

Journeying Through Islam, Society & Culture: Understanding Divergent Interpretations of  
Marital Rape Within the Sudanese Patriarchy

By

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## Abstract

Perennially, Islam has been viewed as a religion that subjugates women's rights under the overwhelming pressure of the Islamic patriarchy. This work is an illustration of my journey as a third culture child through my home country, as I attempt to find answers to unusually difficult questions that bridge the theory and praxis of Islam.

My journey begins as I unveil several complexities of interpretations concerning how Islam may or may not perpetuate, condone, or indeed even sanctify marital rape in Sudan. Muslim women living in predominantly Muslim countries do not have to see the *Quran, Fiqh and Ahadith* as a source that promote the oppression of women. Consequently, my goal is to offer an alternative way of thinking to both Sudanese women and men who have become conditioned to accept patriarchal interpretations of Islam. Maneuvering through culture, religion and society, this work attempts to answer a hyperbolically complex question: can Islam be read as sanctifying marital rape, or is it quite simply the cyclical effects of the religious patriarchy?

I argue for less of an immediate solution, and more of a rethinking and re-engagement with the very texts that govern daily life within a marriage. Through qualitative data and the examination of secondary sources, I advocate for Sudan to begin the process of conscientization prior to the amendment of rape laws. My journey ends as I offer explanations for what I believe is a moral conundrum resulting from the societal implementation of religion. I hope that men can divorce themselves from false "religious" norms that have dictated and reiterated hyper-masculinity, and employ a more independent reading of Islam. My hope is that one day Sudanese women can examine the ambiguous and underlying meanings in those very same texts to find support for their bodily autonomy and emancipation of thought.

## **Preface**

This thesis is an original work by Miraaj Yousif. The research project, of which this thesis is a part, received research ethics approval from the University of Alberta Research Ethics Board, Project Name: “Popular Discourse Around Possible Interpretations of Islam's view on Marital Rape: Study of Sudan” No. Pro00086449, December 17th 2018.

## Dedication

I would like to dedicate this work to my little sisters and brother. To Shimaa and Ulaa, may you marry someone who understands your Islam the way you do, may you know your rights and never have to question them. To Mohamed, may you marry someone who is able to communicate her Islam to you if she is Muslim; and if she is not, whatever religion she may be, I pray that you are able to understand.

رَبِّ نَسْرَحْ لِي صَدْرِي وَيَسِّرْ لِي أَمْرِي وَالْجُلُوعِ عُدَّةً مِنْ  
لِسَانِي فَيَقَ هُؤَالِ قَوْلِي

“O my Lord! Open for me my chest (grant me self-confidence, contentment, and boldness); Ease my task for me; And remove the impediment from my speech, so they may understand what I say”.

[Surah Ta-Ha; 20:25-28]

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Dad and Mom, I truly could not have maneuvered around in Sudan without your guidance and support. Dad, you're the smartest and most well connected person I know- don't humble yourself too much. Mom thank you so much for being a symbol of Islamic matriarchal strength and teaching us to be the same.

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## **Chapter 1: The Sudan I Know**

### **1.1 Morality, Humanity & Islam**

“Everybody wants to hear what will advantage them, and they don’t hear what will put them on trial; but you know what? In front of Allah, we are slaves of Allah”.

- Dr. Nouman Ali Khan

“The sinner does not care about whether he angers his Lord (Allah) or not, all he cares about is satisfying his lusts and desires”

- Ibn al-Qayyīm(Allah have mercy on his soul)

I would like to begin this work by telling you a short story; the significance of the story will unveil itself as the work progresses. The day I will be referring to occurred during an exciting time for me. For the first time in my entire life, I was on my way to completing the Qu'ran cover to cover. I carried the responsibility like an honor, an honor that would put my life in perspective, an honor that would allow me to become independent in my Islamic thinking; I would reap rewards unparalleled to any earthly reward. It was during the early days of Ramadan 2017. My cousin and I decided to attend Ramadan Taraweh(extended prayers during Ramadan);I had pitched the idea, convincing her that Allah would give her more *Ajr*-أجر(rewards). After having a quick Iftar(Ramadan breakfast), we headed to Masjid Al-Nour, one of Sudan’s most aesthetically pleasing and well-known mosques. We were going to order a *tirhal*(Sudanese equivalent to Uber), but thankfully my father handed me his car keys. I was relieved that we wouldn’t have to look for a taxi in Khartoum’s nighttime heat (which at times was worse than the daytime heat because it was coupled with humidity). With a full belly and a grin of pride, I drove off with my cousin to Masjid Al-Nour. “This was it, I thought: I am an adult now, I’m doing “big girl things””. A gust of nostalgia

hovered over me, taking me back to the first time I had visited Mecca with my parents and sister; it took me back to the first time I completed Al-Safa w al Marwa,(the ritual of traveling back and forth between small hills now located in the Great Mosque of Mecca in Saudi Arabia, named the Masjid Al-Haram). We had chosen Masjid Al-Nour not only because of proximity, but because of its reputation of having Imams that held some of the best Ramadan *Khutbas*(public teachings or sermons) in the country. It took us about 10 minutes to get there as it was early and most people were still in their homes having *Iftar*. Taking our shoes off to enter the mosque, I was prompted by my cousin to place the *tarha*(scarf, in the Sudanese dialect) on my head. I usually do not wear a headscarf; today I had on a brand new *Ibaya* but the scarf was placed around my neck. I quickly wrapped the scarf around my hair and secured it as well as I could.

After the prayers, I sat down cross-legged thinking: “my favorite part is here”. I had only heard *Khutbas* over the radio, on YouTube and occasionally through the *Masjid*(mosque) speakers every Friday. As the Imam commenced the *Khutba*, I realized I had picked the perfect day to come in: the *Khutba* was about the relationship between a husband and wife. He drew inspiration from *Surah al Baqara* and *Al- Nisa*. As I listened attentively, I realized I had never heard an Imam portray Muslim women with such eloquence. There was no denigration of women, no bold statements of biological differences or inferiority, no quotes stating that women should be subordinate to men; this was **his** *tafsir*(interpretation) and he was quoting straight from the Qu'ran.

Prior to the 2011 split from the south, Sudan was the largest country in Africa in terms of area. Sunni Muslims account for ninety-seven percent of the population. The other three percent are mostly Coptic, with a minute number ascribing to animist religions. As of this year, Sudan is officially home to approximately 42 million people. Of the 42 million people, 70 percent are Arab Sudanese or Afro-Arabs, with the rest being Arabized ethnic

groups. Sudan is home to approximately six hundred tribes, and those tribes speak about four hundred dialects. Among those Arabized ethnic groups is the Zaghawa tribe- notorious for being extremely religious and conservative, but most importantly, they're known for early marriages within their tribe. In the third chapter of this work, you will be introduced to the story of Noura Hussein whose family just so happens to be from the aforementioned tribe.

Ramadan 2017 was a monumental year not only because I had gotten into the program of my choice for my master's degree, but I had also attended my first *Khutba* and most importantly I had for the first time read the Holy Qu'ran from cover to cover. Returning to an earlier point about the Imam quoting straight from the Qu'ran in his *Khutba*: he had made an active decision to read justice into the verses he was quoting; he was actively making a choice of equality in Islam. I decided that this Imam was a womanist, and I have deliberately used that word rather than feminist. I opine that the term *womanist* is more appropriate because Islam and womanism share the same humanistic principles. A term coined by Alice Walker in 1983, womanism's core beliefs address the tridimensional oppression of classism, sexism, and racism (Martin 1993:39). In theory, Islam preaches the just treatment of **all** people. Unfortunately, in Sudan there continues to be a scarcity of womanist men. In Sudan, cultural norms have oppressed men into exhibiting hyper-masculine traits. Consequently, a womanist man in Sudan and most Arab/Muslim nations will, more often than not, be considered weak. "Masculine identities were and are lived and experienced heterogeneously in response to situational and historical conditions, even within cultural categories such as "Arab" and "Muslim" (Hasso, 2007).

For far too long, women's stories found in the Qu'ran and *Ahadith* (collection of traditions containing sayings of the prophet Muhammad along with accounts of his daily practice (the Sunna) have been kidnapped by rigid Sudanese tribal systems, resulting in ultra conservative, reductionist and patriarchal readings of certain aspects of Islam. Unfortunately,

those have become the dominant stories passed around generation after generation. A case in point would be the voices of Prophet Mohammed's (Peace be upon Him) wives that have been overshadowed and silenced by the dominant male voice. Female invisibility justified through Islam is laughable because some of the most powerful figures in Muslim history were women. Educators, business women, even some advisors to the Prophet (Peace be Upon Him) were women. According to Joseph Hill, "norms depend on reiteration" (Hill 2018: 28); to improve the future of Sudanese women, womanist women and men must reiterate their versions of gender equality in Islam. To this day, Muslim women are still negotiating visibility. *Ijtihad* (reexamination of Islamic texts) is the key, and until women in Sudan accept the responsibility of re-reading Islam, patriarchal readings will perennially dominate. Khaled Abou El-Fadl's statement on the dangers of claiming to speak for God encompasses all the problems with the prevailing patriarchal readings of the Qu'rān, Ahadith including the elucidation and application of *Fiqh*(Islamic jurisprudence). El-Fadl asserts that:

"... Speaking for God and speaking in God's name are different things. The Prophet, through revelation, and the Qur'an, through dictation, in a literal sense, speak for God. Everyone else claims to speak in God's name. Everyone else is functioning in the realm of the possible and probable . . . To claim full or perfect knowledge of God's Will is to challenge the singularity and uniqueness of the Divine perfection"

- Khaled Abou El-Fadl, *Speaking in God's Name*(2001)

It is for the above reason that I have never adhered to and have no intention of adhering to the dominant voices of men trying to kidnap the very meanings of justice, mercy and love that I have found in Islam. That is not my version of Islam and never will be. I, like several Muslim women in Sudan and around the Muslim world, prefer to take a logical and reasonable approach to matters pertaining to women's rights in Islam. For centuries, Islamic scholars have been unable to fully reconcile to coexistence of reason (*aql*) and revelation (*naql*). In olden Islamic times, the Hanafis did not allow elderly women to attend *duhr* and *'asr* prayers. The reasons? al-Maghinani(1137-593) "cited the habits of lustful men on the

prowl”(Sadeghi 2013:150) as reason to forbid them from worshipping in masjids. This is a classic example of women having to pay for men’s sins. Why are women regarded as the problem rather than actually fixing what needs to be fixed? Why are we [Muslim women] being made to carry the heavy burden of men’s sins? Even today, why is victim blaming normalized? how is it that so many people cannot see the blatant core problem: sexual harassment and sexual assault? How has this sort of thinking ever passed the standards of logic and reason?

The struggle in applying Islamic teachings to everyday life situations requires individual initiative and a conscious effort to allow for the existence of interpretation and application. This claim is cemented by Ibyn Taymiyyah (661AH-728AH/1263 CE-1328), who was one of Islam’s most influential theologians. Aside from being a theologian, Ibyn Taymiyyah was also very well known for being a jurisconsult, but most importantly a logician (Makari 1983). A great advocate of employing reason with religion, Ibyn Taymiyyah’s most powerful statement addresses the importance of reason in the application of Islam in everyday matters.

“Reason is a requirement for acquiring knowledge and performing righteous deeds, through which knowledge and deeds are perfected, but it is not enough on its own. Rather, it is a faculty of the soul and an ability like the ability within the eye to see. If it is connected with the light of faith and the Qu’ran, then it is like the eye receiving the light of the sun and torch. If it is left to itself, it cannot gain insight into matters that it cannot know alone... Thus, the circumstances resulting from the denial of reason are defective, and ideas that contradict reason are false”.

-Bin Muhammad cited in (Nusseibeh 2016:57)

Despite this learned view, it is important to understand the dominant perception of the praxis of Islam in everyday matters in Sudan; more specifically I would like to examine a taboo in Islam: the discussion of marital rape. After hearing about a series of child rape cases in Sudan, I decided I wanted to know about sexual assault in Sudan- but within a holy union.

