOs, many of which were engaged in work on sexual violence. This did not only mean a more repressive political environment for women activists to demand rape reform, but also a dramatic decrease in funding for such activities.

### The Sudanese Women's Movement

Sudanese women's groups developed in tandem with political parties and women activists' room for maneuver was restricted by the conservative ideologies of traditional and sectarian political parties. The establishment of these women's groups was regarded as a pragmatic move orchestrated by the political parties to expand their membership base by appearing to be champions of the women's cause (El Bakri 1995). In 1952, as a response to more independence from political parties, a handful of women founded the Women's Union (*al-Ittihad al-Nisa'i*). Influenced by Marxism, the Union's objectives included the promotion of girls' education, women's political and economic rights, including equal pay for equal work. The majority of the founding members of the Union were members of the Sudanese Communist Party (SCP) and it remained closely associated with the party (Hale 1986). This limited the range of topics and demands the Union was able to articulate. While women gained the right to vote and stand for election in 1965 and equal pay for equal work was introduced in 1968, they made few demands challenging traditional gender roles. While a younger generation of women within the Union started to voice concern about violence against women such as female genital mutilation and domestic violence already during the late 1970s and the beginning of 1980s, it was not welcomed by either the leadership of the Union nor the SCP (Hale 1996).

Soon after its establishment, the Union suffered from internal conflicts and saw opposition from the founding members who were *not* communists. In particular, there was opposition from

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<sup>4</sup> It was followed by UN resolutions on women, peace and security adopted in 2008 (UNSCR 1820), in 2009 (UNSCR 1888 and UNSCR 1889), in 2010 (UNSCR 1960), and in 2013 (UNSCR 2106 and UNSCR 2122) re-enforcing the strong focus on protection of women and children against sexual violence. Focuses were put on documentation, criminal prosecution and protection mechanisms.

the Islamist women who eventually broke away from the union and started their own Muslim women's group associated with the Muslim Brotherhood that later assumed power through a *coup d'état* in Sudan in 1989 under the leadership of the current president Omar al-Bashir. The Marxist approach versus the Islamic approach to women's empowerment remains a divisive division line even among contemporary Sudanese women activists that remain largely fragmented. Each of these two strands of approaches to women's empowerment has seen periods of state 'feminism'; the first during the military regimes of Jafaar Nimeiri (1969-1985) in which the state-controlled Sudanese Women's Union, led by former Union leaders, monopolized interventions within the field of women's rights (Khalid 1995). The second and current period is taking place within the framework of the Islamist regime of Omar al-Bashir (1989-) spearheaded by the state-controlled Sudan Women's General Union. The Islamist gender ideology is based on the idea of gender equity (*insaf*) in which women and men have different and complementary roles and responsibilities because they are born biologically different. The idea of gender equity grants women rights in the public domain to participate in politics, work outside the home and get educated, *if and only if* they behave piously and dress in a modest way. After the *coup d'état* in 1989, the Islamist regime instigated a comprehensive Islamization of Sudan's laws which many observers deemed a backlash to women's rights: among other things, a headscarf for women became mandatory by a presidential decree, and women's behavior and movement in public spaces were restricted in the Sharia-based Criminal Act of 1991, which, among other things, instructed women to dress and behave in a modest way (al-Bashir 2003). While granting women's rights in the public sphere, such as the introduction of 25% reserved seats for women in national and sub-national legislative assemblies in 2008, legal reforms within the area of family law and violence against women have triggered counter-mobilizations of religious conservatives inside and outside of the Islamist state. In particular, it has been an uphill battle to advocate for rape reform post-ICC as the indictment of President al-Bashir's personal responsibility for systematic and widespread use of sexual violence has been regarded as embarrassing for a state whose moral underpinnings are Islamic. Therefore, official representatives of the state have, on more than one occasion, denied the existence of violence against women, including sexual violence, in Sudan.

The influx of aid, particularly after 2005, has created an alternative funding base for women's groups, independent of political parties and the Islamist state (Hale 2015). After the end of the war, there was an explosion of NGOs; Sudan has never seen so many NGOs working within the field of gender and women's rights as after the 2005 peace agreement. The international presence offered Sudanese activists capacity building, funding to establish NGOs and run programs and exposed them to activists in the region and globally working to better the situation of women within a range of areas like, for example, political representation, peace building and legal reform. This newly won independence from conservative traditional political parties, as well as the state, coupled with an increased awareness of international human rights norms, has re-directed the focus of independent women's groups to more radical and politically sensitive topics, such as female genital mutilation, child marriage, domestic violence, and rape including marital rape (Tønnessen 2014; Tønnessen and al-Nagar 2013). These women activists outside of state Islamism advocate gender equality, not equity. Under the rule of an Islamizing state, they employ Islamic feminist arguments for gender equality. They argue that gender justice as enshrined in international human rights is inherent in Islam (Tønnessen 2011).

