

LAWS WITHOUT JUSTICE



AN ASSESSMENT
OF SUDANESE
LAWS AFFECTING
SURVIVORS
OF RAPE

ACKNOWLEDGEMENTS

Refugees International (RI) would like to thank the Save Darfur Coalition for its financial support of this report. We would also like to thank Governor Bill Richardson of New Mexico for raising the issue of rape with Sudanese President Omer Al-Bashir when he visited Sudan in January 2007.

Most of all, RI would like to thank the dedicated Sudanese advocates who work on behalf of women in Darfur, and who generously shared their time and expertise during our research.

ABOUT REFUGEES INTERNATIONAL

Refugees International generates lifesaving humanitarian assistance and protection for displaced people around the world and works to end the conditions that create displacement. Based on our on-the-ground knowledge of key humanitarian emergencies, Refugees International successfully pressures governments, international agencies and nongovernmental organizations to improve conditions for displaced people.

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Cover photo: This young girl from North Darfur was attacked by Janjaweed in 2004 and branded on the arm. This report, which is dedicated to the women of Darfur, is intended to help ongoing efforts inside Sudan to reform rape laws and bring justice to the many survivors of sexual violence in Darfur.

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A NOTE ABOUT THIS REPORT:

This report resulted from the express invitation of the Government of Sudan, conveyed after meetings between President Omer Al-Bashir, a representative from the Ministry of Justice and New Mexico Governor Bill Richardson. Richardson was visiting Sudan with the support of the Save Darfur Coalition in early January 2007 and was accompanied by a delegation that included Refugees International President Ken Bacon. After discussing the issue of rape in Darfur, the Government invited the delegation to organize and dispatch an expert team to analyze the Government's purported efforts to protect Sudanese women from sexual violence and to make recommendations for improvement.

Pursuant to this invitation, a team from Refugees International (RI) traveled to Sudan in March 2007. Upon arrival, however, the government refused to give the team permission to travel to Darfur. Eight days into the mission, officials from the Voluntary Organizations Department of the National Security Bureau informed the RI team that the mission could not continue due to the lack of an official invitation from Khartoum and its international representative had to leave the country within twenty-four hours.

Prior to the government's order to end the mission, the RI team interviewed a wide variety of persons with knowledge of Sudan's laws relating to sexual violence and their implementation. This report draws upon these interviews and other research to assess the legal problems facing Sudanese survivors of rape.

<p>The goal of this report...is to help focus attention on laws and procedures that must be changed.</p>	<p>EXECUTIVE SUMMARY</p> <p>Mass rape, often perpetrated by members of the Sudanese armed forces and affiliated militias, is endemic in the Darfur region of Sudan. Government officials deny that rape is an integral part of violence in Darfur and assert that Sudan aggressively punishes rape. In fact, rape victims suffer from an almost complete lack of access to justice, and the Government is more likely to take action against those who report and document rape than those who commit it.</p> <p>The high incidence of sexual violence¹ in Darfur has been well documented. The inadequacies of Sudan's laws, regulations, customs and courts for dealing with rape have received less scrutiny. Yet the response to rape cannot be improved until the laws are rewritten.</p> <p>The goal of this report, which is based on an analysis of Sudanese law and extensive interviews in Khartoum, is to help focus attention on laws and procedures that must be changed. Refugees International continues to call on the U.S. to implement tougher policies against the Government of Sudan, including stricter sanctions, to end the violence and rape in Darfur.</p> <p>The analysis by Refugees International concluded that:</p> <p>1. Sudan's laws governing rape expose victims to further abuse.</p> <ul style="list-style-type: none"> • Rape is defined as the offense of <i>zina</i> -- intercourse between a man and a woman who are not married to one another -- that is performed without consent. Where a woman is unable to prove that she did not consent to such intercourse, she becomes at risk for being charged with the crime of <i>zina</i> because she has confessed to sexual penetration outside of marriage. • Unmarried women convicted of <i>zina</i> receive one hundred lashes and married women are sentence to death by stoning. In February and March of 2007, two women were sentenced to death by stoning for committing adultery. • In prosecutions for rape, many judges require the sexual act to have been witnessed by four competent men, verification that is all but impossible to obtain. Others will accept the testimony of a man who swears on the Qur'an that he did not commit rape, but will not accept contrary testimony from a woman that she was indeed raped. <p>2. Prosecution of rape is often functionally impossible because Sudan grants immunity to individuals with government affiliations.</p> <ul style="list-style-type: none"> • Legal action cannot be taken against members of the military, security services, police, and border guards and immunity may only be lifted by the individual's superior officer. • Many members of the Janjaweed are integrated into the Popular Defense Forces, which is also exempt from prosecution. <p>3. In the climate of fear and suspicion that prevails in Darfur, many survivors do not access medical, legal, and psychosocial services offered by legitimate national and international non-governmental organizations (NGOs).</p> <ul style="list-style-type: none"> • The Government of Sudan closely regulates NGOs through the Humanitarian Aid Commission and uses rules related to their staffing and operation to infiltrate otherwise independent organizations. Many victims are deeply suspicious of such organizations and are therefore reluctant to report rapes or pursue legal remedies through them.
<p>i</p>	<p>LAWS WITHOUT JUSTICE: AN ASSESSMENT OF SUDANESE LAWS AFFECTING SURVIVORS OF RAPE</p>

<ul style="list-style-type: none"> Survivors' hesitancy is accentuated by the regime's creation of pseudo-NGOs that outwardly appear committed to human rights but in actuality are fronts for the Government. Further, NGO workers are often subject to threats and intimidation, ranging from threatening phone calls to physical assault. <p>4. Medical services for rape victims are entangled with governmental documentation requirements.</p> <ul style="list-style-type: none"> Initially, rape victims were required to file a document known as Form 8, which lists evidence of a serious violent crime, before they could legally receive medical treatment. Under pressure from the international community, the national Government and then the Governor of South Darfur issued decrees that allowed victims of rape to receive treatment without first completing the form. The victims remained obligated to complete the form after being treated if they wanted to file a legal claim. Despite this modest improvement, Form 8 remains a serious problem because of confusion surrounding its use and value in criminal prosecutions. The form suffers from important deficiencies as a means for documenting evidence of rape and it is unclear whether other forms of medical documentation may be acceptable in court. In addition, doctors who provide medical treatment to raped women continue to face harassment and intimidation. <p>5. Women with little or no education need assistance to file claims with the police, which is often not available.</p> <ul style="list-style-type: none"> The police are frequently unhelpful, poorly trained in handling sexual violence, and verbally abusive. Even when a rape victim presents a completed Form 8, she is often unable to convince the police to open a criminal file against the perpetrator. The lack of security in Darfur also means that women expose themselves to further sexual violence by traveling to the nearest police station. <p>Rape is viewed as a serious stigma in Darfur. As a result, Darfuri women are extremely reluctant to report they have been raped. Sudanese NGOs working within the camps have implemented valuable education programs that help these communities to cope with the problem of mass rape and international NGOs must continue to work with local women's groups on these programs.</p> <p>It is vital to note that there is nothing inherently Islamic about the way Sudan's rape law is constructed. Pakistan, a country that imposes Islamic law, changed its rape law in 2006, allowing rape to be considered a crime distinct from <i>zina</i>. Similarly, in 2006 the Republic of the Maldives took steps to reform its laws to comply with international norms.</p> <p>Refugees International recommends that the Government of Sudan take similar steps and carry out legal reforms that allow victims of sexual abuse to access justice. In addition, the hybrid peacekeeping force of the African Union Mission in Sudan and the UN must adopt a mandate that protects women and girls in Darfur and allocate sufficient resources and training to deal with survivors of gender-based violence.</p> <p>In Sudan today civil society organizations and even some judges are calling for rape law reform and improvements in legal remedies for rape victims. This study, which is dedicated to the women of Darfur, is intended to help those efforts.</p>	<p>Sudanese NGOs... help these communities to cope with the problem of mass rape and international NGOs must continue to work with local women's groups on these programs.</p>
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I. INTRODUCTION

Rape on a mass scale is one of the hallmarks of the conflict in the Darfur region of Sudan. Compounding the terrible physical and psychological trauma is an almost complete lack of access to justice for victims. There is a manifest absence of political will to prosecute or investigate rape on the part of the government of Sudan, which almost invariably uses immunity laws to shield government-affiliated alleged perpetrators from prosecution.

This climate of impunity is matched by fundamental flaws in the legal system, which labors under an inadequate definition of rape, unclear and deficient evidentiary standards, and a system of justice that perversely forces victims to expose themselves to a real risk of prosecution for crimes relating to sexual morality. Furthermore, although the government has gestured at reform of policies affecting access to medical treatment, both rape victims and medical service providers remain at risk of harassment by the authorities. The government further obstructs victims' access to essential services through onerous laws regulating non-governmental organizations (NGOs) and frequent intimidation of their members.