There was great potential for me to uncover a multitude of practices, discourses, and beliefs using this topic, and I decided to look at it through an Islamic lens. Knowing that Islam permeates almost every societal aspect in Sudan, I wanted to get to know how people thought about marital rape on a micro level- I wanted to understand ideologies from common citizens. Ultimately, this work will aim to understand the incongruity of Islamic thought and action; furthermore, it will unpack reasons why society in Sudan is 'expected' to act in a certain manner that is different from what might be expected after independent thought. Rather than suggesting a particular way of thinking, I aim to raise consciousness, specifically for women, to allow them to create their own versions of Islam. The hope is to allow individuals in Sudan to vacate inflexible thoughts and practices that have been passed on from generation to generation and pave a way to a just praxis of Islam. Similar to Ibyn Tamiyyah, throughout this work, I will be advocating for the use of reason and logic in elucidating the importance of both recognition and de-normalization of marital rape in Sudan. "Feminist *tafsir* makes the distinction between the ethical vision of the text and the pragmatic or legal voice of the text" (Seedat 2016:140). For far too long, Muslim women been subject to the recounting of Islam's stories, history and legislation in a manner that predominantly favors men; however, "As soon as we acknowledge that none can fully know what Allah meant, then the door is open to both patriarchal and feminist egalitarian readings" (Wadud, 2016:132).

Alluding to Margeret Heffernan's *Wilful Blindness* (2011), it is important that in societies that create rules concealed behind the façade of Islam, women do not become willfully blind to the prevailing practices. It is important that we begin to be less subservient, and more active in our religious practice as Sudanese women and claim our rights. This reminds me of one the first feminist works I ever came across. Before beginning my master's degree, before realizing that I was interested in the promotion of social justice for women, I came across Adrienne Rich's *Claiming an Education* in which she delivers a 1977 graduation

speech to female graduates of Douglass College. Rich conveys to the women the importance of taking charge of their own life and capabilities, and not succumbing to male domination. In the same way I argue that Muslim women must claim their own understanding of religion, and build their own meanings. Rather than accepting norms as authoritative and true, I urge women to "...take as the rightful owner[s]; to assert in the face of possible contradiction. The difference is that between acting and being acted-upon, it can literally mean the difference between life and death" (Rich 1977: 608). Indeed, for a crime of a violent sexual nature it can literally be the difference between life and death.

This applies to all practicing Muslim women, not only women occupying places of religious power (e.g. female Muqqadims/Mualimas) because even the simple awakening of a married woman will have multigenerational effects as she teaches her daughter and her daughter teaches hers. Indeed, we should teach our sons, as well that, in more ways than one, Islam promotes not only feminism, but also womanism. Although Muslim men are tremendously pressured to exhibit hyper masculine traits, it must be noted that Prophet Muhammad (PBUH) was undeniably in my view a feminist, in his treatment of his wives, and in his interactions with and statements concerning women. Amongst the many instances, it has been said by the Prophet that: "The best of you are those who are best to their women" (Sunan al-Tirmidhi 1162).

Upon embarking on this research, I knew that it was not only a journey of exploration but also a journey of enlightenment. As a result, the first and the most important thing I have learnt is that Islam and culture are intractably interlinked in Sudan; one simply cannot exist without the influence of the other. This is the case in several Muslim societies. In recent studies it has become apparent that "Women's status and roles in Muslim societies, as well as patriarchal structures and gender relationships, are a function of multiple factors, most of which have nothing to do with religion"(Barlas 2002:2). The deep intertwining of tradition



with religion is the single most ineluctable factor in the conspicuous gender inequality in Sudan. Yet contrary to popular belief, it has become evident that, “inequality and discrimination derive not from the teachings of the Qur’ān but from the secondary religious texts, the Tafsīr, and the Ahadith” (Barlas, 2002:3).

I am Sudanese by nationality, nothing else. I have not lived in Sudan for prolonged periods of time, but I have been there enough times to understand some of the more intricate values, of which religion occupies the most pivotal role. Yet, I am not proud to be Sudanese. My lack of pride in being Sudanese is not as a result of the “third world” conditions of the country, or the close-mindedness of Sudanese men - on the contrary, I find a certain comfort being in Sudan. My lack of pride derives from the way Islam has been kidnapped, ‘misused’, and represented myopically. My lack of pride is in the glaring hypocrisy in the praxis of Islam employing random *Surahs* to favor the patriarchal majority; my lack of pride is in the cowardice of justifying child marriages by citing the Prophet’s wives (PBUH), and my lack of pride is in the outright claim that a woman reporting a rape was “asking” for it - be it due to her ‘indecent clothing’ or ‘foreign attitude’. My lack of pride stems from the practice of child marriage even though the 2010 Child Act of Sudan defines a child as “every person who is not above the age of eighteen years” (Child Act, 2010); therein lies my lack of pride. My stance is that a majority of men and women in Sudan fail to venerate Islam’s true meaning with respect to the issues that will be discussed in this work.

I considered this stance, as I began to reflect on my position with regards to my work. Yes, I am the ‘Principle Investigator’ -according to the ethics application that was required for fieldwork research. That title scarcely conveys how I understand my role as I approached my research. For a topic that is very important to me, and a religion that has governed my life since my birth, the objectivity of the principal investigator is an illogical response. Feminist ethnographers such as Nancy Naples (1996) have declared objectivity to be a false

dichotomy. Naples argues that as ethnographers, we are never fully outside or inside the community; our relationship to the community is never expressed in general terms it is always being renegotiated (Naples 1996:373). Throughout this work, it will be visible that my lack of objectivity has been my greatest motivator, as it has allowed me to look beneath the surface, finding answers through unexpected avenues.

Growing up, I thought of religion as means of guidance for living my life. Naïvely, I thought this rule applied to everyone who belonged to the Muslim faith. I believed that “...for though you do not see him, he sees you. And anyone constantly aware that God sees all will never misbehave” (Hill, 2018:36). Evidently, those who claim piety and commit rape do not find the idea of “Allah is watching you” sufficient to prevent them from committing inexcusable crimes such as rape and murder. This is comparable to the cases of young boys reporting sexual assault by Roman Catholic priests; this of course is not the only case in point. Like rapists of any religion, the lapse of morality is often due to the drive for power. I recall a time when cases of child rape were rampant in Sudan, among them the rape of Muraam- a toddler that was raped by the neighborhood shopkeeper; as a result, the little girl passed away due to the brutality of the rape.

It is important for me to acknowledge that I also do come from a position of privilege. This position of privilege is through the fact that I have not endured first-hand a great deal of the injustices that women in Sudan have endured. This may be due to the sensibility of my father and the strength of my mother. However, my analysis as a Muslim, womanist critical reader does lend itself to direct currency for other women living under Muslim laws (Wadud 2016:131).

It must be stated that regardless of how the Qu'ran is interpreted, it adheres to one universal truth, a truth found in the United Nations Declaration of Human Rights as well as

the Declaration on the Elimination of Violence Against Women: "...all human beings are unconditionally equal in dignity... (UNDHR, Article 1:1948).

## **1.2 Negotiating Visibility through Lived Experiences**

"The uniqueness of feminist theology lies not in its use of the criteria of experience but rather in its use of women's experience, which has been almost entirely shut out of theological reflection in the past. The use of women's experience in feminist theology, therefore, explodes as a critical force, exposing classical theology, including its codified traditions, as based on male experience rather than on universal human experience".

- (Ruether, 1992:13)

In Islam, or rather the way Islam is practiced in Sudan, women's individual needs are often overshadowed by the so-called "communal" needs that are usually the dominant needs of men. I would like to bring forth a theory that I will be using in my work: David Hammon's *politics of visibility*. This theory was employed to demonstrate how Black women are constantly negotiating spaces for their visibility (both spiritual and historical) in Manigault-Bryant's: *Talking to the Dead: Religion, Music, and Lived Memory among Gullah/Geechee Women*. Women are continuously needing to struggle to be visible in the face of the patriarchy.

Analogous to African American historical images, we need to find ways of incorporating Sudanese women into "**social and political memory**, instead of using [them] as a substitute which encourages the atrophy of such memory" (Richardson and Jackson 2007:62). This quote encapsulates the importance of reintegration and the possibility of reinterpretation. The author also had in mind, "los desaparecidos" (the "disappeared ones") a term that emerged in the Argentine Dirty War (1976-1983) to describe the people who were disappeared without authorities creating search parties for them. Power structures can

literally disappear women from religious histories. It is common knowledge that most Muslim women have almost been ‘unseen’(or have been ‘disappeared’) throughout Islamic history; there generally is mention only of a handful of particularly powerful, educated and intelligent women in Islamic history. Qu’rānic *tanzil*(order of revelation) for example, has allowed for male scribes to write, and re-write histories, reinterpreting and neglecting to surface the stories of those women. As this work progresses, it will attempt identify such moments in religious history where marital rape is *seemingly* sanctioned. All of this is in an effort to allow women to write futures in which they are visible and heard, rather than relying on the stories of the past. As previously mentioned, this may come in the form of consciousness raising and enabling women to enact agency in their lives. The hope is to eventually find a relationship between what we read the texts to be saying and how we think and treat real women (Barlas 2002:3). Optimistically down the line, this stream of thought will be utilized in creating a positive cyclical effect resulting in a new generation of Sudanese women who think for themselves and teach their children to do the same.

*Faith, Feminism and Scholarship* is a collection of the works of feminist theological scholars. Written in 2011, scholars compile their personal experiences into a book that bridges personal, societal and academic experiences of religion. I would like to draw upon the concept of cognitive dissonance utilized by two contributors to the collection Rachel Elizabeth Hardin and Anne Joh In the second chapter, entitled, “Christian Feminist Theology & Postcolonial Resistance”,W Anne Joh the author reflects on her attempt in creating “dissonance in what and how students arrived at the truth of things” (Harris & Ott 2011:26). Although the quote above pertains to an academic setting, the author has allowed me to think of the impact of cognitive dissonance as a means to appeal to women. First coined in 1957 by Leon Festinger, cognitive dissonance is a term used in the field of psychology to describe “mental discomfort experienced by a person who simultaneously holds two or more

contradictory beliefs, ideas, or values” (Festinger, 1957:3). My belief is that questioning certain Ahadith, Surahs and *Fiqh* will incite an incongruity of ideas, and will result in participants experiencing some sort of internal conflict. Ideally, this will result in consciousness raising as they begin to couple reason and logic to the interpretation of religious texts, prompting women to think: how can a religion that preaches mercy, love, dignity and compassion permit or even sanctify the violation of women? The generation of this type of internal discomfort, I am hoping, will spark a different way of thinking about religion. Perhaps the emotions generated can be similar to those on display in *Judith Beheading Holofernes* (1614) by Artemisia Gentileschi. The painting illustrates the story of Judith- a Bethulian widow summoned by Assyrian general Holofernes into his tent because of his desire for her. In an effort to save her land and people, having Holofernes in a compromising position, Judith is able to behead him, hailing a victory for her people. This may have been a poignant allusion to put this as an experience of sexual assault whether or not that is the case, the message remains the same. Judith’s regaining of power for herself and people points to the same metaphorical journey women should ideally undergo when confronted with cognitive dissonance.

**Image 1:**

Gentileschi, Artemisia *Judith Beheading Holofernes*. 1614



### **1.3. The Taboo of Sex & the Reiteration of Honor**

My family left Sudan before I started elementary school, therefore I have not experienced elementary or middle school in Sudan. I have shared this fact because an important part of raising women and men is educating them about the importance of being mindful of their developing bodies, as well as being respectful about biological differences, fostering healthy sexual relationships and arming children with adequate information on how to protect themselves from sexually transmitted diseases. Although Kathleen Johnson has found that “Sexual health education is not solely provided or learned from a single course or conversation; it is rather a synthesis of lifetime experiences and knowledge to form attitudes, beliefs, and values on identity, relationships, and intimacy” (Johnson 2016:82). Nevertheless, sexual health education classes for children can make an important start.

Even with recognized indisputable benefits, many public schools in Sudan do not offer sexual education in their curriculum. An overwhelming majority of public schools in Sudan practice a single-sex/gender segregated educational system. It can be argued that this should benefit the students- by allowing for an important class on sexual health to be given where students of the same gender will feel no shame or embarrassment. Regrettably, this is not the case. As previously mentioned, Sudan is an extremely conservative society. Even though Qu’ranic teachings have stressed the importance of acquiring knowledge, (for instance, the first word of the first verse revealed in the Qu’ran is “*Iqra*” “read”) this practice has not been applied to sexual education. Nonetheless, “The main reason Muslim parents do not or cannot discuss sex education with their children is because of their cultural upbringing, not their religious training” (Athar, 2018).