## Women Activists Demanding Rape Reform

The legal framework for prosecuting rape in Sudan has serious shortcomings. The main problem is the conflation of rape and *zina* (adultery and fornication) in the Criminal Act of 1991. Rape is defined as *zina* without consent. As *zina* is considered a *hadd* crime (plural *hudud*, meaning limit, restriction, or prohibition) – regarded as the ordinances of Allah – it has assumed a central place in the call for Sharia by contemporary Sudanese Islamists, who consider fornication and adultery to be crimes against Islam itself.<sup>5</sup> The introduction of *hudud* (and thereby the criminalization of fornication and adultery) was embedded in a larger call for Islamization: first under President Nimeiri, who enacted the so-called September Laws in 1983, and later under the current Islamist regime headed by Omar al-Bashir (Tønnessen 2014). In the Islamist nation-building project, the control of women's bodies and the protection of their morality and honor were central (Nageeb 2004). The criminalization of fornication and adultery formed an important part of Islamic moral politics and the construction of the modest Muslim woman as the bearer of her family's and nation's honor and good reputation (Abdel Halim 2011). In an Islamist state guided by true religious morals, rape outside of marriage is unheard of; it is un-Islamic, as it constitutes a version of *zina*.<sup>6</sup> Indeed, article 149 in the Criminal Act of 1991 lists the crime of rape under the section on Offences of *Honour, Reputation and Public Morality*. Article 149 of the Criminal Act defines rape in the following way:

- '(1) There shall be deemed to commit the offense of rape, whoever makes sexual intercourse, by way of adultery, or sodomy, with any person without his consent.
- (2) Consent shall not be recognized when the offender has custody or authority over the victim.
- (3) Whoever commits the offense of rape, shall be punished, with whipping a hundred lashes, and with imprisonment, for a term, not exceeding ten years, unless rape constitutes the offense of adultery, or sodomy, punishable with death'.

The reason why the definition of rape, as *zina*, without consent in the Criminal Act is problematic is because the offense needs to be proved according to the rules of evidence applying to *zina* (Redress 2008a; Redress 2008b; Gayoum 2011). This makes it difficult, if not impossible, to not only prosecute rape, but it can also incriminate the victim of rape. According to the Evidence Act of 1994, *zina* needs to be proved according to the following rules of evidence; (a) a confession which is not retracted before the verdict, (b) the testimony of four male eyewitnesses; (c) pregnancy. In order to prove rape, the victim must prove that someone has *forcibly* committed *zina* with her (Tønnessen 2014; Abdel Halim 2011). In other words, she is the one to bring evidence that (a) the perpetrator has committed *zina* and that (b) she has committed *zina* without consent. As the evidence for *zina* is virtually impossible to obtain, a rapist "can only be incriminated if he

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5 *Hudud* (singular, *hadd*, meaning limit, restriction, or prohibition) are regarded as the ordinances of Allah, and they have fixed punishments derived from the Islamic sources. The *hudud* crimes include 1) *Zina*: the punishment is death by stoning for married and 100 lashes for unmarried men and women. 2) Theft: the punishment is amputation of the hand. 3) Highway robbery (brigandage): the punishment is death by crucifixion. This has a harsher punishment than theft because it is assumed that it involves killing of the victim. 4) False accusation of *zina* (*Qadhif*): the punishment is 80 lashes. 5) Drinking of alcohol: The punishment is 80 lashes.

6 The concept of marital rape, however, does not exist in the law. It is considered a wife's obligation to have sexual intercourse with her husband.

voluntarily decides to confess his guilt before the authorities” (Sidahmed 2001: 203).<sup>7</sup> In short, failure to prove (a) and (b) means that the man walks free from the *hadd* punishment, but that the rape victim is still subject to it because she has failed to discharge her burden (Abdel Halim 2011; Tønnessen 2014). Reporting the rape may thus lead to the victim’s incrimination for *zina* which is punishable with 100 lashes (if the person is unmarried) and capital punishment by stoning (if the person is married). In the words of a Darfuri woman lawyer;

“The lack of legal protection mechanisms is one of the reasons for the continuation of violent crimes against women in (...) Darfur. The police, prosecutors, and courts do not contribute to the protection of women from sexual violence. Instead, they criminalize women”.<sup>8</sup>