The inadequacy of Sudan's rape laws can only fully be understood in the context of the prolonged armed conflict in the Darfur region. In 2003, rebel movements organized along tribal lines rebelled against the Arab-dominated central government in Khartoum

to protest longstanding economic, social and political marginalization. The government responded with massive violence targeted not only against the rebel military forces, but also against the tribal groups perceived as supporting them. In this campaign, the government has made extensive use of irregular forces, often referred to as Janjaweed, drawn primarily from nomadic Arab groups in Darfur, and now integrated into the "Popular Defense Forces."² Frequently operating in concert, the Sudanese military and Janjaweed have systematically destroyed villages and harmed or killed their inhabitants.

An important aspect of the pattern of attack has been the mass rape of women and girls. It is impossible to provide accurate numbers of rape victims, because of the Government of Sudan's practice of harassing and even detaining members of organizations that try to report such statistics. In this hostile climate, few survivors are willing to come forward to report the trauma. Many survivors of these attacks have moved into camps for internally displaced people (IDPs), yet women remain at risk even in the camps. When they leave their confines to seek firewood or other sources of income, women and girls are often attacked and subjected to sexual violence.

Refugees International and other organizations have been vigilant in advocating for the rights of women and girls in IDP camps to be safe from sexual violence and to have access to justice when sexual violence occurs.

African Union peacekeepers begin a daily patrol in South Darfur. The AU has struggled to protect displaced women from attack largely due to a lack of resources and equipment.

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II. THE CIRCUMSTANCES OF RAPE IN DARFUR

Rape is an integral part of the pattern of violence that the government of Sudan is inflicting upon the targeted ethnic groups in Darfur. The raping of Darfuri women is not sporadic or random, but is inexorably linked to the systematic destruction of their communities. The perpetrators of rape, who frequently are members of the armed forces and affiliated militias, often claim the government supports them in their campaign of rape.³ During the rapes, perpetrators not only beat their victims, they also taunt them with racial slurs and statements related to rape, such as “I will give you a light-skinned baby to take this land from you.”⁴ These rapes are part of a calculated plan to humiliate women and their communities, including forced impregnation, the ultimate goal of which is to achieve ethnic cleansing in the region.

The rapes are also targeted to humiliate the entire community, since, as an observer working closely with raped women in the camps noted, “In this society, if you rape one woman, you have raped the entire tribe.” One Sudanese human rights activist summed up the problem of rape in Darfur by saying, “Gender-based violence is a political issue....Certain racial groups are being targeted for rape; how can that be anything but political?” Another activist put it this way, “The war in Darfur is centered on identity, and rape is being used as a weapon of war in the struggle for the identity of the region. Women have a very important role in Darfur’s culture, and rape destroys not only a woman but her tribe.”

The first mass rapes were part of the pattern of attacks on villages by the Sudanese military and Janjaweed. After a village was bombed and shelled, the government forces entered the villages and separated women and girls from the males. The women and girls were then gang raped and subjected to brutal physical and verbal abuse.

The pattern of rape, however, has been changing. The systematic destruction of

Darfuri villages has caused survivors to congregate in IDP camps, and this demographic shift has affected the circumstances in which rapes often occur. Sudanese government forces and militias patrol the margins of the camps; as a result, men and boys who attempt to travel outside the camps are at risk of being kidnapped or killed. To prevent this from happening, women and girls, who believe they are less likely to be murdered by marauding Janjaweed and instead “only” raped, often take on duties, such as collecting firewood or searching for unskilled work in nearby towns, which require them to leave the confines of the camps. During such forays, the women and girls are frequently targets for rape. As a human rights worker explained, “The women can leave the camps because they will only rape, not kill, them. Sometimes they don’t rape the older women, they just beat them.”

Although the African Union Mission in Sudan (AMIS) has been providing intermittent “firewood patrols,” in which AU troops and Sudanese police patrol in areas where women search for firewood, Sudanese activists are deeply critical of the efficacy and sustainability of this effort as presently constituted. The director of an organization dedicated to improving women’s rights observed that in one camp, where AU troops provided patrols only on certain days, women were attacked even more fiercely on the days the AU was not present, in retaliation for the patrols. “The response to the irregular patrolling has been to make the attacks worse, as if [the Janjaweed] are saying to the women, ‘You want to show us you’re protected by the AU, but nobody can protect you,’” she noted. “The AU doesn’t have the resources to be present in all the places they need to be, and their mandate is too weak to provide real protection.”

The director of a network providing direct services in the camps said, “Even where the [AU] firewood patrols are present, there are not enough resources, in terms of men, guns, and petrol, for them to really protect the women. They also don’t have the

The perpetrators of rape, who frequently are members of the armed forces and affiliated militias, often claim the government supports them in their campaign of rape.

<p style="text-align: center;">As recently as March 2007, President Al-Bashir categorically denied that rape has ever been a problem in Darfur.</p>	<p>necessary expertise in dealing with violence against women to be effective escorts.” Another observer noted that problems have occurred because women expect that AU escorts will actively protect them from violence by following them while they collect firewood and food, but that often the AU troops think they are only supposed to park their truck near the site where the women are working. The result is a lack of trust in AU forces by women who feel they are not committed to protecting them. As armed attacks against AU forces increase, the uncertainty around the AU mandate to provide protection for women will intensify.⁵</p> <p>In addition, Darfuri women in IDP camps are increasingly facing a new threat: domestic violence, including gender-based violence. This disturbing development is a product of the shattering of Darfur’s traditional social structure. The result has been an increase in domestic violence. Additionally, there are reports that women are now at risk of rape within the camps, which are increasingly insecure, from outsiders or extended family members who are passing through. In this way women living in camps are subjected to rape in their communities in addition to the ever-present threat of rape as a war crime.</p> <p style="text-align: center;">III. THE GOVERNMENT’S DENIAL OF RAPE</p> <p>Despite overwhelming documentation of mass rape in Darfur, the government of Sudan’s response has been characterized by outright denial and efforts to repress reporting on the problem. When faced with international opposition, the government has created bodies ostensibly to address gender-based violence, but they have had no appreciable impact.⁶ The government’s creation of an office to combat violence against women, for example, is unfortunately not proof that it is taking it seriously. “The Violence Against Women and Children Unit [created within the Ministry of Justice] has nothing to do with combating gender-based violence,” a prominent activist stated.</p> <p>Continuing, the activist reported that the head of the unit has claimed she “doesn’t believe GBV exists” and is “the main lobbyist against CEDAW [the Convention on the Elimination of All Forms of Discrimination Against Women] within the Sudanese Government.” A member of a UN team said, “After the Government started the State Committees on Rape, I refused to attend the meetings. I knew that they were for show and only to waste time. The HAC [Humanitarian Aid Commission, a government entity charged with regulating humanitarian activities] controls them and tries to use them to find out what we [UN employees] are doing in the field.” In fact, many advocates believe the Government uses such entities as a means to infiltrate the advocacy community and to try to control attempts to provide services and protection to victims. The Government’s refusal to take effective action is not surprising, since, as noted above, the Government’s own forces are among the worst offenders.</p> <p>As recently as March 2007, President Al-Bashir categorically denied that rape has ever been a problem in Darfur. In interviews on NBC Nightly News and the Today Show, he declared that “It is not in the Sudanese culture or in the culture of the people of Darfur to rape. It doesn’t exist.”⁷ In addition to denying the occurrence of rape, the Sudanese government has a history of punishing those who document rape, as in the case of two senior members of Médecins Sans Frontières, who were arrested after a briefing paper presented findings of 500 rape victims in West and South Darfur based on the relief organization’s medical work over a four and a half month period.⁸ While the senior MSF staff members were ultimately released in the face of international pressure, human rights workers report that the incident has had a chilling effect on the willingness of NGOs to document rape and advocate for justice for rape victims.</p> <p>During meetings with Governor Richardson and the Save Darfur Coalition, President</p>
<p style="text-align: center;">3</p>	<p style="text-align: center;">LAWS WITHOUT JUSTICE: AN ASSESSMENT OF SUDANESE LAWS AFFECTING SURVIVORS OF RAPE</p>



Two women return home after collecting firewood for their cookstoves. When women and girls leave the camps for such forays, they are frequently targets for rape.