This is an area where culture trumps religion. Prophet Muhammad (PBUH) was very vocal about sexual life as shown by multiple *Ahadith*(which will be discussed in detail at a later time); his companions came to him with many questions about sexual relations which led to recorded *Ahadith*. He also was a great advocate of a husband sexually approaching his wife ethically. Perceived as the ultimate taboo, many young girls in Sudan have little to no comprehension about topics such as safe sex and sexually transmitted diseases. There is a glaring reason why sexual education in countries like Sudan is rare: the fear of raising promiscuous, sex-conscious women is greater than the perceived educational value of sexual education. A woman engaging in sexual conduct before marriage is a *haram* (unlawful). *Zinā*(the Islamic term for premarital & extramarital sexual intercourse) is equivalent to the sin of premarital/extramarital sex known as fornication in Christianity. In Judaism, the Torah never explicitly forbids sex before marriage, although adultery and incest are considered unlawful (Malina, 1972).

Rather than being concerned with the promiscuity of young women, I advocate that we redirect our focus to educating young men about sexual relations. The hyper conservative nature of Sudan is actually a contributory factor in the promiscuity of young men and women, “for a segregated society with strict separation between the sexes creates widespread sexual frustration and suppression” (El-Saadawi 1993:24).

It is a common fact that fornication affects a woman more than a man primarily because the two utmost important things for a woman in Sudan are her reputation and her honor, understood not as her honor but rather as her family’s honor. Her reputation directly affects the honor of her family. Furthermore, unlike for a man, there is a physical indicator of a woman’s loss of virginity: a broken hymen. Egyptian scholar, doctor and feminist Nawal El-Saadawi has written about the importance of a girl’s hymen in Islam and the Muslim world. In her critically acclaimed book: *The Hidden Face of Eve*, El-Saadawi dedicates the fifth

chapter, “The Very Fine Membrane Called ‘Honor’ (El-Saadawi 1993:25) to the annihilative effect of a broken hymen in Muslim society, and the immense power such a ‘fine membrane’ holds.

In a country like Sudan, religion and culture go hand in hand and most young women know the shame that not being a virgin will bring to their families. “Patriarchal class societies have imposed premarital virginity on girls and ensured that the very honor of a girl, and her family, is closely linked to the preservation of this virginity” (El-Saadawi 1993:26). Furthermore El-Saadawi goes on to say that an “Arab family does not mourn the loss of a girl’s eye as it does if she happens to lose her virginity” (El- Saadwi 1993: 26). It is for this reason that some families in countries like Pakistan, Iran, Afghanistan and more recently India- practice honor killings. Honor killings are defined as “the killing of a woman by her relatives for violation of a sexual code in the name of restoring family honor” (Abu Lughod, 2013:113). In concurrence with several Western scholars, a majority of human rights activists, Islamists and feminists, argue that honor killings, are a form of “Western domestic violence or femicide (killing of women) (Mujasi, 2000) rather than a practice based on Islamic teachings. There is no rule or practice in Islam that condones honor killings, and thus viewing honor killings/crimes as associated with certain cultures and communities erroneously homogenizes communities rather than viewing the murders as “perverse and diverse acts of individuals in different circumstances” (Abu Lughod 2013:128). “People kill their own flesh and blood to satisfy backward tribal values and traditions that are by no means related to religion (Abu Lughod, 2013:128). While it cannot be presumed that fathers who commit/allow honor killings of their daughter do not feel some sort of sympathy towards their daughters, cultural and religious preaching demand the least “detrimental way” of dealing with this issue. The internal conflict posed for a father as he experiences the pressure



of exhibiting 'manliness' in the eyes of society is likely a focal point of discrepancy between Islamic preaching and societal implementation.

## Chapter 2: Consent, Law & Conscienization of the Sudanese Society: Past, Present &

### Future

“As long as people are doing fine, their true nature is concealed but when calamity strikes, their true natures are revealed, so the believer resorts to his faith and the hypocrite resorts to his hypocrisy”

- al-Fudayl ibn ‘Iyaad

“The overwhelming weight of the Muslim legal and exegetical tradition is on women’s obligations to make themselves available sexually to their husbands, rather than the reverse”.

-Kecia Ali, 2016

Sudan’s judicial system is a mixture of Sharia Law (the Māliki School) and legislation from the Sudanese constitution. It will likely be difficult to change the law. Nonetheless, Sudan currently has no legislation on marital rape (for failure to recognize its possibility) creating a religious, societal and judicial impasse. Prior to 2015, a woman in Sudan who has been raped would have either faced adultery(*zinā*) charges if she was married; or it would be considered an act of indecency and fornication under the Sharia Law if the woman was unmarried (ACJPS 2016:1). In a progressive move, in February 2015, Sudan passed a number of amendments to the 1991 Criminal Act, including long-awaited amendments concerning rape and sexual violence. An amendment to Article 149 (rape) changed the legal definition of rape, from “sexual intercourse” to penetrating any part of the body including the vagina or the anus. The first clause:

“There shall be deemed to commit the offence of rape whoever has sexual intercourse by way of **adultery** or homosexuality with any person without consent” (Sudan: The Criminal Act 1991: Article 149) was replaced with:

“(First)Clause (1) and (2) shall be nullified and replaced by the following new clause:(1)

There shall be deemed to commit the offence of rape, whoever makes sexual contact by way

of penetrating a sexual organ or any object or part of the body into the victim's vagina or anus by way of using force, intimidation, or coercion by fear of the use of violence, detention, psychological persecution, temptation, or abuse of power against the person or another person, or when the crime is committed against a person incapable of expressing consent because of natural causes or luring-related or related to age. (Second) Item No. (3) to be re-numbered and become Item(2)"(ACJPS 2016:4). Although there is no separate prohibition or distinction of marital rape, the removal of reference to adultery in the definition of the crime should ideally mean that it should now be possible to prosecute marital rape under Article 149(1) of the 1991 Criminal Act.

Unfortunately, this is not the case due to the fact that the legislation conflicts with the existing rules of Sharia Law (ACJPS 2016:4).

Although noteworthy progress is being made, it is also worth noting that the greatest differentiating factor between rape and *zinā* has been overlooked. *Zinā* involves **consensual** premarital/extramarital sexual intercourse. "Sexual violence, which includes rape, is considered to be any act of sexual nature, which is committed on a person under circumstances which are coercive (Goldstone 2002:283). Coercion is the absence of consent. Consent, the most imperative element of all forms of sexual intercourse, be it marital, premarital or extramarital, is a concept that is unfathomable by many married couples in Sudan. There are a multitude of consent theories, one of which will be discussed in the coming chapter. For now, to put it simply, this is what Sudan currently believes constitutes *Zinā* and rape:

Unmarried Woman+Unmarried Man+CONSENT→*Zinā*

Married Woman(not wife)+Married Man(not husband)+CONSENT→*Zinā*

Unmarried Woman+Unmarried Man-CONSENT→ Rape

Married Woman(not wife)+Strange Man→Rape

I would like to argue that the lack of consent in a marriage should also be considered (marital) rape.

#### Wife+Husband-CONSENT → Marital Rape

I recall the day I went to visit the only female *Mualima* I could get in touch with. Although female *Mualimas* in Sudan were not rarities, I hadn't had the opportunity to interact with many throughout my life. After about an eight-minute drive from my house, my mother and I stopped in front of a humble white masjid. I was greeted by the refreshing petrichor left behind by the rain. We entered through a different entrance than the men-even though it was not a Friday afternoon, it was a Wednesday. My mother gestured for me to place my scarf over my head before entering. We were greeted with a mixture of smiles, some warm, and some exuding confusion. Instinctively, I chose to focus on the warmth of the smiles. My mother introduced me to the eldest of the women in the masjid's *hōsh*(courtyard). From her demeanor, I knew she was the *Mualima*- her presence commanded respect, and she got it. For the purposes of confidentiality, and of respect for her wishes, this *Mualima* will not be named. We sat down and because it was Ramadan, we did not endure pleas to drink or collect a sweet treat that would've normally be presented to us.

I began to tell the *Mualima* about my research and why I had chosen this topic specifically. The first question she asked me was: "Are you married? If you were married you would know that your husband cannot rape you. We have rape in Islam and the punishment for that is clear in the Sudanese Law books, but in Islam there is no such thing as marital rape, a husband cannot rape his wife". The first thought that came to my mind was to be aware of my body language- I didn't want to appear unprofessional, this was not a formal interview, as I set it up as an informal chat for which I did not need ethics approval. Simply, I wanted to know if a woman with such great influence could help me. However, I was overcome with a feeling of deflation. Expecting somewhat of a different response, I

despondently looked to my right- at my mother. I was not expecting a clear embrace of the legal recognition of marital rape; rather, I was expecting hope. I was expecting her to dispel some of my preconceived notions about marital rape in Sudan and Islam. Nonetheless, I remembered this was literally the first person I had spoken to about this topic. It was just the beginning.

Anti-patriarchal reimagining and rethinking of the Qu'ran, without desacralizing the holy text, is of utmost importance for women to imagine a better future for themselves. A future where new ideas are not implanted or transferred, but rather, where we can embrace the emancipation of independent thought. "The answer without a doubt is to be found in the time-mirror wherein the Muslim looks at himself to foresee his [her] future. The image of (his) woman will change when he feels the pressing need to root his future in a liberating memory. Perhaps the woman should help him do this through daily pressure for equality, thereby bringing him into a fabulous present. And the present is always fabulous, because there everything is possible- even the end of always looking to the past and the beginning of confidence, of enjoying in harmony the moment we have" (Mernissi, 1991:194).

In 2010, Ruth Lazar published an article entitled "Negotiating Sex: The Legal Construct of Consent in Cases of Wife Rape in Ontario" which examined wife/partner rape trials in Ontario, Canada. Lazar interviewed couples as well as crown attorneys and defense counsels. Lazar found that there was "... a presumption that sexual consent is continuous in long- term intimate relationships" (Lazar 2010:333). This problematic presumption amounts to a misconception of automatic consent during a marriage. She further cements this claim by stating that there are "...difficulties with acknowledging concepts of "non-consent," given the nature of marriage and the association of consent with love, sex, intimacy, familiarity, sexual history, and couples' personal language"(Lazar 2010:330). As a result, "...raising the definition of consent to a standard of 'informed consent'" (Gotell 2015:870) is of the utmost

importance. Consent is a concept that is transferrable throughout all interactions, irrespective of location. Early Islamic jurists failed to recognize its importance and as a result this has been reflected in the laws of a majority of Muslim countries worldwide. The next sections of this chapter will trace how Sudan arrived at its current legal situation which almost implies the impossibility of recognizing marital rape.

### **2.1: The Māliki *Fiqh***

Dating back to the 8<sup>th</sup> century, the Māliki *Fiqh* is the second oldest and the second largest school of law. Largely prevalent in Northern and Western Africa, the Māliki *Fiqh* is also present in some areas within the Arabian Peninsula including The United Arab Emirates, Kuwait and the Kingdom of Bahrain. The founder of the Māliki *Fiqh*, Mālik ibn Anas (711-795CE/93-179AH), also known as Imam Mālik, was a jurist, a collector of Ahadith as well as a theologian who sought to create a new system of Muslim jurisprudence. Born in Al Madinah Al Munawarah he is venerated as an exemplary figure by most *Ulema*(Muslim scholars with specialized knowledge of Islamic law and theology)(Zaman,2010). It has been claimed that the Prophet Muhammad (PBUH) foresaw Imam Mālik's coming, he said: "Very soon will people beat the flanks of camels in search of knowledge, and they shall find no-one more knowledgeable than the knowledgeable scholar of Madina"(al-Rifai 2015:28).

A unique aspect of the Māliki School is that, unlike its three counterparts the Hanafi, Hanibali and Shafi'I schools, it relies heavily on the consensus of the people of Al Madina at the time of the Prophet's life (Hawasli 2015). These included a mixture of people already in Al Madina (some of which actually invited the Prophet there), and those who accompanied the Prophet from Mecca to Al Madina and embraced Islam. For this reason, the Māliki School is often viewed as the school of the Madinites (Hawasli 2015).

Imam Mālik's *Muwatta'* is one of Islam's oldest surviving legal texts and unlike other works, it integrates both Ahadith as well as independent *Fiqh* (Hawasli 2015). Furthermore, Māliki ideas about rape and appropriate penalties continued to evolve over subsequent centuries, with many new ideas developing between the 10<sup>th</sup>-15<sup>th</sup> centuries.