In the Sudanese context, advocacy for a rape reform has met two major challenges. 1) Since the *hudud* crimes are regarded as the ordinances of Allah, they are not easily challenged. It is difficult to question the Islamic scriptures upon which the *hudud* offenses are based without being accused of challenging Islam itself, which could lead to accusations of being an apostate and an anti-government secularist advocating the abolition of Sharia and thus the eradication of the underpinnings of the state altogether. Since rape and *zina* are confused in the 1991 Criminal Act, women activists had to thread carefully in advocating a rape reform. 2) Since women activists brought attention to a rape reform in the context of the Darfur conflict, this politicized the issue even further, especially after the sitting president was indicted by the ICC for the use of sexual violence as a war tactic. The advocacy for a rape reform has thus emerged against the backdrop of an increasingly suppressive political environment.

### The Campaign and the 2015 Rape Reform

Over the last several years, the reform of the 1991 Criminal Law on rape/*zina* has become a priority for Sudanese women activists. In January 2010, the ‘alliance of 149’ announced the launch of its campaign to reform Sudan’s rape laws as part of the UN initiative for 16 days of activism against gender-based violence.<sup>9</sup> The 16 days of activism initiative in 2010 specifically focused on the intersection between militarism and violence against women with references to resolution 1325. According to an activist partaking in the campaign, “We never thought of sexual violence as an issue. Darfur changed that.”<sup>10</sup> Particularly UN resolution 1325 created a space for Sudanese activists. In the words of another Sudanese woman activist, “International attention, particularly resolution 1325, has opened up space for women activists to talk about sexual violence in Darfur”.<sup>11</sup> Salmah Women’s Resource Centre, one of the most radical feminist groups active

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7 Proof for the element of force needs to be documented in Form 8 which is the form used by the police to report a violent act, which is then used as evidence in court. Form 8 only requests limited information (whether there has been recent loss of virginity, bleeding, or presence of sperm), and does not allow for a comprehensive medical report to be written by the doctor. In the majority of cases, the full extent of the injuries is not documented and the necessary evidence that would assist in the prosecution of rape is not collected (Redress 2008a; Redress 2008b).

8 Interview lawyer from North Darfur November 21, 2013.

9 The campaign was supported by Redress, Refugees international, and Women Living Under Muslim Law.

10 Interview with the woman activist leading the ‘alliance of 149’, October 8, 2012.

11 Interview with a Sudanese humanitarian worker from one of the expelled NGOs, October 8, 2012.

in Sudan, coordinated the advocacy for law reform.<sup>12</sup> The campaign builds on recommendations from joint research between Redress and Khartoum Center for Human Rights analyzing the Sudanese Criminal Acts in 1925-1991 (Redress 2008a; Redress 2008b; Abdel Halim 2011). The main focus of the campaign was article 149 and the legal obstacle it creates for rape victims (Gayoum 2011).<sup>13</sup>

The strong focus on law reform in the campaign was facilitated by a parallel development in Sudan. At the same time as the United Nations Security Council referred the armed conflict in Darfur to the ICC in 2005, after the passage of resolution 1593, the Bashir regime signed the Comprehensive Peace Agreement ending Africa's longest civil war between the north and the south in 2005. The adoption of the Interim National Constitution followed in the same year. It included a Bill of Rights for women, which sparked a process of law review and women's demands for a gender equitable reform of a range of Sudan's laws, among others demands for family law reform, the criminalization of female genital mutilation, a gender quota to Sudan's national and sub-national legislative assemblies, and a reform of Sudan's rape laws. They claimed that article 149 of Sudan's Criminal Act from 1991 was unconstitutional. Because Sudan is among a select few countries that have not ratified CEDAW, the new constitution became an important legal framework within which to argue for reform. The campaign to reform Sudan's rape laws primarily focused on clearly differentiating rape and *zina*, not on de-criminalizing *zina*. In this way, women's rights activists avoided (to a certain extent at least) directly challenging the Islamic texts in which the crimes and punishments for *zina* are explicitly stipulated. Their basic argument was that rape is un-Islamic and as long as the Criminal Act defines it as *zina* without consent, then impunity will flourish. The fact that the campaign did not advocate de-criminalization of *zina*, and thus a moral cornerstone in the underpinnings of the state ideology, might help explain why their demand was partly heard by Islamists inside the government. In February 2015, Sudan's National Assembly reformed article 149. In its new definition, rape is de-linked from *zina* altogether.<sup>14</sup>

### Women Activists Branded Enemies of the State

The 2015 reform came at a high cost for women activists. At the same time as the reform was celebrated as a victory, Salmamah Women's Resource Centre was shut down after its leader, Fahima Hashim, appeared as a speaker at the Global Summit to End Sexual Violence in Conflict in London. During the last few years, other human rights and women's groups have been forcibly