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Al-Bashir responded to queries about the rapes in Darfur by asking a representative from the Ministry of Justice to present findings on sexual violence and the criminal justice system in Darfur to the delegation. During the presentation, members of the Government stated that because of the ongoing conflict in Darfur, women are afraid to approach the Government, including the police and the legal system, and that investigating reported rapes was too difficult. The Government said they instead rely on the various UN agencies in the field to conduct investigations into reported sexual violence. Where sufficient evidence exists the Government then purports to allow the victim to bring a case through an attorney, almost always provided through a Legal Aid-appointed lawyer funded by the United Nations Development Program Rule of Law program.⁹

Despite this explanation by the Government, the relevant UN agencies were unaware that the Sudanese Government relies on them to carry out rape investigations and to bring such matters to the attention of the authorities. In fact, a UN employee with experience working on sexual violence said in response to the Government's statement, "It is not

true that the people don't bring rape cases because they are afraid of the war. People don't pursue their claims because the Government doesn't allow them to, and because it harasses them and intimidates them."

The recurring theme in the Government's response to rape in Darfur is denial of the problem and its scope. One Sudanese human rights activist noted what she characterized as the Sudanese Government's "ongoing resentment" of the focus on rape and other forms of gender-based violence in Darfur, saying "The Government denies that GBV is happening; they do not want it brought up or questioned. This is, in part, because they don't think it is worth bringing up, because issues related to women and sexual violence are marginal." A psychologist who provides psychosocial services for women in an IDP camp and trains the community to support rape victims, sums up the response to the Government's claims that current legal and social mechanisms are adequate to deal with the problem of rape: "I laughed when I saw the Government statistics for last year of seven rapes," noting there were many more rapes during that period in her camp alone.

<p style="text-align: center;">...even when women would be otherwise willing to report their assaults, important structural impediments impact their ability and willingness to do so.</p>	<p style="text-align: center;">IV. OBSTACLES TO REPORTING RAPE</p> <p>Rape is among the most underreported violent crimes in many societies.¹⁰ Rape is viewed as a serious stigma by many in Darfur; as a result, Darfuri women, like most women from conservative cultures, are often extremely reluctant to report they have been raped. Sudanese NGOs working within the camps have implemented valuable education and awareness programs that are helping these communities to cope with the problem of mass rape, but even when women would be otherwise willing to report their assaults, important structural impediments impact their ability and willingness to do so.</p> <p>One such problem concerns the entanglement of medical services for rape victims with criminal procedure documentation requirements. Article 48(1)(c) of the Criminal Procedure Act of 1991 is designed to make sure the police collect all standard evidence during their investigations. In cases involving death or severe bodily injury the law requires the police to “take the necessary steps to call a competent physician to examine the body or the injured person” and to transport the injured person to the nearest hospital. The law requires police to provide all seriously injured persons, including rape victims, with a document called a “Form 8” in order to record the findings of the medical examination, and to serve as evidence. When widespread rape first became a major problem in Darfur, rape victims were required by law to fill out and file Form 8 at the police station before they could legally receive medical treatment.¹¹ Doctors who treated rape victims before they had filed a Form 8 faced arrest or harassment.¹²</p> <p>In the face of pressure from the international community, including Refugees International, the Minister of Justice issued a circular on August 11, 2004 (Criminal Circular 1/2004) that referenced the conflict in Darfur and stated that where urgently needed, medical treatment can be provided prior to completing a Form 8.¹³ A later circular in December 2004 (Criminal Circular 2/2004) elaborates on the procedures to be followed.¹⁴ The Governor of South Darfur then issued a statement that victims of rape should be allowed to receive treatment without first completing the form, though the victim remained obligated to complete the form after being treated if pursuing a legal claim.¹⁵ Thus, certain authorized clinics may provide copies of the government-issued form to patients to be verified and stamped at a National Hospital at a later date.</p> <p>Despite this modest improvement, Form 8 remains a serious problem because of ongoing confusion surrounding its use and value in criminal prosecutions. First, the form suffers from important deficiencies as a means for documenting evidence of rape: it records only limited information, such as whether there has been a recent loss of virginity, bleeding, or presence of sperm and it does not provide for a comprehensive medical report.¹⁶ Yet, under Sudanese law, Form 8 takes the place of medical documentation for purposes of criminal prosecutions.¹⁷ A physician familiar with rape-related issues said, “The law needs to be changed so that medical tests and reports can be admissible as evidence without the Form 8, which doesn’t provide a lot of documentation about the rape.”¹⁸</p> <p>A closely related problem is that the forensic procedures for documenting rape fall far short of international best practices; no protocols have been implemented for collecting and identifying biological material such as semen, and even when such samples are obtained, the only laboratories capable of performing DNA analysis are in the capital city of Khartoum.¹⁹ Moreover, if a woman has waited several days before seeking treatment or has filed a claim without having received treatment, there will be limited medical evidence to substantiate her claims.</p> <p>In the current political climate, medical professionals are unsure if they are supposed to determine rape has occurred (as opposed to simply describing a rape victim’s medical condition). For instance, a physician with extensive experience treating rape victims in</p>
<p>5</p>	<p style="text-align: center;">LAWS WITHOUT JUSTICE: AN ASSESSMENT OF SUDANESE LAWS AFFECTING SURVIVORS OF RAPE</p>

<p>Darfur reported that “With the current law, doctors are supposed to fill out a Form 8, but it isn’t clear how much information we are supposed to provide or whether we are supposed to determine whether a woman was raped.” This confusion is compounded by the fact that law enforcement officials have rejected rape charges on the basis that insufficient medical evidence was recorded on the Form 8.²⁰ Nor is it clear whether a physician may legally provide emergency contraception or terminate a pregnancy for a rape victim.</p> <p>Doctors and health personnel who provide medical treatment to raped women also face harassment and intimidation. One physician explained that, given the regime’s suppression of the problem of rape in Darfur, “Doctors are scared to mention [on a Form 8] that a woman’s injuries are consistent with rape because we have no protection from National Security.”²¹</p> <p>Important socioeconomic factors also cause raped women to be reluctant to file claims, even when their community would support them. The overwhelming majority of internally displaced women comes from rural backgrounds and has little or no education. As a result, they need assistance filing claims with the police, which is often lacking. This problem is compounded by the fact that human rights workers report that the police are frequently unhelpful, poorly trained in handling gender-based violence, and verbally abusive. Even when a rape victim presents the police with a completed Form 8, human rights workers report that women are often unable to convince the police to open a criminal file against the perpetrator. Although the police claim they cannot investigate reported rapes, this is denied by many advocates working in Darfur. The general reluctance of women to report rape is also compounded by the perception among the displaced that the Government is behind the attacks. As noted above, their perception is often accurate, given the high incidence of rape reportedly perpetrated by Sudanese government forces.</p> <p>Since raped women know how few perpetrators are brought to justice and that victims themselves can be accused of illegal sexual activity, there are few incentives to pursue justice and powerful disincentives to speak out.²² The lack of security in Darfur means that women expose themselves to further sexual violence by traveling to the nearest police station. Because of the time and effort involved in filing official reports and legal claims, which often involves traveling long distances on foot at great personal risk, there are major social and economic costs for women who choose to pursue redress. Time and energy spent preparing for a legal proceeding necessarily reduces the amount of time a woman can pursue income-generating activities.</p> <p>V. FLAWS IN SUDAN’S LAWS GOVERNING RAPE</p> <p>Sudan’s laws governing rape suffer from significant infirmities that contribute to a denial of access to justice. As one practicing human rights attorney said, “The problem in Darfur is that the criminal system is not capable of bringing [rapists] to justice. The police and the judiciary have issues, but they are not the main problem. The law itself is the main problem.”</p> <p>As an initial matter, the rape laws expose the victim to potentially devastating consequences by intertwining the law of adultery with rape. Articles 145-160 of the Criminal Code codify Islamic jurisprudence regarding crimes of sexual immorality. Rape is defined in Article 149 as the offense of <i>zina</i>—often translated as “adultery,” but more precisely meaning intercourse between a man and a woman who are not married to one another—that is performed without consent.²³ The relevant clause states: “There shall be deemed to commit the offence of rape, whoever conducts sexual intercourse outside of marriage or sodomy [<i>zina</i>] with any person without his or her consent.”²⁴</p> <p>Defining rape as <i>zina</i> without consent has potentially dire repercussions for a woman</p>	<p>Rape is defined... as the offense of <i>zina</i>—intercourse between a man and a woman who are not married to one another—that is performed without consent.</p>
<p>WWW.REFUGEESINTERNATIONAL.ORG</p>	<p>6</p>

alleging she has been raped. Proving rape requires the rape victim to admit that she was subject to sexual penetration outside of marriage. Where a woman is unable to prove that she did not consent to such intercourse, she becomes at risk for being charged with the crime of *zina* because she has confessed to sexual penetration outside of marriage.