Considered to be the most rational of the four schools of Islam, it has been said that the Māliki school is notorious for providing ways to “accommodate social demands on the grounds of rationality, balance and justice” (Serrano 2007:2). For countries such as Sudan that adopt Islamic classical penal law, following the Māliki *Fiqh* is advantageous. Because of the flexible nature of the Māliki School, the legislative branch of Sudan may be able to create new laws that are in line with religion, rationality and (most importantly) justice.

Unlike the Hanafis, who define rape as a coercive form of zinā (Azam 2015:201), Mālikis use several verbs to describe the act. The *Hanafis* have created a dead-locked definition of rape that make it difficult to amend laws and regulations in the nations that have integrated the Hanafi School of law within their legislation. Beneficiary to future law reform are the Mālikis' definitions of the act of rape. Rape in the Māliki School is defined as a composite crime. In a composite crime the composition of the offenses that is the *hadd/hudud* (penalty/penalties is fixed by law for the specific combination of crimes(Felson,2006). Māliki '*fuqaha*' (*jurists*) usually refer to rape with: *ghasaba*(to force, compel or coerce) or *ightasaba* (to take away by force, rape) and in most cases those words are used interchangeably” (Serrano 2007:167). Specific to a premarital or extramarital rape, Māliki '*fuqaha*' also employ the verb *ghaba* followed by '*alā*' which denotes taking a woman to a secured place where the crime is perpetrated (Serrano 2015; 167). Other verbs such as *iftadda* and *iftara'a*(the act of defloration) and *afdā*( a term used to describe a man who tears a woman's vagina) are also used(Serrano 2007:167 ).

Rape in Sudan is identified and tried in accordance to the Māliki *Fiqh*. When setting rules for the identification of a rape, Māliki *fuqaha*'' created guidelines to identify and penalize this crime. Proving illegal sexual intercourse (zinā) requires:

- To prove illegal sexual intercourse (zinā) this must occur: “either four upright witnesses who have seen the act in its most intimate details, or the confession of the perpetrator or pregnancy of the survivor” (Serrano 2007:169).
- Because rape is based on coercion and force, the usurpation of an individual’s right to refuse to have sexual intercourse (consent) is also considered as rape. This is because sexual intercourse is a legal right that can be enjoyed only within a marriage or concubinage in which *mahr*(bride-price) or monetary compensation (if the woman is a slave) has been paid (Serrano 2007: 170). The latter would not be applicable in modern day laws due to human rights advancements that have abolished legalized slavery.
- If the rape is proven, the survivor is exempt from the punishment for zinā
- However, if the survivor cannot provide compelling circumstantial evidence, then the accusation is considered false accusation (or *qadhf*)- which carries its own punishment of eighty lashes (Serrano 2007:170).

The above stipulations are clearly problematic. With reference to the first point, the impracticality is clear. It is extremely difficult to produce four witness (unless a woman is gang-raped, in which case the perpetrators would also serve as the witnesses). Four witnesses witnessing “the act in its most intimate details” is even more impractical, particularly for proving marital rape since it is very unlikely that anyone else would be present at the time of sexual intercourse between a husband and his wife. How then does a wife come forth and declare her husband to have raped her if she cannot provide a witness and her husband is insistent on his God-given marital ‘right’ of sexual intercourse? Even if the wife were to become pregnant as a result of a marital rape, there would be no grounds for punishment as a crime was not committed and it would be a justified pregnancy. Yet, according to the *Māliki*



definition of *al-ightisab*, sexual intercourse without consent is considered rape. Why then is the consent factor not applicable to a married woman if she is subjected to sexual intimacy without her consent? Some might argue that sexual intimacy is a part of the marriage contract. However, even in the marriage contract, the use of force and the infliction of harm as a means of sexual intimacy is most certainly not condoned. This is illustrated in Al-Nawawi's *Ahadith*:

فلان كان يملك جماعها من غير ضرر بالفئله ذلك وانك اذ لم يكن جماعها الا بالاضرار يجره جماعها .  
 (“If it is possible to have intercourse with her [the wife] without harming her, then he may do that. If it is not possible for him to have intercourse with her except by harming her, then he does not have permission to have intercourse with her”).

- al-Majmū' Sharḥ al-Muhadhab 16/409

I would like to draw attention to the fact that harm resulting from rape does is not explicitly limited to physical (visible) harm; in addition rape can result in both emotional and mental harm. Although the aggressive nature of rape is recognized, marital rape is denied as a possibility in Sudanese law, even when consent is lacking.

The assumption according to *Māliki Fiqh*, is that the survivor reporting a rape will be believed if she simply declares that her **choice** of engaging in sexual intercourse has been usurped. According to Delfina Serrano, when a woman submitted a claim of rape, it is to evade the punishment for *zinā* (Serrano 2007:158). This still continues to make it difficult for women to report cases of sexual assault or seek legal remedies. In Sudan, if a young woman musters up the courage to report a case, ignoring the likelihood of victim-blaming and dishonoring of her family (if she is unmarried) and the subsequent tarnishing her reputation, she will still most likely be suspected as an adulterer and can be charged with *zinā*

When creating stipulations for rape, the *Māliki fuqaha'* also distinguished between the sane and insane survivor, the child and the adult survivor, a survivor that was awake or asleep during the assault, and the survivor of bad or good reputation (Serrano 2007:170). A survivor is reduced to her societal standing, her age (understandable because preadolescent

girls have no way of giving informed consent) and her mental state when, in my view, a survivor's testimony should suffice as cause for questioning the perpetrator.

It is extremely likely that there are a great multitude of young Sudanese woman who have been sexually assaulted and have not reported it to authorities, a situation that is not unique to Sudan. According to Rape, Abuse & Incest National Network (RAINN), out of 1,000 reported rapes, 995 perpetrators will walk free; additionally, out of 1,000 rapes, 770 will go unreported (RAINN 2017). However, unlike in Western countries such as Canada, the United States, and European nations, in Muslim-majority countries, survivors face greater difficulties reporting rapes due to the religious nature of laws. In Sudan's northern Hanafi neighbor Egypt, the Egyptian Center for Women's Rights has found that there are roughly 200,000 cases of rapes that occur annually, of which only about 12% are reported to police due to the legality of marital rape (ECWR,2008). In an expert group meeting organized by the United Nations Division for the Advancement of Women activists found the reason for Egypt's high rates of honor killings within the Middle East/ North African region is the fact that neither Sharia Law nor modern laws have penalized honor killings due to the tribal influence (UNDAW). In Algeria, another Arab nation, Article 336 of the 1984 Penal Code stipulates that rape is a punishable offence but leaves the definition of rape to the discretion of the judges (UN Women, 2011). Unfortunately, this continues to make it difficult for women to report cases of sexual assault or seek legal remedies. The unfortunate truth is that current systems will most likely paint a rape survivor as the perpetrator of her own misfortune.

## **2.2.: Rape Legislation in Sudan**

“Will they not then reflect upon the Qur'an, or are there locks upon their hearts?”

- The Qur'an, 47:24

Early Māliki jurists developed laws over many centuries. In the rapidly changing contemporary era, Sudan has unfortunately been unable to respond to religious shifts and create new laws accordingly. “How the Qu'ran and Sunna are interpreted to provide Islamic codes is the basis of law-making in Muslim nations”(Halim 2011:228). Sudan has failed to protect women (single or married), among other segments of the community, in matters of pre or extra marital sexual assault, and to protect married women in matters of- marital rape, citing religious rights and purpose, because, “Sudanese law endorses the gender discrimination founded in the early interpretations of Islamic law”(Halim 2011:228).

Sudan gained independence from the Anglo-Egyptian administration on January 1 1956. The first permanent constitution of Sudan was drafted 17 years later- on January 1st 1973. During that period, in 1969 to be exact, the late president Jaafar Nimeiri(1930-2009) led a military coup, and took control of Khartoum. The 1973 constitution, like a majority of preliminary constitutions was more of a declaration of sovereignty, than a comprehensive criminal and penal code. Consisting of 225 articles, this constitution set out citizen's rights and affairs, legislative rights, government structures and the judiciary. In 1974, the Minister of Justice compiled all the Sudanese civil and criminal laws into an eleven volume series, a reference that is still used to today by the Sudanese judiciary(Medani 2010:7). In 1975, in which four articles concerning citizens’ rights were amended to the 1973 constitution. Through these Amendments, Islamic punishments such as *Huddud* and *Qisas* were introduced (Medani 2010:8). A form of retributive justice, *Qisas* were punishments sanctified by Allah in the Qu'ran for the crime of murder. Among the specified *huddud* were:

“...stoning to death for **Zinā** (adultery) if the person is married or 100 lashes otherwise, 100 lashes and possible imprisonment for 5 years for sodomy and possible death penalty or life imprisonment in case of a third conviction, 100 lashes and

imprisonment up to 10 years for rape, unless it also amounted to adultery or sodomy it becomes punishable with death...” (Medani 2010:7).

In order to impose Islamic Law throughout the entire nation, in 1983 (in the midst of civil war between the Christian/Atheist **South** and Muslim North), President Nimeiri declared Sudan an Islamic State. “Sudan thereby joined Iran and became the second country in the world and the first Sunni country to be governed according to Islamic principles”(Warburg 1990:625).

Although Nimeiri’s regime came to an end in 1986 and a democratically elected leader, Prime Minister El Saddiq al-Mahadi took over until current president Omer Al-Bashir carried out a military coup in 1989. Sudan has remained an Islamic state through all the political changes. Māliki Sharia judges, *Muftis*(legal experts that are given power to rule on religious matters), were given discretionary power to rule on cases, as they had in earlier Islamic times. Judges and Muftis were even given the right to create new rules, called *manashir*, and to nullify or impose different laws on different cases as they saw fit (Medani 2012:8). This was problematic then as it is now, and when the creation of a comprehensive Penal Code in 1991 solidified punishments for specific crimes, they were still rooted in classical Islamic times.

As in other non-secular Muslim countries, Sudan’s inability to adapt to current times regarding crime and punishment is a point for concern. There are some countries that implement Islamic *Fiqh* in their laws, yet still have abolished punishments that are a clear infringement on human rights. Sudan, however, continues to impose *huddud* punishments such as stoning to death and flogging (Medani 2010:12) both of which are associated with sexual offences.

In Part XV of the 1991 Penal Code( entitled: “*Offences of Honor, Reputation and Public Morality*”) Article 149 stipulated the punishments for rape:

(1) “There shall be deemed to commit the offence of rape whoever has sexual intercourse by way of adultery or homosexuality with any person without consent.

(2) Consent shall not be recognized where the offender has custody or authority over the victim.

(3) Whoever has committed the offence of rape shall be punished with 100 lashes and with imprisonment for a term not exceeding 10 years, unless rape constitutes the offence of adultery or homosexuality, then it punishable with death”.

(Sudan: The Criminal Act 1991: Article 149)

This section of the Penal Code is problematic in a multitude of ways. Beyond how homosexuality is punishable by death, (or punishable at all)- a blatant human rights infringement. I would like to begin by dissecting the title of Part XV. As mentioned in the previous chapter, a woman’s honor in Islam is sometimes a burden in cases associated with bodily autonomy. Unfortunately, the honor in question is a family's honor if a woman comes forth and claims she had been raped. Placing honor before truth, sometimes survivors of rape do not come forth so as to protect their family’s honor. I would say my main issue with this section of the 1991 Penal Code is that it places emphasis on *character*. According to early Māliki jurists, a man of reputable character is more likely to receive leniency when accused of a rape crime. In line with questioning a person of supposedly good character, I would like to play the devil’s advocate. Since Islam is a religion that preaches *rahmah*(mercy), where is the mercy in forcibly having sexual relations with a wife as she displays dismay? Where is the *rahmah* when a woman is crying out shrill sounds and actually begging for *rahmah*? Is it not true that any type of sexual assault that infringes on the right of choice is the antithesis of *rahmah*? It is common knowledge that simply because a law exists does not mean it will be obeyed, however the issue here lies in the fact that a law concerning marital rape does not exist in the first place. There is an evident feud between knowing how one *should act*,

morally speaking and how one is *expected to act*, societally speaking. Why not realize that good character is associated with *rahmah* and compassion? If the omnificent Allah himself is *Al-Rahim(The Merciful)*, what version of Islam is a violent merciless person practicing?