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12 The alliance was led by the Salmamah women resource center, which was shut down by the regime last year. In addition, Sudanese Women Empowerment for Peace (SuWEP), Sudanese Organization for Research and Development (SOR), Mutawinat, Alalag centre for media services, Sudanese society for environment protection, and Sudanese Observatory for Human Rights were part of the alliance. Before the launching of the campaign, other Sudanese NGOs were also involved, but they were shut down. Among these was Khartoum Center for Human Rights and Amal Centre for Rehabilitation of Victims of Violence. The campaign was supported by international organizations, among them Refugee international and Women Living under Muslim Law (Gayoum 2011).

13 But the campaign also pointed to other limitations in the definition of rape, among those the fact that sexual intercourse is solely defined as penal penetration either vaginally or anally (sodomy). As a result, oral rape or rape by foreign objects, such as that of a gun barrel, is not considered rape according to the 1991 Criminal Act. The very definition of rape as penal penetration does not capture the landscape of war rapes in Darfur where also gun barrels and other foreign objects are used (Gayoum 2011:19).

14 Moreover, rape is no longer solely defined by penal penetration, but also includes foreign objects or other parts of the body. The idea of "force" no longer includes only physical violence, but also includes psychological intimidation.

shut down, many of them active advocates against violence against women.<sup>15</sup> The reform, this article claims, is more about political control at a time when the president is under pressure from the ICC, than the protection of rape victims. It gives the impression that the government is dealing with the problem of sexual violence, but in reality, they are attempting to discredit the ICC and derail its investigations of rape crimes. This is effectively done by curbing the work of international and national NGOs on sexual violence.

Already a year after the ICC started its investigation in Darfur in 2005, the regime took the opportunity to curb work on sexual violence. NGOs working within the area of sexual violence have been hit particularly hard. Accused of being collaborators with the ICC, women activists are branded enemies of the state. In the words of a Darfuri politician, “When the ICC indicted al-Bashir, it became crazy. We are now being accused of being an agent of the ICC”.<sup>16</sup>

The Voluntary and Humanitarian Work Act (VHWA) from February 2006 imposed severe restrictions on NGOs, both international and national, and gave the government excessive discretionary and regulatory powers over their work. The law required new registration of all NGOs under the humanitarian aid commission (HAC), including already registered NGOs. Appointed by the President, most commissioners of HAC have had a security background, rather than a civil society background, signaling the intent of the establishment of HAC as a control and surveillance institution to curb what is perceived as any international or national threat to the current regime. After the ICC arrest warrant against president al-Bashir in 2009, the Sudanese government expelled 13 international NGOs, as well as three Sudanese NGOs operating in Darfur. Figuring high on the agenda of many of the expelled organizations was sexual violence. It soon became clear that work on sexual violence was unwelcomed by the al-Bashir regime. “After the expulsions in 2009, the message was clear: work on gender-based violence, and you’ll be kicked out.”<sup>17</sup> The threat of expulsion seems to have been a successful strategy vis-à-vis those international NGOs that have largely removed protection and sexual violence from the project portfolios, because they are afraid of expulsion. In the words of a UNFPA staff member, “The NGOs left in Darfur do not work on sexual violence, because it is too sensitive. They are afraid that they will be expelled”.<sup>18</sup>

The VHWA law has thus greatly affected the work of women’s NGOs both *indirectly* through the expulsions of the international NGOs and *directly* by HAC’s surveillance and the constant threat of being shut down. By removing protection and sexual violence from the project portfolios of international NGOs, women’s groups have lost vital funding for their advocacy on rape. Many of the Darfuri women activists have been forced to re-direct their activities *away* from sexual violence.<sup>19</sup> In the words of a woman activist: “(...) there is an absence of organizations working on violence against women in Darfur now.”<sup>20</sup> Women’s NGOs operate under the constant

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15 In recent years, several civil society organizations were closed by the HAC and a literary forum was closed by the Ministry of Culture and Media. These were Beit al Finoon, the Sudanese Studies Center, the African center for justice and peace studies, Arry Organization, The Narrative and Criticism Forum and the Khatim Adlan Center for Enlightenment and Human Development. Particularly the Khatim Adlan Center for Enlightenment and Human Development has been active with regards to women’s rights, in particular in a campaign against sexual harassment. The Mahmoud Mohammed Taha Centre, which advocated for women’s equality within an Islamic frame, has had its license revoked.