Rape victims have strong reasons not to subject themselves to even the possibility of being charged with *zina* since the penalties for this crime are extraordinarily harsh. Unmarried women convicted of *zina* receive one hundred lashes; married women are sentenced to death by stoning.²⁵ Such sentences are not merely theoretical, but a very real possibility. For instance, on February 13, 2007, a court sentenced a twenty-two year old Darfuri woman to death by stoning for committing adultery. On March 6, 2007, a second Darfuri woman, age twenty-three, also charged with adultery, received the same sentence.²⁶

Lawyers and other activists working with victims of sexual violence stress the negative impact of the law's conflation of rape and adultery. As noted by one person familiar with the challenges of rape prosecutions, "The problem with article 149 is that the definition of rape and adultery are up to the person trying the case. In several cases raped women were then charged with adultery." As a result, according to this expert, "The definitions of rape and adultery need to be separated from one another."

Defining rape in terms of *zina* also often creates insurmountable evidentiary obstacles. *Zina* is one of the hudud crimes under Islamic law, i.e., a crime designated in the Qur'an and thus especially serious and requiring a heightened standard of proof. Article 62 of the Evidence Law of 1994 (Law No. 31 of 1994) provides the evidentiary requirements for establishing rape.²⁷ The law reflects the Qur'anic requirement that a conviction for *zina* requires the sexual act to have been witnessed by four competent men (Qur'an 24:4).²⁸ It is all but impossible to obtain four male witnesses to testify on behalf of a rape victim. As a result, where the judge imposes this evidentiary requirement, a prosecution for rape has essentially no chance of success. This evidentiary requirement is subject to frequent complaints. An established 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."

Although some judges do not impose this next-to-impossible standard of proof, even the more flexible courts often employ flawed and discriminatory means of weighing evidence when determining whether intercourse was consensual. For example, many judges will accept the testimony of a man who swears on the Qur'an that he did

These four "sheikhas" were elected to represent displaced women in Kalma camp in South Darfur. When attacks increased significantly around the camp, these women leaders led more than 300 women to demand a meeting with the international community to discuss ways to enhance protection.

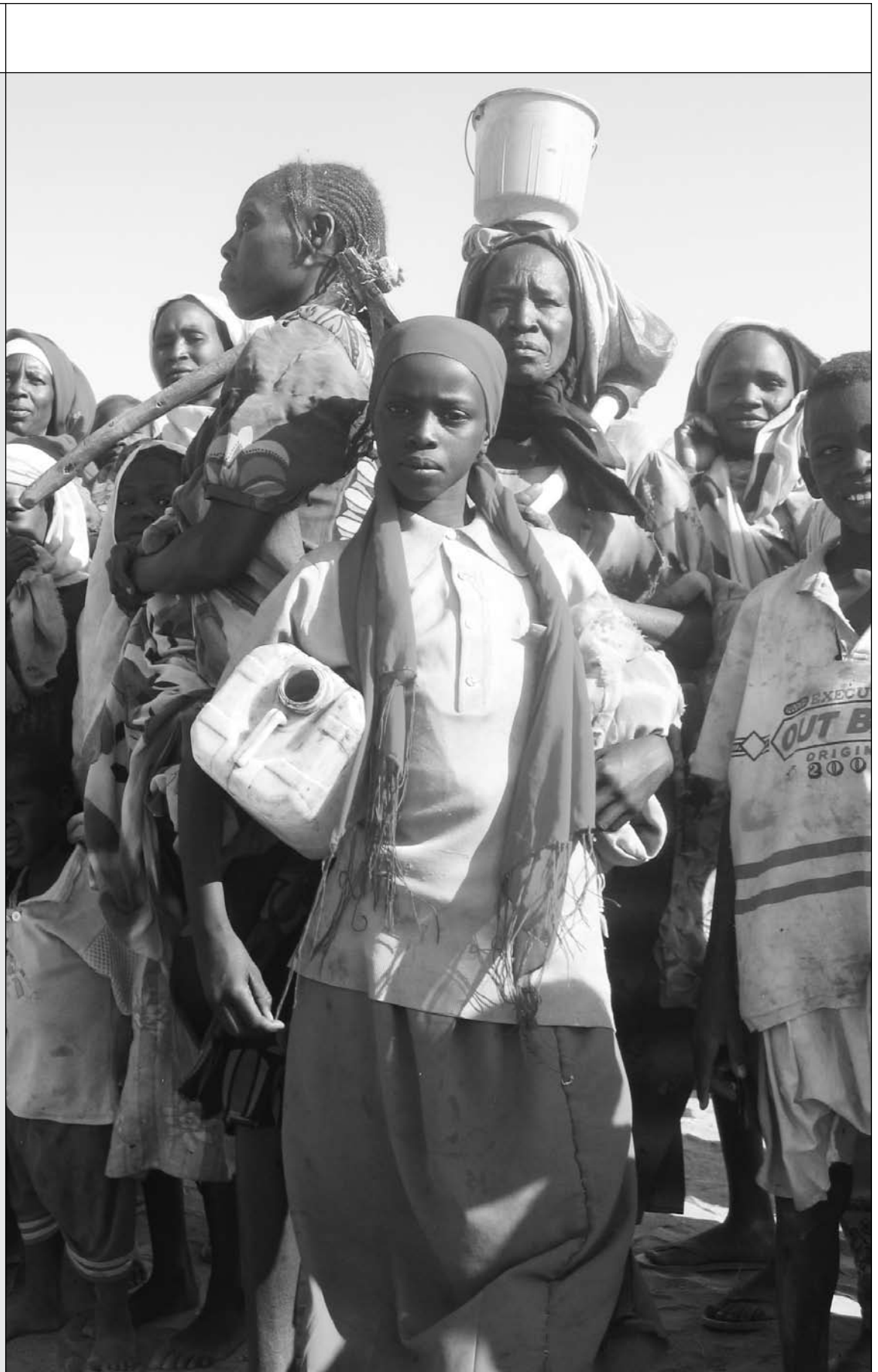
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<p>not commit rape, but will not accept contrary testimony from a woman that she was indeed raped. Moreover, many judges use untrustworthy indicators to decide whether the sex was consensual, such as whether the victim wore underwear. “Judges decide rape cases along their own biases, sometimes judging a woman based on the way she is dressed,” a human rights activist complained. There is also a general lack of sensitivity and understanding of sexual violence, and a prevailing notion that the testimony of women who have survived gender-based violence (GBV) is untrustworthy. For instance, members of the Government are reported to have expressed the belief that women in Darfur are “sexually generous,” and that since sex is “a part of their culture,” rape is not a significant issue.</p> <p>Another major flaw in Sudan’s rape law is that it does not encompass penetration with inanimate objects. Thus, a perpetrator who rapes a woman with a gun barrel would likely be found not guilty under the existing definition of rape. Nor does the definition of rape adequately account for sexual coercion. Although, on occasion, where the elements of rape cannot be proven, the court has found the perpetrator guilty of “Gross Indecency” under article 151, that article does not sufficiently address the weight of sexual and gender-based crimes against women in Darfur. As a politician familiar with the work of Parliament’s Human Rights Committee explained, “Cases aren’t being reported as rapes, because the definition of rape is too hard to meet. Since 2004 the majority of rape cases have been officially reported as incidences of adultery or gross indecency.”</p> <p>The statute of limitations provides an additional impediment. Under the applicable statute of limitations, a rape prosecution must commence within three years of the offense, and there is no provision for this period to be “tolled,” or temporarily suspended. As a result, a rape victim who is unable to file a claim within three years, for any reason -- including the prevailing lack of</p>	<p>security and resources or being in a refugee camp in Chad -- forever loses the right to have her assailant prosecuted. This makes it functionally impossible for many refugees and internally displaced people even to try to seek justice.</p> <p>Many in the legal and human rights communities recognize the need to address the serious deficiencies in Sudan’s rape laws. Sudanese judges themselves have called for reform of the rape law to address, among other things, the problems of defining rape in terms of <i>zina</i> and the corresponding evidentiary problems. The rapes in Darfur have also mobilized many in Sudanese civil society to consider the problems in articles 145-152 of the Criminal Code of 1991. For example, in July 2006 prominent Sudanese NGOs collaborated, with the United Nations Mission in Sudan, in holding a workshop on legal reforms necessary to protect victims of sexual violence.²⁹ The resulting recommendations to the Government included policy matters, such as the adoption of practical measures to prevent rape in Darfur, as well as measures to protect victims of sexual violence; the establishment of a clear policy on sexual violence for judges to follow; training police on human rights and GBV; and the appointment of more women police officers in Darfur to assist victims in reporting rape claims. Recommended legal reforms included adjusting the definition of rape found in the 1991 Criminal Code to avoid confusion with <i>zina</i>; revision of the Evidence Law of 1994; and the adoption of decisive measures to prevent a rape victim from being accused of <i>zina</i> where there is insufficient evidence to establish she was raped.³⁰</p> <p>Although none of these recommendations has been adopted by the Government of Sudan, one promising development is a concept paper on reforms to the rape laws that is being circulated in Parliament which addresses many of these reform proposals. It remains unclear, however, whether the Government will allow formal discussion of the proposed amendments.</p>	<p>[I]n July 2006 prominent Sudanese NGOs collaborated with the United Nations Mission in Sudan in holding a workshop on legal reforms necessary to protect victims of sexual violence.</p>
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Kalma camp, where these women live, is one of Darfur's largest camps, with nearly 90,000 inhabitants. In August 2006, the International Rescue Committee reported that more than 200 women had been sexually assaulted in a five-week period around the camp — an alarming spike in attacks.