I would like to draw a parallel to Judith Butler's book, *Precarious Life: The Powers of Mourning and Violence* (2006) cited in Chloë Taylor's *The Precarious Lives of Animals*, 2008 article. I have chosen to draw on this work not because I find gripping similarities between animals and women, nor in an attempt to dehumanize Muslim women, but rather in an attempt to underline the lack of human *rahmah* involved of the act of rape; (premarital or marital). Rape is a traumatic event, for the survivor. The act of violating a woman's body causes her to suffer prior to (fear), during (pain) and after (traumatic memory) the act. In her paper, Taylor utilizes Judith Butler's work on nonviolence on humans and attempts to use the same reasons to argue for animal ethics. Butler's first argument is the about the sanctity of lives and the face of suffering. According to Butler, the face can be a cry, or even the image of a suffering body that is meant to invoke some sort of empathy in us-However why does this not happen when a man is presumably towering over a woman as she lets out piercing sounds begging for the perpetrator to stop? For an unmarried Muslim girl, an ear splitting cry is not only the cry for help or for the perpetrator to stop, she is pleading for her life; unfortunately, within a marriage the perpetrator is the one person a woman should never fear.

In Geraldine Brooks' *Nine parts of Desire*(1996) the second chapter chronicles the story of an Eritrean Dr. Abrehet Gebrekidan whose hands had saved a great number of Eritrean Muslim and Christian women who had been subjected to Female Genital Mutilation(FGM) or Female Genital Cutting(FGC). FGM has become the preferred term of use over FGC by organizations such as the United Nations. A country ravaged from a long war with its South-Eastern neighbor Ethiopia, many women in Eritrea had little access to healthcare, family planning or education. Both Christian and Muslim women from the

highlands and coastal-lowlands attended Dr. Gebrekidan's rural clinic, for (as she herself has noted "The practicing of mutilating women's genitals in Eritrea predated the arrival of Christianity and Islam, and for hundreds of years neither faith questioned it" (Brooks, 1996:35). The difference, however, was that the Christian community saw the practice as "traditional" while the Muslim community believed it to be religiously derived. "The women have been told that it is written in the Qu'rān so they must do those things" (Brooks 1996:35). Seen as a measure to reduce female promiscuity, FGM is still widely practiced in Sudan today. In fact, according to a Sudanese local newspaper *Al-Jarida*, there has been a 42% increase in FGM in the year 2018(*Al-Jarida*, October 14, no.2607,1:2018). This resistance of this practice illuminates the importance of education, also specifically the importance of teaching women how to read and not only to read the text for what it says, but also to read it for an understanding that provides a just religious experience for women. It is important for women to learn how to read (in Arabic) the Qu'ran, Ahadith and selections of *Fiqh*. By doing so, the hope is for the reconciliation of *aql* and *naql*.

### **2.3: 2015 Amendment: Re-defining Rape**

In 2015, Article 149 was amended and Article 149(1) was included. This amendment includes an actual definition of rape:

“(First) Clause (1) and (2) shall be nullified and replaced by the following new clause:(1) There shall be deemed to commit the offence of rape, whoever makes sexual contact by way of penetrating a sexual organ or any object or part of the body into the victim's vagina or anus by way of using force, intimidation, or coercion by fear of the use of violence, detention, psychological persecution, temptation, or abuse of power against the person or another person, or when the crime is committed against a person incapable of expressing consent because of natural causes or luring-related or related to age. (Second) Item No. (3) to be re-numbered and become Item(2)”(ACJPS 2016:4).

Actually, the second part of the amendment to Article 149 as quoted below:

“Whoever has committed the offence of rape shall be punished with 100 lashes and with imprisonment for a term not exceeding 10 years, unless rape constitutes the offence of adultery or homosexuality, then it punishable with death”,

(Sudan: The Criminal Act 1991: Article 149:3)

Should provide room for the inclusion of marital rape, which is cause for celebration, but the question is: what man will actually propose the inclusion of a marital rape clause in the constitution? We must ask: “Is it plausible that a Sudanese man in a position of power would advocate for the basic rights of married women to be protected against sexual assault”? Would the Iman I declared a womanist during his Ramadan *Khutba*, I wondered if he would have advocated for the recognition of marital rape. However plausible, this would be highly unlikely. Perhaps a woman in the Judiciary might advocate for this law, but given the minute number of female judges and lawmakers in Sudan, this might not even be a possibility. My examination of the Ministry of Justice’s website and directories of lawyers in Sudan’s Yellow Pages; failed to turn up any official statistics or even qualitative data about women lawmakers and judges in Sudan. Such data is yet to be carried out.

Another point of concern with the 1991 Penal Code involves is defining the age of consent. According to Article 4 of Sudan’s Child Act, a consenting adult as defined is one that is 18 years of age(CAS 2010:12). However, in the Personal Code, “the law discriminates against girls by defining the age of consent as puberty”(Badri 2012:11). How then does a country make progress, or even implement laws that will be successful in protecting girls and women’s rights, if there are two conflicting laws in place? The simplicity of the solution is almost laughable. Sudan should amend all its laws, and consistently enforce 18 as the age of consent, not only is that the legal age of an adult, but it also adheres to international human rights laws. Sudan is not a country that boasts itself on conforming to international human



rights guidelines; in fact, Sudan is one of ten member states that have not signed and ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)(Badri 2012:20-21). Yet, the world's newest nation, its southern neighbor South Sudan, has- in the midst of the war, political unrest, poverty and rampant disease has managed to still find room for the advancement of women's human rights. As Balghis al-Badri, an activist and a professor at Ahfad University for Women in Omdurman writes, "with explicit reference to experiences from other countries, it is necessary for women to be represented in legislative bodies to make these bodies pay attention to women's issues"(Tønnessen and Kjølsvædt 2010:14).

I have always had a lifelong fascination with law, in particular criminal law. Amongst many cases, I came across the case of *Williams v. Saxbe* (1976) about two years ago. *Williams v. Saxbe* was a monumental case that took sexual harassment in the workplace to the U.S Federal Court. The case was monumental in recognizing workplace sexual harassment as a form of gender based discrimination. This is called 'Quid pro quo' harassment which includes but is not limited to, unwelcome sexual advances, demanding sexual favors and implicit or explicit sexual conduct within the workplace (York 1989:830). Legal consciousness and social movement theory have both been instrumental in my understanding of this case. Sociologist Anna-Maria Marshall coined both terms. Social movement theory analyzes political disputes that emerge in everyday life that reveals the way that movements can organize, discontent, leading activists and even the general public to see **harm** where none existed before (Marshall 2003: 660). Legal consciousness is used to examine the way legal norms and values shape the meanings, limitations and opportunities of daily life (Marshall 2003: 661). "On one side is the pull of the law in constructing and constraining individual actions and decisions..." "On the other side, individuals' own interpretations of law provide the "push", shaping new versions of legality" (Marshall

2003:617-618). “Putting legal consciousness into action, the authors emphasize everyday practices that both enact and challenge existing laws” (Marshall 2003:618). The application of social movement theory will tackle the problem of seeing harm. The harm being referenced is the harm in women accepting ‘conjugal duties’ as a resolute fate, which leads to not being conscious of sexual consent within a marriage as a necessity. In addition to this, the hope is to transform social consciousness into legal consciousness resulting in the rectification of laws relating to the issues above. This chain reaction will act as a catalyst in creating legal consciousness reform, by which Sudanese society actively rethinks laws that are currently in place.

### **Chapter 3: Noura Hussein: Unholy Matrimony**

“...He has created for you, spouses from amongst yourselves so that you might take comfort in them and He has placed between you, love and mercy. In this there is surely evidence (of the truth) for the people who carefully think.”

-The Qu’rān, 30:21

“Is this what جهنم(*jahanam*) (*hell*) feels like”? I thought to myself. Ramadan was about a week away and I was already dreading the fast. It was mid-May, and it felt like the hottest day of the summer. Simultaneously, I ran past my mother’s garden into the comfort of the entry way’s air conditioners. All I could hear was my little sister sobbing. Alarmed, I ran to see what was going on, and all she said was “they’re going to kill her”. “Kill who”? I asked. “Noura”, she replied. I began recalling all the Noura’s I knew, but then I realized I didn’t know any. So I asked her who she was talking about. “Noura Hussein, Miraaj where have you been? Everyone has been talking about her, do you not have any friends”? I was too busy googling Noura’s story to address her side jab. As I began reading tweets, and stories on BBC.com and CNN, the story began to unfold. I remember feeling dumbfounded. From that point onwards, my other sisters joined the discussion, followed by my mother then my father. I will never forget the words of my mother and the words of my father, albeit for different reasons. My mother joined the commotion and said, in English: “You guys are hearing about this on the internet but this happens every day in Sudan”. I knew that as sad as those words were, her words were powerful. My mother was right. My father’s pragmatism lead him to utter, what I thought then, was a short-sighted comment: “The facts are that she killed a man. He was her husband, he cannot rape her. He was her husband”. I will never forget the words that followed. my older sister(whose wedding was two months away) asked my father: “Baba, so if I come to you and tell you that my husband raped me after I get married you’ll say that is what you’re going to say”? He had no response; I could see that he was thinking, but it was also visible that it a **strenuous** thought. I was glad someone had intervened, as my

first reaction to his comment was disappointment. As disappointing as his response was, his few words have guided me immensely during the data analysis phase of my work. Without realizing it then, my father's response would lead me to find answers to the most complex of my questions.

This chapter will utilize Noura Hussein's story in an effort to display the impact of the justification of marital rape by the patriarchal Sudanese legal system on women. In discussing and evaluating how the reiteration of erroneous Islamic patriarchal beliefs led to Sudan's failure to protect Noura Hussein, several cultural practices, policies, and issues will be elucidated relating not only to Noura's case, but also to the nation and indeed the world. The details of this story bring to light several issues that include: child marriage, forced marriage, sex contracts, and marital rape. These practices are different but are closely related to one another, and when a female experiences one, she will most likely simultaneously experience the other(s). These issues offer an in-depth understanding into the troublesome role of culture, patriarchy and religion in generating an internal conflict not only within individuals in society but in the minds of Sudanese law makers. The overarching impact of this has been exposed by the viral case of Noura Hussein, but much more crucial is the significant impact on other unseen female children, and adult women in similar or even worse circumstances.

Through love and understanding, a child is guided and directed to achieve their best potential, grow and develop into resourceful adults in the community and likewise to attain self-actualization. The rights of children around the world should not only be recognized but also accepted and widely implemented. Although children are young and relatively vulnerable, they are free spirited individuals who should be recognized as persons with real feelings and thoughts, instead of just being considered children. As such, they should be

protected but also treated with respect. The real life story of a 19-year-old Sudanese girl, Noura Hussein represents the quintessence of failure to respect and protect a child.

### **3.1. Background**

Noura was born in Sudan, growing up in a rural town south of Khartoum; but unfortunately she ended up being forced into marriage at age 15 to a 35 year old abusive man who brutalized and raped her. This is not an uncommon practice in Sudan, as the country allows girls as young as 10 years to get married off. A report by the United Nations (2017), found that more than one third of Sudanese girls are married off before they turn 18, and 12% of them suffer the same fate before they even turn 15 years. During her first marriage ceremony, Noura's father signed a marriage contract with her late husband. Noura refused and ran away but her father persistently forced her to return. Three years after her marriage, in April 2017, the second marriage ceremony took place and Noura was forced to move in with her husband considering she had finished high school. Noura refused to consummate the marriage on their honeymoon; consequently, on the 2nd of May 2017, Noura's husband raped her, with the help of his brothers and two male cousins, who held her down. The next morning, during a second attempt to rape her, Noura escaped to the kitchen, and grabbed a knife. Following a scuffle, Noura's husband sustained fatal knife wounds that led to his death. Though she went back to her family home after the incident, her father handed her over to the police who then filed a case against her. As a result, on the 10<sup>th</sup> of May 2018, Noura was charged with premeditated murder and sentenced to death by hanging.

This story is one that exemplifies how Islam has been misinterpreted and almost cherry-picked to propagate and suit patriarchal agendas entrenched in culture that continuously subjugate and marginalize women in a given society. What many fail to acknowledge or blatantly ignore, are rulings that directly clash with patriarchal ideals, such as this aspect of Māliki *Fiqh* regarding a woman who has been coerced into sexual intercourse:

“When lack of consent has unexpected consequences for the assailant, as in the case of a woman who injures a man who is harassing her, e.g. hitting him with a stone, no action will be taken against her”(Serrano 2007:175).

The significance of this legal opinion is immense; however in Noura’s case it was not used to defend her. Noura’s self-defense not only injured her husband, but killed him. It is possible that had his injuries not resulted in death, Noura would have been either completely vindicated or received a more lenient sentence.

