

## **Justice Elusive for Rape Victims**

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The high burden of proof makes it almost impossible for them to win their cases. By Tajeldin Abdhalla Adam, Assadig Musa, Simon Jennings and Katy Glassborow in Hilversum

Lawyers from Darfur say antiquated laws and weak investigations make it virtually impossible for rape victims to get justice in Sudan.

They say rape has been used as a tool of war in Darfur, and laws need to be amended so that women do not have to prove that they were to blame for the attack.

The tragic tale of one 16-year-old girl, who was raped in March 2006, illustrates how difficult it can be to bring perpetrators of sexual violence to justice.

Musaahat Mohammed Ali, head of the girl's legal team, says she was raped on the road from Nyala to El-Fashir, when her bus was hijacked by a group of armed men. The men allegedly beat the passengers and took the girl to some nearby woods to rape her.

Although the armed men were subsequently arrested, and a case brought against the suspects, the court ultimately ruled that there was not sufficient evidence to deliver a guilty verdict. Following an unsuccessful appeal, all the suspects were released.

Mohammed Ali explains that the case was thrown out because Sudan's criminal law requires there to be four male witnesses in order to prove that the alleged rape was not consensual sex.

He says that the medical report, which the girl was able to obtain shortly after the rape, was not admitted as evidence.

Other circumstantial evidence was also disregarded, such as the psychological state of the victim; and the claims that the bus was hijacked and the girl taken away into the forest.

Victims say that it is impossible to find four male witnesses who are willing to testify in a rape case.

One woman from Jebel Marra, who was raped recently by three men dressed in army uniform, says people are often too scared to intervene.

"One man came from a neighbouring house to help, but the man standing guard in the doorway shot him in the leg," she said. "[After the attack], the local sheik called the village together and asked why no-one had helped me. Everyone said they heard my cries but were afraid that if they came, they would be hurt."

Lawyers say that one of the problems with Sudan's rape laws is that the crime is seen as no different to adultery or sodomy.

"Rape, sodomy and adultery are bundled together in one article," Mohammed Ali said. "The evidence needed for an adultery crime is also the evidence which is needed for a rape."

Sudanese law defines rape as "sexual intercourse, by way of adultery, or sodomy, with any person without his consent".

Rasha Saraj, a lawyer from Nyala in Darfur, points out that this definition creates confusion about whether a crime should be classed as rape or adultery.

"If you fail to get a conviction for rape... [the woman] could be convicted of having committed adultery," she said.

David Donat Cattin, director of the international law and human rights programme at Parliamentarians for Global Action, says that a woman who accuses a man of raping her could be charged with libelling him if the rape case is thrown out.

"This evidentiary burden is a double sword," Cattin said. "On the one hand it... makes [rape] impossible to prove, and on the other hand it damages the victim again. There is no law in the world where this level of corroboration is required."

Adrienne Fricke, a researcher for human rights group Refugees International, says that rape laws in Sudan draw their logic from Islamic sharia law, which historically sought to protect people accused of adultery from harsh punishment by requiring a high burden of evidence.

She said that other Islamic countries have taken steps to reform laws that penalise rape victims, such as Pakistan, which in 2006 introduced amendments to allow rape to be considered distinct from the crime of adultery.

In order to kick-start proceedings, victims of rape in Sudan must register the attack at a police station and then fill out a so-called Form 8 incident report form at the hospital based on their injuries.

But Fricke argues that the Form 8 procedure is flawed, since it often takes the place of medical documentation, even though it is not nearly as detailed in the evidence it documents.

Moreover, injuries can only be assessed at hospitals in bigger cities. This makes it harder for victims who have been raped in rural areas to obtain justice. By the time they have travelled to a hospital, signs of their injuries may have disappeared altogether.

“The sooner they report [a rape], the easier it is to find out if there is a scratch on their bodies and any sign of physical aggression,” Mohammed Ali said.

The confusion surrounding Form 8 means that evidence often gets lost, further hampering victims' efforts to achieve justice.

The woman from Jebel Marra, cited earlier in this article, said that she was given a Form 8 to fill in, but the police later took it back from her, on the grounds that they had not been able to arrest the suspects.

Darfur lawyer Saraj says that, even if a case is successfully reported and taken on by the police, there are major flaws in the investigations of sexual violence.

“There is no special unit to deal with rape cases at local police stations,” he said. “Those people who investigate the crime are not trained or specialised.”

Darfur lawyers have welcomed the International Criminal Court arrest warrant for Sudanese president Omar al-Bashir, which was issued last year and included one count of rape as a crime against humanity.

But they also recognise that international law on its own is not enough to bring justice to victims of rape in Darfur.

“In this condition of war we need new laws that can punish and deter perpetrators, and match our laws with international standards,” said Saraj, the lawyer from Nyala. “Unless this happens, local laws remain incapable of dealing with rapes.”

Defending the existing laws, Fathi Khalil, former head of the Sudan Bar Association and National Congress Party, NCP, loyalist, said, “There is no need to change the laws. Before you change [them] you have to have a good reason. If there is a necessity to change the laws, this is something we are ready to consider.”

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