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VI. IMMUNITY FOR GOVERNMENT-AFFILIATED PERPETRATORS AND OTHER DEFICIENCIES IN THE LEGAL REGIME

Even where survivors of sexual violence have strong evidence of a perpetrator’s guilt, prosecution is often functionally impossible because Sudan grants immunity to individuals with Government affiliations. This immunity generally only can be waived by the alleged perpetrator’s superior officer, who almost never consents to a waiver. As a result, members of the military, security services, police, border guards, and the Popular Defense Forces (PDF), which includes many members of the Janjaweed, are almost invariably exempt from prosecution.

For instance, Article 33 of the National Security Forces Act (1998) provides that “no civil or criminal proceedings shall be instituted against a member or collaborator for any act connected with the official work of the [National Security] member, save upon approval of the Director.” Article 46 of the Police Forces Act (1999) provides that “no criminal procedure will be taken against any police officer for a crime committed while executing his official duty or as a consequence of those official duties without permission of the Minister of the Interior.” Similarly, the People’s Armed Forces Act (1986) states in Article 8 that when the armed forces are tasked with providing internal security, they shall enjoy the same powers and legal immunity granted to all other internal security forces. Sudan amended this last law by a presidential decree on August 4, 2005, which provides that “There shall not be taken any procedures against any officer, ranker (sic) or soldier who committed an act that may constitute a crime done during or for the reason of the execution of his duties or any lawful order made to him in this capacity and he shall not be tried except by the permission of the General Commander or whoever authorized by him.” This Amendment has been used to shield perpetrators of rape from prosecution since the crime occurred ostensibly “during the

execution of his duties” as a member of the military or the PDF.

Since the majority of the sexual violence occurring in Darfur is perpetrated by members of the armed forces or other Government units, Sudan’s immunity laws create, in all but the rarest cases, an insurmountable obstacle for their prosecution. Human rights workers told of numerous instances where women could provide compelling evidence of a rapist’s guilt but a prosecution could not proceed because of the perpetrator’s immunity. “Even where a woman has very good evidence, it is difficult to convince the military legal advisor to lift immunity and allow the case to go forward,” said a human rights advocate with experience monitoring rape cases. Another human rights worker recounted a case in North Darfur in which two married women and a girl had been raped. Although “there was strong evidence and witnesses,” the “perpetrators belonged to the Border Guard. Even when the Judge ordered the commander to hand over the perpetrators, he refused, saying they were covered by the immunity laws.”³¹ A human rights attorney who follows the issue closely observed that “The decision to lift immunity should not be made by the authorities the alleged perpetrator is working for, because those authorities aren’t neutral. Immunity should be automatically lifted where there is *prima facie* evidence of rape or any other crime.” Some activists note that officers and Janjaweed understand they will never be held to justice for committing sexual violence, and that they take advantage of this impunity, which portends badly for the future of women in Darfur.

Sudanese human rights advocates also cite other serious structural flaws in the judicial system as important obstacles to achieving justice for victims of sexual violence. First, the plethora of different courts creates confusion regarding which court is the correct venue for bringing a claim. In addition to the statutory courts created by the Interim National Constitution, the government has instituted

Since the majority of the sexual violence... is perpetrated by members of the armed forces or other Government units, Sudan’s immunity laws create... an insurmountable obstacle for their prosecution.

Displaced men and women share their concerns with Refugees International about life in their camp in North Darfur. Many women said they wanted more protection from attacks, as well as ways to earn an income.

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by decree various other courts for criminal activities in Darfur. These include the so-called Special Courts established by the Chief Justice in 2001 under the Emergency and Public Safety Act (1997), which were replaced by “Specialized Courts” in 2003. The crimes over which the Specialized Courts have jurisdiction include, among other things, matters “considered a crime by the wali or head of state or head of the judiciary.”³² Further adding to the confusion, on June 7, 2005, the Chief Justice created a Special Criminal Court for the Events in Darfur (SCCED), which has jurisdiction over any act contained in the Sudanese penal code, any charges arising from the National Committee of Inquiry on Darfur, and international humanitarian law. Since the regular statutory courts, the Specialized Courts, and the SCCED all appear to have jurisdiction over rape, advocates complain that it is unclear where they should file cases. A senior opposition politician observed, “The Special Court for Darfur isn’t working. People don’t have enough legal information to file cases properly.”

A significant deficiency in the staffing and training of court personnel, including judges, is another problem that affects the quality of justice in Darfur. Not only are the courts chronically understaffed, local human rights activists have raised serious concerns about the qualifications of judges sitting on the Specialized Courts, who they report have little legal training and have been recruited from the military. Although the judges on the SCCED are generally viewed with higher regard, this court has proven almost entirely ineffective, having heard very few cases and delivered even

fewer judgments.³³ A senior academic who focuses on sexual violence in Darfur said, “I don’t know what the judges are doing to stay busy, sitting out there [in El Fasher]. They don’t have any cases to hear, because women won’t bring claims forward since they consider the Government itself as a perpetrator.”

Even where judges in Darfur are properly trained and courts are adequately staffed, the lack of independence of the judiciary in Sudan means that justice often is still denied. This is particularly true in cases brought by rape survivors, since the law suffers from crucial structural flaws that disadvantage rape victims. A person familiar with the judiciary reported that judges who believe the existing laws are unfair to women feel no choice but to apply them. “We have a very weak judiciary,” an attorney noted, “Judges don’t have to be experienced or well-trained; they just have to be followers.” Under Sudanese law, Chief Justice Jalal el Din Mohammed Osman has the power to “nominate and discard” judges, and there has reportedly been an “exodus of strong Sudanese judges” since the beginning of the Bashir regime. The ongoing conflict in Darfur means it is even harder to attract strong and competent members of the judiciary. Moreover, because the courts often sit far from the IDP camps, access to justice is further limited by geography. In a cruel irony, a woman who leaves her camp to travel to court faces the very real threat of sexual violence while in transit. “Traveling is a risk for the women,” one activist said, “and the people they are going to file reports with are often the same people who are committing the crimes.”

VII. HARASSMENT OF NGOS WORKING ON ISSUES OF SEXUAL VIOLENCE

Rape survivors are also negatively impacted by the draconian legal regime governing the operation and activities of NGOs, including those that provide vital services to victims of sexual violence. The regime does so through a powerful government entity called the Humanitarian Aid Commission (HAC) that is charged with enforcing laws concerning the composition and operation of local and international NGOs, as well as UN and other multilateral aid agencies.

One of the principal laws the HAC is responsible for enforcing is the recently enacted Humanitarian and Voluntary Work Act of 2006. NGO leaders report that, among other things, this legislation restricts the ability of NGOs to receive funds by making it contingent upon permission from the HAC. They report that the Act also allows the HAC to veto the nomination of individuals to serve on an NGO's board. In addition, the law requires that organizations hold periodic meetings, before which the NGO must publish the names, telephone numbers, and addresses of its entire membership. The meeting must be public, and the NGO is required to give the HAC written notice, which is then publicly posted, stating the time and location of the meeting. The HAC is reported to dispatch government-affiliated individuals and organizations to attend these meetings to influence their policies and report to the HAC about discussions of sensitive topics, such as rape. This technique has been used to undermine NGOs that address sexual violence.

In no small measure because of the Government's strategy for infiltrating otherwise independent NGOs, many victims of sexual violence are deeply suspicious of such organizations and are therefore reluctant to report rapes or pursue legal remedies through them. Their hesitancy is accentuated by the regime's creation of pseudo-NGOs that outwardly appear committed to human rights but in actuality are

fronts for the Government. In the climate of fear and suspicion that prevails in Darfur, many survivors of sexual violence choose not to avail themselves of the medical, legal and psychosocial services offered by legitimate national and international NGOs.

Another technique employed by the Government to prevent NGOs from providing much-needed services is simply ordering them by decree to cease operation. For example, in March 2007, the HAC announced the closure of 58 organizations in South Darfur State.³⁴ Although the government cited a variety of alleged reasons for the closures, NGO workers report that the real reason was to prevent internally displaced people from receiving the direct services they provide and to limit the NGOs' ability to report on conditions to the international community. Although the government claimed the closure would be "temporary," nearly three months later the regime still has not permitted their activities to resume. As a result, many of the organizations most active in providing services to rape victims cannot function. Many NGO workers believe that the disruption is so serious that numerous NGOs will be forced to close permanently even if the regime allows them to reopen.

