

# **Sudan's Revised Penal Code: A Mixed Picture for Women**

**Women Living Under Muslim Laws**

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In February this year, Sudan made amendments to its controversial Shari'a-based penal code which included changes to the law pertaining to the crime of rape. These amendments were reviewed by WLUMML networkers working at the forefront of women's rights work in Sudan, including those involved in the struggle to change the Penal Code.

How the new law will affect women's lives remains somewhat unclear. Here we set out the context and history of the laws surrounding rape in Sudan, the activism of women's organisations on this issue, and the pros and cons of the recent legal changes.

### The context—the legal conflation of rape with *zina*

- Sudan's 1991 Penal Code, passed by Omar Al-Bashir's government, contains a number of articles that curb women's enjoyment of their fundamental rights.
- Article 149 of the Penal Code has been of particular concern to women's rights campaigners. Up until the recent changes, Article 149 set out rape as a crime, but described it as a form of *zina* (sex outside of marriage) in which the woman has not consented.
- Because of this, a woman who had been raped could be tried for the crime of *zina* if she was unable to "prove" her lack of consent.
- There are many reasons a woman would seem unable to prove her lack of consent, such as a lack of witnesses, as the legislation states that a woman needs four male witnesses to prove that this act was "without consent"
- The gender bias of both the court system and society, along with the general climate of immunity towards perpetrators, stack the odds against the acceptance of a woman's testimony.
- Rape has been used as a weapon of war in Darfur. Officials, including police and security officers, have had conditional immunity granted to them, which has made justice for those women raped in conflict especially hard to achieve.
- The penalty for *zina* is 100 lashes for an unmarried woman, and death by stoning for a married woman. A stoning sentence has not yet been implemented, although two such sentences were given to two women in 2012. Both, however, were overturned after appeal.
- On paper, the penalties for crimes of *zina* are the same for men and women. However, men are targeted much less than women and also tend to have more success in when dismissing accusations.
- For victims of rape, the complicated nature of Article 149 has meant that court cases become a long and drawn-out process. By the end of the proceedings, the woman's case is likely to become public knowledge and hence a source of high stigma, regardless of whether or not the rape has been proven.

## The resistance—Sudanese and international women’s organisations’ work on rape and Article 149

International organisations and members of the Sudanese women’s movement have been campaigning for change in the law that conflates rape with *zina* for over a decade. The extreme levels of sexual violence during the conflict in Darfur since 2003 have acted as a catalyst for women’s mobilisations for justice for survivors of sexual violence.

In 2008 and 2009, Khartoum-based Salmmah Women’s Resource Centre embarked on a joint programme with Women Living Under Muslim Laws (WLUML), with the support of Refugees International, to address laws related to adultery and rape in Sudan. WLUML helped link the Sudanese campaigners with civil society and legal experts from Pakistan who had worked on a similar advocacy initiative, one that had led to the reform of Pakistan’s Hudood Ordinances. In late 2009, a national coalition of activists was formed under the name “Alliance of 149” to work on the matter.

The coalition went on to convene women from Senegal, Nigeria, Mauritania, Morocco, Pakistan, and around 60 Sudanese activists, all working on similar issues. In 2010, the coalition announced their campaign by publishing their [demands for reform](#). The campaign made many strides: it opened a dialogue between Sudanese women’s organisations and legislators, it made alliances with government figures to promote the need to reform Article 149, it conducted successful grassroots awareness raising activities, and it gained favourable coverage in the media.

WLUML also undertook joint actions with Salmmah and another organisation Aid Centre for Advice and Legal Advocacy (ACAL) in response to a number of cases of women being sentenced to death by stoning for alleged *zina* crimes in Sudan. Two examples of such cases are [Layla Ibrahim Issa](#) and [Intisar Sharif Abdallah](#).

Through its activities under the consortia programme [WELDD](#), WLUML continued to support activists pushing to reform the rape law. WELDD also supported representatives from Salmmah and ACAL, training them at workshops on political participation and on engaging with UN mechanisms, geared towards international advocacy on the rape law issue. Under the same programme, WLUML supported Salmmah and their local ally Mutawinat to campaign for reform of the rape law through a project titled “Adultery: the Unjust Laws Project”. However, this project had to be put on hold in June 2014, with the [sudden closure](#) of Salmmah by the Sudanese government. The Sudanese authorities gave no good reasons for the closure; women’s rights groups in Sudan tend to believe that it came in response to Salmmah’s high profile work against the Penal Code.