16 Interview on June 17, 2013.

17 Sudan Tribune, “Why aid for Darfur’s rape survivors has all but disappeared”, [online], available <http://www.sudantribune.com/Whyaid-for-Darfur-s-rape,32836>.

18 Interview with UNFPA staff October 21, 2012.

19 Interview with Darfuri activist and university professor, October 16, 2014.

20 Interview with woman activist, October 18, 2012.

surveillance and threat of being shut down by HAC. The VHWA law gives HAC the authority to shut down NGOs if they “insult people of the state, beliefs, culture, or dignity” and if they “give false information or violate the law”. Accused of defamation and publication of false news, three Sudanese NGOs were shut down at the same time as the international humanitarian NGOs were expelled from Sudan. According to a woman activist from one of the Sudanese NGOs that were shut down “(...) Our organization was accused of spying on the government for the ICC”.<sup>21</sup> As such, these NGOs were regarded as a threat to national security and thus as an enemy of the state.

In addition to making life difficult for women activists working on sexual violence, the government started to establish its own organizations, units and initiatives on violence against women. Under the auspice of the UN mission in Sudan, the government hosted workshops on combating violence against women and participants called for reform of Sudan’s laws on rape. In addition, a National Plan for Combating Violence against Women and Children was developed in 2010. One of its main objectives was to “review policies and legislations pertaining to women and children [and] enact strict legislations for combating violence against women and children” (Violence Against Women Unit, 2010). The activities were led by the government’s Violence against Women Unit, established around the same time as the VHWA law. The unit is controversial and women activists consider its creation as an attempt to monopolize intervention within the area of violence against women. Now the government can go about its business without being challenged by voices independent from the state, because the state has effectively suppressed them. They also see it as a unit that “is embedded within conservative Islamist ideology that fails to acknowledge that violence against women exists in Sudan”.<sup>22</sup> It is regarded as a way of derailing the ICC investigation, rather than as a genuine attempt to tackle the problem of sexual violence. In the words of a woman activist from Darfur,

“Violence against women has become politicized, because of the rape in Darfur. The ICC embarrassed the government. It is because of this they established the Violence against Women Unit. They did it in order to whiten their face so that they could take the lead in handling it, not the NGOs and the international community. It has become a political issue”.<sup>23</sup>

## Conclusion

Sudan follows many post-conflict countries in Africa where there have been constitutional and legislative changes regarding women’s rights. The Sudanese government’s widespread and systematic use of sexual violence as a weapon of war in Darfur put Sudan’s rape laws on the political agenda internationally and nationally. While changing international legal norms, regarding sexual violence in war zones coupled with the influx of international NGOs providing funding for women’s groups were important, the bill of rights in the new constitution of 2005 proved to be a critical political opportunity for an emerging independent women’s movement to advocate for criminal law reform. Women activists’ legal campaign called attention to how article 149 produced impunity for sexual violence crimes in the name of Sharia. The mobilization was primarily focused on article 149 in the Criminal Act of 1991 that does not clearly differentiate

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21 Ibid.

22 Interview with woman activist October 8, 2012.

23 Interview with woman activist from Darfur, October 14, 2012.

between rape and the crime of *zina*. Although *zina* remains a criminal offense, in February 2015, the government introduced a new definition of rape that is clearly de-linked from *zina*.

On the surface, this can be interpreted as a success story. But by situating the 2015 reform within the larger political dynamics in the wake of the ICC's indictment against Sudan's sitting president, it remains a problematic victory, which has short- and long-term consequences for the protection against violence against women in the country. The reform was coupled with a regime clamp down on women activists. With the ICC arrest order hanging over al-Bashir's head, both national and international NGOs working on sexual violence are under constant surveillance and threat of being shut down. The short-term implication is that those critical of the reform and actors most likely to watchdog its implementation are effectively silenced as women's and human rights NGOs are being shut down and activists are forced into exile. According to activists, the 2015 reform has several limitations. While rape and *zina* are now clearly differentiated, it is still unclear what constitutes evidence for rape (Salah 2015). The Evidence Act of 1994 only provides judges with what constitutes evidence for *zina*, not rape. What constitutes evidence for rape, therefore, remains at the discretion of the judge. Since Sharia remains a source of law according to the 2005 Constitution, judges may still require evidence for *zina* in rape cases, as the 1994 Act does not specify otherwise. The long-term implication is that it weakens an emerging independent women's movement and thereby, the government will face fewer demands for legal reform within the field of women's equal rights. A strong and independent women's movement is crucial in successfully pushing for legal changes in women's rights in general and violence against women in particular. While legal reforms might still materialize, they will be safely based within the state's Islamist ideology aimed at gender equity and complementarity between the sexes.

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