### **3.2. Child Act 2010 and the United Nations Convention on the Rights of Children (UNCRC)**

As previously mentioned, under the Sudan Child Act (2010), a child is defined as anyone less than 18 years of age; therefore the legislation in this Act applied to Noura from the time of her marriage to the time of her crime. Article 45, Chapter IX of the act clearly states that anyone who rapes a child has committed an offence punishable by law (Sudan Child Act, 2010). In relation to Noura’s case, at least two things have apparently been ignored: the fact that Noura was a child at the time of marriage, and her subsequent rape, an offence for which her attacker and his accomplices should have been penalized under the Child Act.

Several rights that should have been guaranteed to Noura under the 1990 United Nations Convention on the Rights of Children (UNCRC) were also ignored in the initial treatment of case. These rights apply to every person who is considered a child, and the UN Child’s Right Act (CRC) treaty is notably the most widely ratified treaty in the world since its introduction over 25 years ago. Sudan has ratified this convention, and as such should have considered its provisions when handling Noura’s case. Her rights Under the UNCRC were disregarded not only by her parents, but also her government. Among others, Noura had the rights to be kept safe from all forms of violence (Article 19), to have her views respected

(Article 12), and to be treated fairly under juvenile justice when she committed the crime (Article 40). These rights, amongst others, were clearly not taken into account by the Sudanese government and as such they failed to protect her from their very first point of contact with the case. I understand the actions of the Sudanese government in light of a statement made by Behnam Sadghei: “An argument is not considered to be legitimate unless it follows the **expected pattern**”(Sadghei 2013:147). I argue that here ‘expected pattern’ is one that does not necessarily favor justice but rather favors the popular patriarchal opinion, in this case as embodied in a law.

Contradictory to the UNRC and Child Act (2010): the Muslim Personal Law (1991), which stipulates the minimum age for a child to be married at 10 years. Despite the signing and ratification of the UNCRC and Child Act, the fight to reform the minimum age of marriage still encounters resistance from religious conservative groups. These groups argue that Islam supports the practice of child marriage, which could possibly explain why Noura was treated the way she was prior to the media exposure of the story. This is not the only example of topics on which multiple and mutually contradictory laws exist in Sudan. This is an excellent illustration of the effects of a structural systemic practice.

### **3.2.1. Two Roads Converge: Child Rape and Marital Rape**

Furthermore, from an Islamic perspective, sexual intercourse should be done either for procreation or recreational purposes in the sanctified relationship of marriage. The former is to ensure the natural maintenance of the human race, while the latter is for humans to enjoy satisfaction (*Al-nikmat*)(satisfaction)during their lifetime. Additionally, according to some *Ahadith*, the Prophet Mohammed (PBUH) was an advocate of foreplay. It is believed that when asked about how to approach a woman, the Prophet (PBUH) stated: “No one should throw himself on his wife like beasts do. There should be, prior to coitus, a messenger

between you and her. People then asked, “What sort of messenger?” The Prophet (PBUH) then answered, “Kisses and words” (al-Ghazali 1982).

Sexual intercourse is thus sacred to the Islamic faith, but only when conducted by husband and wife is it *Halal*(lawful). Furthermore, *Al-nikmat* is not categorically stated in the Qu'ran to be exclusive to men. Although wives are obligated to serve their husbands sexually (except in situations where they cannot, such as in sickness, menstruation and during the fasting hours of Ramadan) (Susila, 2015:198), women are also entitled to this *Al-nikmat*. As such, under Islam, it can be argued that Noura had every right to refuse having sex with her late husband, and that by raping her, he denied her pleasure, going against *Al-nikmat*. Islam also obliges the husband to treat the wife well (Mu'asyarah bil ma'ruf), and be patient (sacrifice himself) when she is unwilling to indulge in sexual acts with him (Ali 2006:5). Yet, none of this was observed in Noura's case.

Noura's story exemplifies many of the injustices that some Sudanese girls undergo. Noura also exemplifies courage, indomitability and strength. Violence is always a last resort, but Noura was able to summon the courage to defend herself against an act of violence, her heroism should not be disregarded. It is said that: “الإرهابي هو مقبّل لحرّو فئش خص آخر” (One man's terrorist is another man's freedom fighter). Child marriage is any formal or informal union where one or both parties are less than age 18 (El Nagar, Bamkar and Tonnessen, 2017). This is an issue that affects both sexes, but the practice is particularly prevalent among female children and in Africa. This is a complete violation of the rights of children, as it affects not only the physical but also the psychological and the overall social wellbeing of the child. Child brides continuously suffer marital rape and domestic violence, and are rarely allowed to continue with their education. Child marriage in Sudan is very prevalent and sadly, as exhibited in the last image of *Aljareeda's* (“The Newspaper”), it has recently seen a 27% increase.



A number non-governmental organizations in Sudan (such as Plan International, Care and UN Women) have prioritized the creation of awareness campaigns against underage marriage, including Plan International's 'Because I am a Girl' campaign(2012-2018) aimed at educating young girls and parents about the dangers of underage marriage and the perennial benefits of educating girls. These campaigns aim not only to emphasize the detrimental effects of child marriage, but also to illuminate the physical and psychological violation of the human rights of female children that result from early marriages. These issues have always existed in Sudan, but were somewhat obscure to the world.

The Muslim Personal Law Act of 1991 sets the minimum age for marriage at *tamyeez* (maturity) itself defined as 10 years of age. During the passing of the Muslim Personal Law Act in 1991, the Islamic government of Sudan defended the legitimization of child marriage on religious grounds. The practice is still endorsed by the Sudanese Cabinet of Ministers, and child marriage continues to be culturally embedded in Sudanese society as a form of denying girls the freedom to choose whom and when to marry (El Nagar, Bamkar and Tonnessen, 2017).Some believe that the Prophet Muhammad (PBUH) married 'Á'ishah (ra)(may Allah be pleased with her) at the age of 6, however many agree that he waited before the consummating the marriage. "Khadija died three years before the Prophet departed to Medina. He stayed [alone] for two years or so. He married Aisha when she was a girl of six years of age, and he consummated that marriage when she was nine years old" (Sahih Bukhari, Vol 5, Book 58, No. 234 and 236). Yet, the debate over the age at which Prophet Mohammed(PBUH) married 'Á'ishah(ra) has received heightened attention since 2016, which has resulted in the call for a reform in the country's legislation (United Nations, 2016). In Islam, women need to be contracted out for marriage by a *wali* (male guardian) who can be either her father, brother or an uncle. These male guardians do not always act in the best interests of female children. For example, the ethnic group of Red Sea State's pubescent girls

are **stereotypically** believed to be promiscuous, and is considered as anecdotal discourse. Being a ‘promiscuous’ girl in Sudan is considered damaging to the honor of their family and ethnic group. As a result, in order to curtail promiscuous behavior and avoid shame, families give out their female children for early marriage. In patriarchal societies like Sudan, the negative consequences of a sex or marriage contract (such as one signed by Noura’s father, without her consent) are frequently endured by women.

The circumstances that led to Noura’s marriage are not uncommon. A wealthier man agreed to help a family of a lower status and, due to the nature of this transaction, Noura’s father essentially sold his daughter to him. Similar instances occur worldwide, as documented in a study carried out by UNICEF (United Nations Children’s Fund) in 2017 and reported by GirlsNotBrides, an organization committed to ending child marriage. According to GNB, 1 in 5 girls is married before the age of 18, and about 650 million women were married as children. Niger is the country with the highest rates of child marriage, with a staggering 76% (Girls not Brides, 2018). Child marriages exemplify perceptions that women cannot self-govern and lack the ability and innate characteristics to operate as free, equal individuals. Through the continuous proliferation of this idea, the ubiquity of men’s powers remains persistent and reflects in a variety of phenomena including the preference for a male child over a female, the opposition of girl child’s education, and the exclusion of women from inheritance (especially of land) (Pateman, 1988: 2). As rightly pointed out by Pateman, of all power structures in society, “...men’s governance over women is the most deeply entrenched” (Pateman, 1988: 3).

Several misinterpretations of Islam can best be described as fraternal – they support the rule of (a fraternity of) men over women (Jerichow and Simonsen 1997:93). Male fraternal power is reproduced and maintained over time through several cultural practices that are justified by religious polysemy and that dictate the way women are treated in a given

society, including child marriage, marital rape and sexual contracts. The ‘sexual contract’ is a phrase used by many people across cultures and societies to refer to forms of domination over women. From a womanist point of view, a sexual contract sustains patriarchal structures in the modern state by justifying the governance of women by men (Pateman, 1988:3).

Noura’s story exemplifies this mentality of thinking that women should be ruled and possessed, something her late husband and other men in his family deemed to be fit. To this day her late husband’s family denies that he ever raped her, arguing that they were married and, as such, Noura cannot claim to have been “raped” (Elbagir, 2018). Marital rape is generally referred to as a situation wherein a husband forcefully has sexual intercourse with his wife, without her consent (Nasri and Hamat, 2017). However, what many neglect to consider in this instance is Noura’s lack of consent both to the marriage itself and to having sexual relations with her husband. Attention to these points should have vindicated Noura’s use of self-defense. According to Sahih Muslim, in Islam: “A woman who has been previously married (Thayyib) has more right to her person than her guardian; and a virgin’s father must ask her consent from her, her consent being her silence. At times he said: Her silence is her affirmation”(Sahih Bukhari, Book 16, Hadith 80). Technically speaking, this was reason to delegitimize the marriage for Noura did not remain silent and thereby effectively affirmed her consent, instead she vocally and actively protested. However because the above mentioned stipulations were disregarded, Noura was unable her accuse husband of rape.

In a majority of Muslim countries, including Sudan, there exists a widespread belief that it is impossible for rape to occur within the institution of marriage. This way of thinking is not confined to Muslim-majority countries. In Canada for instance, “historically, male violence, especially within marriage, was untouched by law and protected as part of the private sphere of family life”(Gotell 2006:747). The biggest factor affecting this mind-set is

the fact that a majority of married men deem a woman's consent [to sexual relations] to be [automatically] contractual within a marriage.

### **3.3 Consenting to Marriage and Sexual Intercourse: Pateman's Sexual Contract**

“The most intimate relations of women with men are held to be governed by consent; women consent to marriage, and sexual intercourse. Without a woman's consent this constitutes the criminal offense of rape”.

-Carole Pateman, 1988

I would like to re-visit consent through a different lens. Carole Pateman's *Sexual Contract* provides us with a western viewpoint on the importance of consent within the marriage contract. Consent is usually discussed in the course of arguments about political obligations within a narrowly conceived political context, (for instance consent of citizens to the liberal democratic state). As a result, these theories fail to consider areas of everyday social life. In unravelling the unwritten history of women and consent, problems with consent theory rise to the surface. Consent theory simultaneously presents women as always consenting, and as individuals quintessentially incapable of consenting. This implicit state of non-consent has, throughout time either been regarded as irrelevant, or reinterpreted as “consent” (Pateman, 1988), something which is true of Islam as well.

Pateman argues that it is a façade to believe that today women have been granted equal citizenship with their male counterparts within liberal democracies, such that any major difficulties about women's consent lie only in the past. In arguing why and how this perceived sense of equality between men and women is misleading, she refers to the origin of Modern Consent Theory. Both consent theory and social contract theory were initially underpinned by fundamental ideologies stating that all individuals are naturally free and equal to each other. Consent theories in the 17<sup>th</sup> and 18<sup>th</sup> centuries cemented the idea that consent is vital not only within the State, but also in relationships between both sexes.

Although contract and consent theory developed partly as an attack on patriarchy theory, neither classical contract theorists nor their successors incorporated women into their arguments on the same footing as men (Pateman, 1988:150). Their criticism did not extend beyond the existing relationship between women and men, or more specifically, husband and wives (Pateman 1988:152). Ideally, two free and equal individuals could be expected to oversee their family affairs jointly. Till this day, this ideology is not universally obtainable, as a husband's authority is considered "natural". This is reiterated in Sudan's Family Law of 1991, under the subsection of *nafaa*(maintenance) which states that: "The man is the breadwinner of the family (Article 51)"(Tønnessen and Kjøstvedt 2010:6).