In tandem with its outwardly legal mechanisms to restrict the activities of NGOs, the regime also employs extra-legal techniques. NGO workers are often subject to threats and intimidation. For instance, on January 19, 2007, international NGO workers, UN staff and African Union peacekeepers at a social event were arrested and assaulted by local police and security officials, resulting in serious injuries. Other forms of harassment include threatening phone calls and harassment of women under Islamic moral norms for improper dress, especially focusing on "correct" wearing of headscarves.

Another technique employed by the Government to prevent NGOs from providing much-needed services is simply ordering them by decree to cease operation.

VIII. CONCLUSION

Current laws and procedures for documenting rape are in dire need of revision, a fact recognized by members of the judiciary as well as human rights activists. The definition of rape and related evidentiary rules make it functionally impossible to prosecute successfully; significantly, almost all convictions have resulted from confessions by perpetrators. Immunity laws must also be changed to combat the climate of impunity that prevails for rape in Darfur. The Government's attempts to undermine and harass NGOs providing direct services to raped women must be addressed immediately. In addition, negative attitudes and stereotypes about victims of rape must be confronted, so that women are not blamed for the very crime that has been committed against them. As a senior activist observed, "Changing the laws would help, but we can't focus on that alone.

We must encourage people to speak about the problem of rape, so that women who have been raped feel supported."

It is vital to note that there is nothing inherently Islamic about the way Sudan's rape law is constructed.³⁵ In fact, Pakistan, a country that imposes Islamic law, changed its rape law in 2006, allowing rape to be considered a crime distinct from *zina*.³⁶ Similarly, in 2006 the Republic of the Maldives took steps to reform its laws by commissioning a draft penal law and sentencing guidelines that, though based on Islamic law, still comply with international norms.³⁷ The Government of Sudan must act immediately to prevent rape from occurring in Darfur, and, like other Islamic countries seeking to improve justice for women who have been raped, to revise the harmful laws that penalize both rape victims and those who support them.

Girls in Otash Camp in South Darfur weave baskets to sell in a nearby market. Income-generating activities like these protect girls from sexual violence, as they do not have to leave the safety of the camp to collect firewood to sell.

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<p>IX. REFUGEES INTERNATIONAL'S RECOMMENDATIONS</p> <p>Revising the laws and procedures to improve the response to rape can only be undertaken by the Government of Sudan. Sudanese civil society organizations and opposition members in Parliament continue to call for changes to these laws, but it is important that the UN, U.S. and the international community support these national efforts by pressuring the Government to make real reforms to improve access to justice for women in Darfur.</p> <p>Refugees International recommends that:</p> <p><i>The Government of Sudan</i></p> <ul style="list-style-type: none"> Publicly acknowledge that rape occurs in Darfur and the extent of the problem, including the high incidence of rape being perpetrated by members of the armed forces and affiliated militias. Allow NGOs and health service providers to participate in free and unbiased reporting and documentation of sexual violence in Darfur. Amend the generic Form 8 to make it a more effective tool for documenting rape, and make it more widely available to physicians in Darfur. The government must publicize changes in rape-related Form 8 policy among local government and law enforcement personnel. Establish protocols for documenting rape using best international practices. Clarify to law enforcement officials that it is not the healthcare provider's responsibility to declare rape has occurred, and that only a court of law may determine whether a rape claim is valid after considering all the evidence. Require physicians and healthcare providers to follow international best practices, including giving treatment for unwanted pregnancy and providing detailed medical documentation when rape is alleged. <ul style="list-style-type: none"> Revise the evidentiary rules to allow all relevant medical documentation to be admissible. End harassment and intimidation of international and national humanitarian workers who provide medical, legal and psychosocial services to survivors of rape. Repeal or overhaul the Humanitarian and Voluntary Work Act of 2006, which significantly restricts freedom of association and increases the Government of Sudan's control over both local and international NGO activities, in order to allow them to provide services in a climate free from intimidation and harassment. Clarify which court in Darfur constitutes the appropriate venue in which to hear cases involving rape. Allow the NGOs in South Darfur State that were closed in March 2007 to resume operations. <p><i>In addition, the Government of Sudan should carry out the following legal reforms:</i></p> <ul style="list-style-type: none"> Issue a decree directing that women not be prosecuted for the crime of <i>zina</i> if they have alleged they have been raped but cannot meet evidentiary standards. Precedent for such a decree exists in the changes made to Form 8 policy specific to Darfur. Such a change will allow rape victims in Darfur to bring claims for rape without fear of prosecution for <i>zina</i>. Amend the Criminal Code so that the crime of rape is not defined in terms of <i>zina</i>. Render a woman's testimony regarding her rape inadmissible to prove <i>zina</i>. Take action to investigate and punish intimidation and harassment by the police or the armed forces of women testifying in rape cases. Bring the definition of rape into compliance with international standards. At a minimum, 	<p>The Government of Sudan should issue a decree directing that women not be prosecuted for the crime of <i>zina</i> if they have alleged they have been raped but cannot meet evidentiary standards.</p>
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<p style="text-align: center;">International NGOs should support rape awareness campaigns that ...improve acceptance and understanding of the impact of rape.</p>	<p>it should encompass penetration by objects or other body parts, and forced oral and anal penetration.</p> <ul style="list-style-type: none"> • Codify the crime of sexual violence in accordance with international standards to encompass sexual crimes that do not fall within the definition of rape. At a minimum, this must include committing an act of a sexual nature against a person, or causing that person to commit a sexual act, by threat of force or coercion. • Clarify the evidentiary laws and give equal weight to the testimony of men and women. • Train and educate the judiciary in Darfur about changes in the law to achieve implementation of any reforms. • Temporarily suspend the statute of limitation for rape in appropriate circumstances, including during times of armed conflict and displacement. • End immunity for Government-affiliated individuals from prosecution for rape. • Require participants in Government of Sudan efforts to combat rape to have adequate training in and sensitivity to rape and gender-based violence. • Encourage the recruitment of female police officers, who should be trained in investigating, documenting, and dealing with victims of rape by NGOs working on the issue of rape. • Issue a formal written invitation to Refugees International as the representative of the Save Darfur Coalition to complete the assessment requested by the Sudanese Government in January 2007, including provision of travel permits to Darfur to investigate implementation of the aforementioned laws. <p><i>The African Union Mission in Sudan (AMIS) and the UN Hybrid Peacekeeping Force (if deployed)</i></p> <ul style="list-style-type: none"> • Adopt a mandate to protect women and girls in Darfur in order to prevent sexual violence. • Allocate sufficient resources and training to deal with survivors of sexual violence. • Encourage the continued recruitment of female officers and soldiers to supplement those already in the field. • In cooperation with organizations managing the internal displacement camps, work to improve security within the camps in coordination with community leaders. <p><i>International NGOs</i></p> <ul style="list-style-type: none"> • Support rape awareness campaigns that encourage community discussions of gender-based violence and improve acceptance and understanding of the impact of rape. Where already in place, international donors must focus on grassroots education using national NGO partners as a vital part of helping to improve community support for victims of sexual violence. • Strengthen collaboration and communication with national and regional NGOs for a more integrated, effective, and sustainable approach to advocacy and provision of services. • Work with the gender-based violence programs of agencies of the United Nations and the African Union, including the Human Rights and Protection divisions of the UN Mission in Sudan, the UN Fund for Population Activities, the UN Development Fund for Women, UNICEF, the UNDP Rule of Law Program, and the Gender Based Violence Program of AMIS, to develop and support a network of victim advocates to assist rape victims in filing claims and accessing legal, medical, and psychosocial services.
<p>15</p>	<p style="text-align: center;">LAWS WITHOUT JUSTICE: AN ASSESSMENT OF SUDANESE LAWS AFFECTING SURVIVORS OF RAPE</p>



An aerial view of Gereida camp in South Darfur shows a few of the makeshift dwellings that house some 128,000 people. A few months after this photo was taken in 2006, attacks forced international aid agencies to suspend their operations here.