## The recent amendments: a mixed picture

We welcome the news of the amendments to the law on rape. However, other changes to the law, along with the broader political background against which they are set, complicate our forecasts of how these changes will affect women's lives.

### Pros

- The amendment expands and clarifies the definition of rape, classifying it as a penetrative sexual act involving physical or psychological force.
- The amendment distinctly separates the crime of rape from the crimes of *zina* (sex outside of marriage), thus reducing the risk of women being accused of *zina* when they report rape.
- It is possible that the added clarity will also help conclude cases more quickly, sparing women some of the added trauma and stigma that can arise from the judicial process.
- These factors may make it more likely that women who have been raped will report the crime and take the perpetrator to court. This in turn holds promise for breaking a climate of impunity for perpetrators.

### Cons and complications

#### *Viewing the rape law in its broader context*

The positive aspects of the new law on rape will only have meaningful effect if they are accompanied by other changes in the social and political environment. For example, without proper legal aid, it is unlikely that women will even be able to take their cases to court.

Moreover, awareness-raising and gender sensitisation programmes on rape and sexual violence are needed. These are necessary for women to know their rights and the legal avenues available for them to demand them, and to sensitise men to the seriousness of rape. Such programmes require adequate funding to be effective.

Perhaps most importantly, awareness-raising programmes can only operate if the Sudanese government honours basic civil liberties and allows women's organisations to operate without hindrance or intimidation. The current situation in Sudan is characterised by a [clampdown](#) on human and women's rights organisations, as shown by the sudden closure of Salmmah. An increase in civil liberties in Sudan is desperately needed.

#### *Other problematic amendments*

The changes to the rape clause of the Penal Code might be welcome, but other legal changes that also came in February 2015 actually pose a threat to women's rights and freedoms.

Firstly, Article 126 (apostasy) has been amended to be even more brutal, as it now broadens the definition of apostasy to include anyone who questions the credibility of the Qur'an, the Sahaba (companions of the Prophet Mohamed), or the wives of the Prophet. Similarly, the definitions in Article 125 (insulting religions) have also been broadened, and the punishment has been increased. These changes further threaten the rights of non-Muslims and apostates, but also of those with differing interpretations of Islam such as Sufis, Shi'as, reformists, or secularists. The case of Mariam Yahia, a Christian woman accused of apostasy and then sentenced to death in 2014, highlights the grave risk the apostasy laws already pose to minorities and women in Sudan.

Secondly, a new article has been introduced outlining sexual harassment as a crime. This might appear to be a triumph for women, but in fact the opposite appears to be true. According to a translation by a Sudanese civil society organisation, the article describes the crime of sexual harassment in the following way:

“A person who commits sexual harassment is anyone who carries out an act, a speech or behaviour that is a temptation or an invitation for someone else to practice illegitimate sex, or conducts horrendous or inappropriate behaviour of sexual nature that harms a person psychologically, or makes them feel unsafe. This person will be sentenced to a period of no more than three years and lashing.”

Apart from being extremely vague, the article is essentially still concerned with policing morality rather than protecting women’s rights and freedom in public spaces. The most worrying aspect is that the language of “temptation” suggests that the article could easily be used to further police women’s dress choices and behaviour in public, and hence lead to even more victim-blaming when women are attacked.

### **Related Links:**

[New Amendments to Sudanese Criminal Law, Walaa Salah, Open Democracy, April 2015](#)

[Statement of demands for reform of rape law by “Alliance of 149”, January 2010”](#)

[Sudan changes law that left rape victims punished for adultery, Thomson Reuters, April 2015](#)

[Pregnant teenager alleging gang-rape charged with adultery in Sudan, The Guardian, February 2014](#)

[Laws Without Justice: An Assessment of Sudanese Laws Affecting Survivors of Rape, Refugees International, 2007](#)

[“The silence and the denials” – UN rights expert calls for open dialogue on violence against women in the Sudan, May 2015](#)

[Special Rapporteur on violence against women, end of mission statement for Sudan, May 2015](#)

[WLUML condemns the shutdown of Sudan’s Salmmah Women’s Resource Centre, June 2014](#)

[Interview with Fahima Hashim of Salmmah Women’s Resource Centre](#)

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