The contemporary liberal conviction that marriage is a matter of "individual" choice masks the patriarchal undertone of marriage itself and the unequal status of husbands and wives created through a marriage contract, in which women are considered "naturally" subjected to their husbands. For example, Keica Ali(2016) writes: "in the developed logic of some *fuqaha*', the *mahr*(dowry) came to be understood as compensation in exchange for milk *al-nikah*(husband's exclusive dominion over the wife's sexual and reproductive capacity)"(Ali 2016:5). Furthermore, Pateman asks: if women are free and equal individuals, why would they enter into a contract (marriage) that always places them in subordination and subjection to a male individual? The contents of marriage contracts both past and present reveal this notion of individual equality to be a façade and clearly show the underlying assumption that women are not free and equal; "having been under the authority of their father, they do not, like sons, enter a new status on maturity, but are (given away) by their father to another man to continue in their (natural) state of dependence and subjection" (Pateman 1988:153).

Unfortunately, to this day, many young girls like Noura, in addition to not being recognized as sovereign beings, are not free and equal in making decisions on when and

whom they marry. The idea that a marriage contract is entered by choice cannot be applied to Noura, as she was given away for marriage by her father, denied of the choice of whom to marry and when. Again, even if the freedom to choose whom to marry and when to get married had been given to Noura, she would still have ended up in a compromising situation, if Pateman is correct about the implicit gender hierarchy in consent theory, in which “their [her] apparent (consent) to the authority of their [her] husbands is only a formal recognition of their (natural) subordination” (Pateman 1988: 153). As such, Noura would remain perpetually vulnerable to the authority (or in this case the desires) of men- starting with her father who gave her in marriage without her consent, which resulted in her being subjected to marital rape, physical assault, and mental abuse. This situation of course is not unique to Noura.

The consequence of entering a marriage contract is that the subsequent consent of the wife to her husband’s sexual desires is silently assumed, socially and legally to be the natural order of things. In Sudan, this ideology poses significant obstacles to attempts to reform rape laws to include married women, as legal opinions have the conviction that rape is impossible within the institution of marriage. Rape is ubiquitous in Sudan, and the social rejection of the ideal that women are “free and equal” individuals is underpinned (albeit erroneously) by religious beliefs that maintain patriarchy.

A woman who has been raped is unlikely to convince the public, the police, or a judge and jury that she in fact did not consent to sexual intercourse. This is because, throughout history, submission to the act has been identified as consent, unless resistance could be proved (Pateman, 1988:157). Unless a woman is physically injured or proves she resisted, a man’s defense against a charge of rape is often found acceptable. As despicable and unfair as this reasoning is, had it been applied in Noura’s case, it could have sufficed to substantiate her claim of rape considering she had body wounds to demonstrate the struggle that ensued

during her attack. At the time of her arrest, Noura bore defensive wounds ranging from shoulder bite marks to cuts on her hands. In an article published in the Ahfad University Journal (an all-girls university in the Northern part of Khartoum (capital) Omdurman), Ikhlas Nouh Osman (2016) found that “the Sudanese socio-cultural context, hold back women from reporting domestic violence to any source of help and more restrict to report to official police” (Osman 2016:6).

Considering, however, that the judiciary system in Sudan has been influenced by (supposedly) Islamic values which have been skewed and misinterpreted to support a patriarchal agenda, it is not at all surprising that Noura was treated the way she was. The fact that she was sentenced to death by hanging for killing her attacker makes this a very compelling and dramatic case. Likewise is the fact that according to the Sudan Child Act 2010, Noura was a child at the time of her marriage, which then should have been considered void by default during the time of her arrest and trial. In which case, the debate about the validity ‘marital rape’ would have been negated, and Noura seen as the true victim.

The overwhelming influence ideology and individual thought can have on judicial systems is evident. At an earlier point in writing, I was concerned solely with scrutinizing the current systems in place, however this has proven to yield very little results. Once again I am led to believe that the core problem is not the written laws, but rather the *reasoning of the individuals writing* the law. As I have already noted, Behnam Sadeghi claims: “A jurist’s justification for a law often has little to do with the reason why he or she advocates it”; as a result, “jurists are required to argue in terms of what may one may call public reason” (Sadeghi, 2013: 148). In Noura’s case, irrespective of the ruling judge’s individual feelings (perhaps he advocated for a merciful sentence and regarded Noura as a victim of misfortune), it was common knowledge that the national discourse was in favor of the death sentence. Men especially took to social media to express their support of the death sentence

for Noura, claiming that (irrespective of what had previously occurred), the altercation ultimately resulted in the death of a human being. It was not until Sudanese millennials took to twitter in May 2018 resulting in an international movement, the process of clemency was initiated.

### **3.4 Conclusion: The Role of Public Opinion**

On the 10<sup>th</sup> of May 2018 Noura was sentenced to death for premeditated murder. Ramadan started six days later. When I learned about the case from my sister, I must admit I reacted terribly. I thought to myself, “Ramadan is six days away so the heat, hunger and frustration would not have affected the judge’s judgement”. I was too shocked to understand his reasoning. I do not wish to make light of the sentence, but rather to stress my confusion. I am not a lawyer, but I am knowledgeable about the law. Premeditated murder is murder that is strategized beforehand, and for Noura to be charged with premeditated murder was an accusation which held little validity. I simply thought: they missed the whole point of this story! Noura’s suffering was buried under the fact that a man had lost his life. Her action(or reaction), a direct result of the violence perpetrated against her, was not contextualized. The biggest failure of the justice system is its inability to contextualize. Justice cannot be blind and justice should not be. This is true not only for Sudan, but for almost all systems of justice worldwide.

I remember having Ramadan *iftar* with a group of friends when Noura’s case became a topic of discussion. The doctor had medical concerns about her physical wellbeing, the graduate student was passionate about her violated human rights, the bachelor was confused as to how her husband could rape her, and the law student was confused about the judge’s ruling and much discourse ensued. The nation seemed divided. Married men and women alike were confused about marital rape. At the same time, a surprising amount of empathy was expressed by older married women, meaning women who had been married for a decade



or more. Through overhearing my mother's friends chatting over a cup of Maghrib (fourth prayer of the day) *shai* (tea) I discovered that, the common consensus was one of empathy and pity. An air of sadness lingered over me; I felt uneasy about the fact that many of these women had probably themselves been repeatedly raped throughout their marriages and had felt the need simply to accept it. I recalled something that was said to Zubia Mumtaz during her study of the lives of Lady Health Workers Program in an unnamed village in Pakistan. The Lady Health Workers is a "program which provides door-step reproductive health services" (Mumtaz, 2013:48). One of the participants, (a wealthy married woman, who was visited by a Lady Health Worker), uttered an unforgettable sentence, "I have never thought about these issues; I've only experienced the pain" (Mumtaz 2013). Judicial systems must find ways to contextualize criminal changes by recognizing the lived experience of pain and suffering. After all, Aysha Hidayatullah has even argued for similar a process of contextualization when confronted with an incongruity between the text of the Qu'ran and the ideals of justice. She argues that "when the [Muslim woman's] reader's idea (and experience) is "outside the text's limited pronouncements"-then the reader is compelled through her experience to go "beyond" the text" (Hidayatullah, 2004: 173).

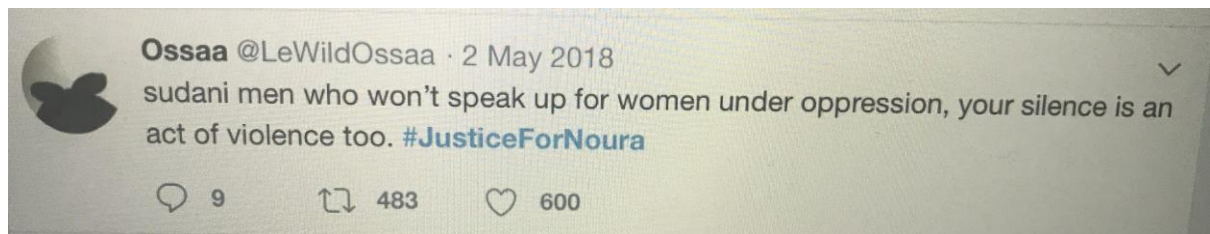
### **3.5. Conclusion**

Noura's case did not remain confined to conversations over *shai al-Maghrib*. In Sudan, content on mass media are pre-screened to ensure that the government censors news made available to the public. In their last annual press release, Reporters Without Borders ranked Sudan among the bottom 10 countries in the world because national intelligence agencies hound journalists and both newspapers and television stations are censored. Therefore, the story on Noura had to be brought to light via social media. A 33-year old Sudanese-American, through an Instagram story, helped spark the #JusticeForNoura Twitter campaign. Resulting in thousands of retweets, gaining the attention of local and international

journalists, diplomats, human rights organizations and celebrities. The #JusticeForNoura campaign gave Noura a voice, as it attracted the attention of several prominent individuals and the international community.

As of May 2018, it had been almost a year since Noura had been arrested and put on death row for premeditated murder. The twitter campaign, which start a few weeks before her death sentence was announced, precipitated an array of discussions about gender-based violence in Sudanese society, forced marriages, and marital rape in Sudanese communities, demonstrating the power and reach of social media. Image 2 reflects the kind of public discourse that suddenly flooded Sudan during that time. I found this to be one of the most powerful #JusticeForNoura tweets published during the time when the hashtag was trending worldwide.

**Image 2:**



Noura's story is essential for the understanding of the influence religion has on culture, and more importantly the overwhelming influence of the patriarchy in Sudan. Through ignoring the sovereignty and legitimacy of women as free and equal individuals to their male counterparts, and based on false interpretation or misinterpretation of the *Qu'ran*, the authority of men in Sudan is reproduced and continues to be strongly embedded not only within Sudanese culture, but also within the judiciary system, ensuring the systematic marginalization and subjugation of women. Sudanese society fails to recognize the need for women's legitimate consent, as they are considered unequal to men. The personal agendas of

cowardly patriarchal men are hidden behind the façade of Islam and reinforced by structural practices. I hope that young girls are never put in vulnerable positions that force them to react in the manner Noura was forced to. Sudan has a long way to go, but there is a way forward.

#### **Chapter 4: Research Methodology: What I Wanted To Do versus What I Did**

“Think we must. Let us think in offices; in omnibuses...Let us never cease from thinking – what is this civilization in which we find ourselves?”

-Virginia Woolf

As someone who grew up abroad as a third culture child, I am aware of my position of ignorance about Sudan and found that this would be a once in a lifetime opportunity to enhance my national and religious knowledge. Like anyone embarking on a journey of research fieldwork, I was eager to start. I had questions and I was on a mission to find answers. Unlike in my undergraduate degree, which I did using a theoretical framework, I took a completely different approach to this work. More than anything, as I started this work, I knew how personal it was to me-and still continues to be. Not only because it is based in my home country, but also because of the importance of religion in my daily life, and the lives of Sudanese people residing in Sudan. I grew up Muslim and still am Muslim, nevertheless, I knew that I would be viewed as an outsider because of the outlandish nature of my research. Talking about sex itself is a taboo in Sudan, and about rape even more so; indeed, to my knowledge, marital rape is a topic that has never been discussed-at least not in public. Sudan has had its share of child rape cases, of which a great majority were reported on, television, radio and in print and social media. Cases of unmarried women being raped are unreported in the media but are not unheard of. However, women reporting their husbands for raping them is unheard of. I had every reason to tread lightly, not only because of the sensitivity of the topic but because I wanted to be taken seriously enough for my participants to recognize the importance of my work.

As Kim V.L England stated, it is important to address “key ethical questions that face researchers conducting fieldwork, especially with regard to the relationship between the researcher and those being researched” (England 1994:81). In order to get an accurate sense

of the values of the participants involved in my work, I needed to foster a relationship with them. Religion is a very sensitive topic of discussion, and fostering a relationship with participants would allow me to capture opinions on a micro level in order to reach conclusions about religious *tafsirs* on a macro level. I wanted people to use their own *'aql*(intellect) and *'Ilm*(knowledge) to think about the questions in the same way I was. I never intended to make grand statements and homogenize the views of Sudanese people about and marital rape; instead, I simply wanted to better understand the connection between religion and Sudanese society, including how religion is implemented in daily life.

Since the inception of this project, I have been asked on a multitude of occasions why I chose this particular topic; furthermore I was told by several people that there are great many ways to link religion and society. I must admit I reacted differently to being asked this question, depending in the identity of the questioner. When asked by men, in particular Sudanese married men, why I chose this specific topic, I became very defensive, perhaps because the inner womanist in me felt as if they were protecting their (misguided) *'divinely given'* right to engage in sexual intercourse with their wives. In contrast, when questioned by those who were unmarried, I never became defensive; I was simply baffled to discover that they didn't see anything that involved the word *'rape'* as an issue. The truth is, I chose to talk about marital rape in Sudan because I find that in Sudan the most uncomfortable topics can yield the most interesting discussions. When people from different tribes, and different levels of Islamic spirituality and education debate a subject, they can all form an opinion that might have otherwise not been thought about at all. Humorously, I have found that the more uncomfortable a Sudanese person is, the more honest their gut reaction to the question/situation at hand will be. Societies' best kept secrets are derived from the most taboo of topics. In all cases, I tried to respond as diplomatically as I could, even when I got defensive; being the daughter of a diplomat does that to a person.