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<p>Whoever commits the offence of adultery shall be punished with execution, by lapidation, where the offender is married.</p>	<p style="text-align: center;">APPENDIX 1: SUDANESE LAW RELATED TO RAPE FROM SECTION 15 OF THE CRIMINAL ACT OF 1991</p> <p><i>The following is an English version of the statutes related to rape from the Sudanese Criminal Act of 1991, Section 15 (“Offences of Honour, Reputation and Public Morality, Adultery (Zina)”).</i> Although there is no officially-sanctioned English translation of Sudanese law, the version is used by the various UN agencies and commissions. As mentioned throughout this paper, the definition of rape as non-consensual “adultery” is problematic since zina encompasses any sexual penetration between individuals not married to one another.</p> <p style="text-align: center;">IN THE NAME OF ALLAH, THE GRACIOUS, THE MERCIFUL THE CRIMINAL ACT 1991</p> <p>Be it here by passed by the National Salvation Revolution Command Council in accordance with the provisions of the third Constitutional Decree 1989, as follows :</p> <p style="text-align: center;">PART XV OFFENCES OF HONOUR, REPUTATION AND PUBLIC MORALITY</p> <p style="text-align: center;">Adultery (Zina)</p> <p style="text-align: center;">145.(1) There shall be deemed to commit adultery :</p> <p>(a) every man, who has sexual intercourse with a woman, without there being a lawful bond between them;</p> <p>(b) every woman, who permits a man to have sexual intercourse with her, without there being a lawful bond, between them.</p> <p>(2) Sexual intercourse takes place by the penetration of the whole glans, or its equivalent into the vulva.</p> <p>(3) There shall not be deemed, to be lawful bond, marriage which, by consensus, is ruled void.</p> <p style="text-align: center;">Penalty for adultery</p> <p style="text-align: center;">146.(1) Whoever commits the offence of adultery shall be punished with :</p> <p>(a) execution, by lapidation, where the offender is married (muhsan);</p> <p>(b) one hundred lashes, where the offender is not married (non-muhsan).</p> <p>(2) The male, non-married offender may be punished, in addition to whipping, with expatriation for one year.</p> <p>(3) Being “muhsan” means having a valid persisting marriage at the time of the commission of adultery; provided that such marriage has been consummated (sic).</p> <p>(4) Whoever commits adultery, in the Southern States, shall be punished, with imprisonment, for a term, not exceeding one year, or with fine, or with both, and where the offender is (muhsan), with imprisonment, for a term, not exceeding three years, or with fine, or with both.</p>
<p>17</p>	<p style="text-align: center;">LAWS WITHOUT JUSTICE: AN ASSESSMENT OF SUDANESE LAWS AFFECTING SURVIVORS OF RAPE</p>

<p style="text-align: center;">Remittance of the penalty of adultery</p> <p>147. Penalty of adultery shall be remitted for any of the following two reasons :</p> <p>(a) if the offender retracts his confession, before execution of the penalty, where the offence is proved by confession only ;</p> <p>(b) if the witnesses retract their testimony, thereby lessening the <i>nisab</i> of such testimony.</p> <p style="text-align: center;">Offence of sodomy</p> <p>148.(1) There shall be deemed to commit sodomy, 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.</p> <p>(2) (a) whoever commits the offence of sodomy, shall be punished, with whipping a hundred lashes, and he may also be punished, with imprisonment, for a term, not exceeding five years;</p> <p>(b) where the offender is convicted for the second time, he shall be punished, with whipping a hundred lashes, and with imprisonment, for a term, not exceeding five years;</p> <p>(c) where the offender is convicted for the third time, he shall be punished, with death, or with life imprisonment.</p> <p style="text-align: center;">Rape</p> <p>149.(1) There shall be deemed to commit the offence of rape, whoever makes sexual intercourse, by way of adultery, or sodomy, with any person without his consent.</p> <p>(2) consent shall not be recognized, where the offender has custody, or authority over the victim.</p> <p>(3) 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.</p> <p style="text-align: center;">[...]</p> <p style="text-align: center;">Gross indeceny</p> <p>151.(1) There shall be deemed to commit the offence of gross indecency, 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.</p> <p>(2) 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.</p> <p style="text-align: center;">Indecent and immoral acts</p> <p>152.(1) Whoever commits, in a public place, an act, or conducts himself in an indecent manner, or a manner contrary to public morality, or wears an indecent, or immoral dress, which causes annoyance to public feelings, shall be punished, with whipping, not exceeding forty lashes, or with fine, or with both.</p> <p>(2) The act shall be deemed contrary to public morality, if it is so considered in the religion of the doer, or the custom of the country where the act occurs.</p>	<p>Whoever... conducts himself in an indecent manner... or wears an indecent, or immoral dress, which causes annoyance to public feelings, shall be punished, with whipping, not exceeding forty lashes...</p>
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ENDNOTES

¹ There is a tendency to use the terms gender-based violence, sexual violence, and rape interchangeably. In fact, gender-based violence is a broader concept that encompasses sexual violence. The Inter-Agency Standing Committee, created by U.N. General Assembly Resolution 46/182 and tasked with coordinating key UN and non-UN humanitarian partners, defines gender-based violence as “an umbrella term for any harmful act that is perpetrated against a person’s will, and that is based on socially ascribed (gender) differences between males and females.” Examples of gender-based violence include sexual violence, domestic violence, trafficking, forced/early marriage, and harmful traditional practices. See *Guidelines for Gender-based Violence Interventions in Humanitarian Settings*, Inter-Agency Standing Committee, Geneva (2005), pp. 7-8. The World Health Organization defines sexual violence as follows: “Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic women’s sexuality, using coercion, threats of harm or physical force, by any person regardless of relationship to the victim, in any setting, included but not limited to home and work.” Rape is one of the primary forms of sexual violence. *Guidelines for Medico-Legal Care for Victims of Sexual Violence*, World Health Organization, Geneva (2003), p. 6. In this report, except when quoting individuals, the author uses sexual violence and rape for the violations committed against the women and girls of Darfur.

² As the U.N. International Commission of Inquiry explains, “For operational purposes, the Sudanese armed forces can be supplemented by the mobilization of civilians or reservists into the Popular Defence Forces (PDF).” The PDF derives its legal status from the Popular Defence Forces Act of 1989, which defines the PDF as ‘Paramilitary forces’ made up of Sudanese citizens who meet certain criteria. For more information, see International Commission of Inquiry on Darfur, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, January 25, 2005, at p. 28.

³ Most mass rapes are reported to have been conducted by members of the Sudanese military and Janjaweed militias. However, there have also been reports that members of rebel groups, such as the Sudan Liberation Army, have attacked civilians and raped women in their campaigns against rival rebel factions, particularly after the signing of the Darfur Peace Agreement. See Refugees International, *Sudan: Town in North Darfur Reflects Changing Nature of Conflict*, July 24, 2006.

⁴ Interview, Touloum Camp, Chad, August 2004. Similar statements by Janjaweed have been report-

ed consistently by the media since the beginning of the conflict. See, e.g., Alfred de Motesquiou, *Darfur women describe gang-rape horror*, Associated Press, May 28, 2007 (describing how rapists shouted that they were “planting tomatoes,” a reference to their lighter skin color, which they consider “red”); Sudarsan Raghavan, *Babies of the janjaweed*, *The Advertiser*, November 27, 2004 (reporting a victim’s account of how her assailant said, while raping her, “We want to change the colour of your children.”); Emily Wax, *‘We Want to Make a Light Baby,’ Washington Post Foreign Service*, Wednesday, June 30, 2004; Page A01.

⁵ For further reference, see Refugees International, *No Power to Protect: The African Union Mission in Sudan*, November 9, 2005.

⁶ Such initiatives include the ad hoc investigatory committees established to address the armed attacks against civilians; the Special State Committees against Rape; the Unit for Combating Violence against Women and Children within the Ministry of Justice; and the Special Criminal Court on the Events in Darfur (SCCED). Unfortunately none of these entities has proven effective in protecting women from rape or providing justice to those who have been raped. For a detailed discussion of the ineffectiveness of these bodies, see *Report of the High-Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101*, Advance Unedited Version, Human Rights Council, A/HRC/4/80, March 7, 2007 available at <http://www.ohchr.org/english/bodies/hrcouncil/docs/4session/A-HRC-4-80.doc>; *Lack of Conviction: The Special Criminal Court on the Events in Darfur*, Human Rights Watch, JUNE 2007, available at <http://hrw.org/backgrounder/ij/sudano606/>; *Access to Justice for Victims of Sexual Violence*, Report of the United Nations High Commissioner for Human Rights, July 29, 2005 available at www.ohchr.org/english/press/docs/20050729Darfurreport.pdf.

⁷ See “Statement of U.S. Senator Russ Feingold,” *Capitol Hill Press Releases*, March 20, 2007; “Sudan’s President Denies Involvement in Darfur Violence,” *VOA News*, March 20, 2007. Alleged Janjaweed leader Musa Hilal gave a related “cultural” argument in an interview about the rape of women in Darfur stating, “Why would you want to rape them? They’re disgusting...The young men would not do that (rape), that is shameful, we have honour...[b]ut if they wanted it they would not need to use force. These things hold no shame for them, it is what they are like.” Nima El-Baghir, *Darfur’s darkest chapter*, *Financial Times*, August 21, 2004, p. 19.

⁸ Between October 2004 and February 2005, Médecins Sans Frontières (MSF) treated almost 500 rape victims in the region. Aged between 12 and 45,

most reported the rape within 30 days and almost a third said they had been raped more than once. In more than half the cases, physical violence was inflicted in addition to the rape. See MSF's report available at <http://www.doctorswithoutborders.org/publications/reports/2005/sudano3.pdf>

⁹ The Legal Aid program was started by Sudanese NGOs and is now funded by UNDP's Rule of Law program.

¹⁰ For a review of issues related to underreporting of rape, see e.g.: McGregor et al., Why don't more women report sexual assault to the police? 162 CMA 5, 659 (2000); Swiss et al., Violence Against Women During the Liberian Civil Conflict, JAMA 279, 625-629 (1998); Miller et al., Victim costs of violent crime and resulting injuries, 12 Health Affairs 4, 186-97(1993); and Soeken et al., Randomized response technique: applications to research on rape, 10 Psychology of Women Quarterly 2, 119 (1986) ("Authorities agree that rape is probably the most under-reported serious crime," citing U.S. Federal Bureau of Investigation statistics, 1974, pp. 14-15).

¹¹ UNHCR, Access to Justice for Victims of Sexual Violence, July 29, 2005, page 26-29, available at <http://www.ohchr.org/english/press/docs/20050729Darfurreport.pdf>. See also Refugees International, Sudan: Inform rape survivors of right to seek life-saving treatment, December 21, 2005 (analyzing the problems in disseminating the changes in Form 8 laws); RI, Sudan: For Raped Women in Darfur, Access to Reproductive Health Services Limited, October 26, 2004 ("Some NGOs say that they do not advertise services to rape survivors because Sudanese law (Article 48) prevents doctors from treating rape victims without a referral from the police department").

¹² Access to Justice, p. 30. ("There are many other reports of intimidation and harassment of human rights defenders and medical providers which are of concern. The action taken to threaten, intimidate and harass human rights defenders and medical providers violates international law and seriously impedes victims' access to justice.").

¹³ Access to Justice, p. 27.

¹⁴ Id.

¹⁵ English version on file with RI. The decree also established protections for doctor-patient confidentiality and instructed the police not to forcibly enter medical facilities. See IRIN, Gender-based violence still rampant in Darfur, say aid agencies, December 5, 2005, available at <http://www.irinnews.org/report.aspx?reportid=57456>; see also, Refugees International, Sudan: Inform rape survivors of right to seek life-saving treatment, December 21,

2006, for further analysis of problems related to implementation of changes in Form 8 laws.

¹⁶ Access to Justice, p. 15.

¹⁷ Id.

¹⁸ In light of the inadequacies of the Form 8, some international NGOs that provide medical services are reported to be supplementing the form with more extensive medical documentation. However, case monitors report that only the form 8 and the healthcare provider's live testimony are admissible in legal proceedings to prove rape.

¹⁹ In May 2005 criminal investigation teams were to provide technical expertise and establish investigation units throughout Darfur, and a police training program was put in place. Doctors were also supposed to be provided with evidence collection kits for rape, to be used with the victims' consent, and the evidence was allegedly to be sent for analysis in Khartoum. See Access to Justice, pp. 32-33. Unfortunately, physicians and activists report no significant adoption of these protocols.

²⁰ Access to Justice, p. 19.

²¹ In a case reported in March 2005 in Nyala, police arrested a rape victim who had sought treatment at an NGO clinic prior to completing a Form 8, and forced her to be reexamined at a state hospital. The police charged the doctors who treated her with "furnishing false information" under Article 97 of the Criminal Procedure Act, a crime which may be punished with up to a year of imprisonment, a fine, or both. Access to Justice, p. 29.

²² Women in Darfur, like all rape victims, must be supported in whatever decision they reach after being informed of their rights to pursue prosecution. One GBV activist emphasized that "The choice to report a rape is the woman's, and she should never be forced to do it. Already she has been traumatized, and we must not traumatize her again."

²³ For discussion of *zina*, see Peters, R. "Zina or Zina' (a)." Encyclopedia of Islam. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs. Brill, 2007.

²⁴ Law as reported in the Report of the High Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101, A/HRC/4/80, March 7, 2007, fn 18 at p. 15.

²⁵ Under article 146 (a) of Sudan's 1991 Penal Code, "whoever commits the offence of adultery shall be punished with: a) execution by stoning when the offender is married (Muhsan); b) one hundred lashes when the offender is not married (non-Muhsan)."

	<p>²⁶ The sentences were handed down in the criminal court of Al-Azazi, Managil province, Gazeera state by Judge Hatim Abdurrahman Mohamed Hasan. Judge Hasan sentenced Ms. Amouna Abdallah Daldoum (23 years old) and Ms. Sadia Idries Fadul (22 years old from Tama tribe, Darfur), on 6 March 2007 and 13 February 2007 respectively, to death by stoning for committing adultery. See “Sentencing to Death by Stoning of Two Women on Adultery Charges,” World Organization Against Torture, Geneva, March 9, 2007 available at http://www.omct.org/index.php?id=EQL&lang=eng&actualPageNumber=1&articleSet=Appeal&articleId=6911&HPSESSID=2c74odf6f87caeff97ae9d65851825e9.</p> <p>²⁷ Article 62 of the Evidence Law of 1994 (Law No. 31 of 1994) provides the evidentiary requirements for establishing rape. The law was first published October 13, 1993, but was later published in Official Gazette 1580 on January 5, 1994. See Qawanin As-Sudan 1901-2003, issued June 2005, Ministry of Justice: Khartoum (digital copy); see also SOAT Press Release, Man Convicted of Rape in Darfur, August 8, 2006, for a discussion of Article 62 of the Evidence Act of 1994 in the context of Darfur.</p> <p>²⁸ See Article 62(b) of the Evidence Law of 1994.</p> <p>²⁹ See the Report of the Workshop on Legal Reform of Rape and other Sexual Violence, 5 July 2006, Khartoum, Arabic version on file with RI.</p> <p>³⁰ Report of the Workshop, p. 4. The workshop participants also declared Sudanese civil society should serve as interlocutors with the government, including by monitoring rapes, in addition to supporting women in filing rape claims by providing assistance and encouragement.</p> <p>³¹ The disregard of the armed forces for civilian courts is well documented by UNMIS workers. For example a briefing note on accountability for crime in Darfur explains, “The administrative procedure of granting civilian jurisdiction by a supervisory official in some cases has led to delays of many months. However, even after jurisdiction is accorded to the civilian courts there have been instances of substantial delay in presentation of the accused either by the concerned security force or due to the non-appearance of the accused....[a] sense of accountability to the civilian courts appears problematic for some security forces members.” El Geneina Human Rights Unit, Briefing Note for Sub-JIM on Human Rights, JUNE 2007 at 1, on file with RI.</p> <p>³² The Specialized Courts, like the Special Courts before them, also have jurisdiction over crimes of particular interest to the state, including offences against the state, including espionage, robbery, banditry, killing, and the unlicensed possession of firearms.</p> <p>³³ A Supreme Court Judge and two Appellate Judges sit on the SCCED, including one woman Judge. The members of the SCCED, who are appointed by the Chief Justice, are President Justice Mr. Mahmoud Mohammed Saeed Abkam, of the Supreme Court; Madam Justice Inshirah Ahmed Mukhtar, of the Appeals Court; and Justice Awad el Karim Osman Mohammed, also of the Appeals Court. See Press Release, Embassy of the Sudan in London, June 7, 2005, available at http://www.sudan-embassy.co.uk/display.php?id=129.</p> <p>³⁴ South Darfur State Decree of March 18, 2007, signed by Jamal Yousef Idris, issued under Article 18 of the Humanitarian and Voluntary Work Act of 2006, Arabic version on file with RI.</p> <p>³⁵ For an argument that some states use religious law to permit violence against women, see Lisa Hajjar, Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis, Law & Social Inquiry, Winter 2004, 29:1 (noting variations in the uses and interpretations of shari’a that show a lack of consensus among Muslims and that overgeneralizing about Islam should therefore be avoided).</p> <p>³⁶ Associated Press, “Pakistan Leader Amends Rape Law,” The Washington Post, December 1, 2006. While many activists have criticized the law for doing too little to protect women who have been raped, it is significant that Pakistan has chosen to allow for the separation of rape from <i>zina</i>.</p> <p>³⁷ Robinson, Paul H., et al. “Codifying Shari’a: International Norms, Legality & the Freedom to Invent New Forms” (November 3, 2006). U of Penn Law School, Public Law Working Paper No. 06-26 Available at SSRN: SSRN_ID942304_code615352.pdf. At the time of writing, the draft code awaits action by the Parliament.</p>
21	LAWS WITHOUT JUSTICE: AN ASSESSMENT OF SUDANESE LAWS AFFECTING SURVIVORS OF RAPE

**REFUGEES 
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A POWERFUL VOICE FOR LIFESAVING ACTION