#### **4.1 Proposed Methods of Data Collection: What I Tried to Do**

When it came to data collection, I knew that I wanted to capture as many diverse views of Sudanese people as I could and to include people that resided both within the capital Khartoum and outside of Khartoum State. I decided to employ a qualitative method of collecting data: holding focus groups alongside using sources such as police reports and newspaper archives. I believed that focus groups would be a more effective and convenient method of capturing multiple viewpoints than one-on-one interviews. “A focus group is small group discussion focused on a particular topic and facilitated by a researcher” (Munday 2014:233). Focus groups can include trying out a product for market research, viewing a film together, or being subjects of medical research, but my intended focus groups were ‘focused’ on debating a set of questions. I ended up doing a different project, and the actual research can be found in the appendix. Here I would like to discuss my original focus group plans.

I decided to do two focus groups outside of the city, and one in Khartoum. The two other states I decided upon were, the Northern State and North Kordofan. I chose those three locations in order to hear voices from people from different socioeconomic statuses and different tribes concerning how they experienced religion. Khartoum, the capital, is the county’s wealthiest state and arguably the least conservative. The Northern State or (al-Shamaliya) can be argued to be Sudan’s most conservative state, with a significant amount of people from the Zaghawa tribe; this is the same tribe Noura’s family came from. North Kordofan represents the median of the two ‘extreme’ states, boasting a ‘healthy’ Growth Domestic Product (GDP) as a result of the Gum Arabic Belt running from Darfur across West Kordofan and North Kordofan.

I also knew that it would be difficult for me to access these places without an insider’s support, so I began to ask around in Khartoum if people had connections to influential people

in the two states where I intended to do fieldwork. I was fortunate enough to know a friend whose family actually resided in both states, who knew the each state's *Omda*-(mayor), who would in turn be able to aid me in the recruitment of participants. Little did I know that having an *Omda*'s help would not be in my favor as it would be seen by the REB(Research Ethics Board) at the University of Alberta as potentially 'coercing' by the ethics board- (although this was perhaps the least of my troubles while seeking ethics approval). In Khartoum I was going to recruit participants through word of mouth as well as by hanging posters around the city in the British Council, the German Institute and the French Institute.

In my original application for REB approval, I proposed the following three focus groups:

**Table 1:**

<b>Location</b>	<b>Number</b>	<b>Age</b>	<b>Marital Status</b>	<b><u>Level of Literacy</u></b>
Khartoum State	7	18-35	Single	High school diploma
Northern State	7	20-60	Married	Elementary
North Kordofan	7	20-60	Married	Elementary

For the focus groups outside of Khartoum, I had minimal requirements for the participants. All had to be above the age of 18, specifically between the ages of 20-60 years. The reason I have noted this is because the required age for participants in the age group falls within the majority of Sudan's population. "More than 60% of Sudan's population is under the age of 25 and around 20% is between 15-24 years old" (Aljazeera.com, December 2018). The other requirements were that the participants to be practicing Muslims, with no minimum education requirement. I intentionally chose that the Khartoum focus group participants be single, and hold at least a high school diploma because most people in Khartoum that fall within that age group have a high school diploma. Across the board it was mandatory that participants have a

minimum elementary level of literacy, as they would need to sign a consent letter as well as read an information sheet; (although the information letter could have been read to them). The reason why I wanted participants from outside as opposed to inside of Khartoum to have differing educational levels was because I wanted to see if there was a correlation between religious values and educational levels. In particular I wanted to see if participants who had received or were receiving a formal 'Western' education had the same religious values as those who have no or little formal education. The following are the questions I had planned to ask, in the order listed to the three focus groups. I also decided to conduct the Khartoum focus group in English, and the other two in Arabic.

**QUESTIONS:**

1. How do you define rape? Let's talk a little about rape in marriage. In your opinion, can a husband in fact rape his wife? Would it be considered rape? Please defend your position.
2. How would you interpret the following quote from Surah al-Baqara?: "Your wives are a place of sowing of seed for you, so come to your place of cultivation however you wish and put forth [righteousness] for yourselves" (Al-Baqarah2:223)
3. You have of course heard about Noura Hussein; what is your position on this case? Do you think she was justified in her actions?
4. Hiba Hidayatullah states: "Since the problem is theological, so must the solution be theological". To what extent do you agree with the previous statement? Whose responsibility is it to challenge the most seemingly patriarchal beliefs and misconceptions in Islam?



The process of attempting to obtain ethics approval for my proposed focus groups was by far the most difficult obstacle I have had to overcome in my entire academic career. Four weeks after applying for ethics approval on June 28th 2018, I received series of questions concerning points that needed clarification. Along with this series of questions, the REB expressed concern that my research was not ‘minimal risk’ and that I had not put in enough supports in for my participants, who might be traumatized or endangered by their participation in my focus groups.

I will not go into detail about the series of rejections I received during over the next two months as I lived in Sudan, eager to begin my research. In a series of exchanges between my supervisor and me, it was becoming very clear that this project would not be approved, at least not the way I wanted to approach it. In July, my supervisor attended an REB meeting on my behalf (as I was in Sudan and not in Canada) and discovered that I was perceived as somewhat “naive” for not knowing the “dangers” of discussing this sensitive topic in such a conservative country. The state of Sudan’s affairs was also brought up. I was made aware that the Canadian government had advised its citizens not to travel to Sudan due to the “turbulent” situation at that time. Reminiscing on the time when all anyone saw and heard in the news about Sudan was the Darfur genocide or the South Sudan famine, I was frustrated by what I could only call a racist outsider comment. Nevertheless, the experience made me even more determined to make my research work somehow. This myopic, racist, outsider way of viewing an African country mirrored colonial thought. Had I chosen to work in Darfur or South Sudan, my reaction would have been different; I would have even shared the same concerns of the REB. But because I was in Sudan and in the process of organizing my travel to locations that were by no means “turbulent” at the time, I knew the invalidity of their “concerns” (concerns that really weren’t about me at all, but rather about making sure all their bases were covered for insurance purposes). In fact, the only time over the past year that

would be considered turbulent in Sudan is the December 18th protests-which are still ongoing.

I decided to invest my energy in trying to obtain police reports about cases of marital rape, which I assumed would be a minute amount. I mobilized everyone I knew in Sudan, both my parents, my cousins and some friends. I needed people that would not to be viewed as outsiders to be on my side and help facilitate my access to archives, police reports and Sudanese lawmakers. It turned out that I needed more than family and friends; for this I needed a man's help. As much as I am ashamed to admit this fact, it was the truth; if I wanted to get anything done or have access to anything, I needed a man and not just any man. I needed a well-connected man. To this day, I still thank my lucky stars that my father was able to play this role. I also obtained a letter from my supervisor verifying that I was a graduate student doing research, not a journalist or media affiliated person intent on exposing the problems deep within our skewed justice system. I thought I was fully equipped to begin my fieldwork. Yet, even with that letter, and my relatively good connections, I was sent all over the city to obtain the signatures of men who would ask me the same questions again and again: "What are you doing? Where do you study? What is your research about"? And, upon hearing my responses, would respond in both dismay and confusion: "That is a new one, you won't find anything like that here; but I will sign your paper". I did the same thing every time: smiled, said *shukran(thank you)*, took my paper, lifted up my *abaya*(robe-like garment worn by Muslim women), and left. I knew there was no use arguing, their opinions did not matter to me at this time and at that point it was a battle I knew I would surely lose. Finally, after about a month and a half, I was granted permission to access police records in the Bahri Police headquarters. I was, delighted to hear that because I live in Bahri and it would not be that far of a drive. However, this permission was contingent on my signing a letter promising not to expose any information I found in the reports, as well as to not shame "my"

government! This catch-22 made having access to the reports meaningless. I was not allowed to take pictures, or make photocopies (there was no photocopier in the police station, and I was not allowed to leave with them to photocopy them). So I pleaded with the commissioner to let me write some cases and figures in my notepad but I was quickly shut down as he calmly replied: “لا”(No).

I began re-strategizing once again, and applied for access to The Faisal Islamic Center Library, The University of Khartoum Library, and Ahfad University Library. Upon getting my library cards, looking for newspaper archives proved to be a difficult task until I was led to someone who advised me to go to the original source-, namely the publishing houses of my select newspapers (*Al-Jareeda, Akhbar Al-Youm and Al-Daār*). “They always keep archives, even ones from before you were born”, I was told. So I went around Khartoum to several publishing houses. I thought I was finally having some success, and after writing the list of topics (rape, child rape, and *reported* cases of rape) I was given permission to photograph copies of newspapers that I was only allowed to read inside the publishing houses. Upon reflection however, I realized that print media censorship in Sudan, the information I would acquire from the newspapers may provide me with a diluted version of public opinion, and was not really valuable after all.

#### **4.2 Istibyan**

After returning from the summer holidays and realizing that I might have to approach my work theoretically, I felt uneasy. The more literature I read, the more I realized that I would never get sufficient information to answer my questions by examining existing scholarship. Furthermore, there are no studies specifically about marital rape in Sudan. In the Arab world, most work concerning religion and society concerns countries such as Morocco, Saudi Arabia and Egypt, all of which have vastly different approaches to Islam.

I then began to try to figure out ways to capture the opinions of Sudanese people without being physically present. Since one on one interviews were no longer a possibility, and neither were focus groups, I had to find the answers to my questions without having direct contact with participants. In the midst of my dilemma, I was speaking to a friend I had met over the summer who studied law in Sudan; she advised me to explore the possibility of posting some questions on a Facebook group called: *Istibyan* or Arabic for ‘questionnaire’. The sole purpose of this group was for people to create polls and questionnaires and have other people take them. Topics ranged widely, including questions about education systems, vegetable and oil prices, and even the Sudanese government. With over 13,000 members, I was confident that using this platform would yield fruitful results.

I aimed modestly, with a target of about 1,000 responses. After asking to join the group, I sent the group’s administrator a message introducing myself as well as asking if it would be possible to create a poll and use it for my research. I was pleasantly surprised that the administrator allowed me to post the questions. It was in September that I first made contact with him, and a month and half later I finally sent him the questions to post. The poll I created consisted of six questions with *Yes*, *No*, and *Maybe* options. ‘*I wish to withdraw my response*’ was also added as per the instructions of the ethics board; I did not argue for at that point I was willing to do anything just to get ethics approval. The questions as well as the accompanying information sheet required by the REB for research involving human subjects can be found in the appendix.

Admittedly, I had a lingering fear that once the *Istibyan*’s group administrator saw the questions, he would deny me the opportunity to post the questions and I would be back to the starting point. Even though he expressed his concerns, and warned me that I might receive some disturbing comments. Nevertheless, he approved what would prove to be an interesting poll. I posted the information letter for participants and followed it by the first set

of poll questions. A week later, I posted the second set of questions. I only looked at the page once, before my data collection deadline so as not to start forming a premature idea of the results.

This graduate thesis has faced multiple challenges. After feeling victorious for less than 24 hours after obtaining ethics approval (December 17th 2018), I remembered something my mom used to say when I was growing up: “نَحْنُ نَخْطُطُ وَاللَّهُ يَضْحَكُ” (“We plan and God laughs”). He was laughing alright. The day after my application was approved, protests in the northeastern state of Atbara(Nile River State) erupted when the price of bread tripled from 1 SDG(Sudanese Pounds) to 3 SDG; (equivalent to \$0.02 and \$0.06 respectively). The issue isn't really the price of bread; it is an unjust 30 year-old regime, in a country whose economy is depleting steadily over the years, a fall accelerated after the 2011 split from neighboring South Sudan; it is not being able to withdraw one's money from the bank due to the lack of cash in ATM machines. It is a corrupt regime that loves power more than a stable country. Shortly after burning down a government building in the Nile River state, the protests spread throughout Sudan and the government declared a state of emergency. To make things worse, they shut down the internet, stopped news coverage of the protests, and soon the military began attacking its own citizens. Only those who had VPNs(Virtual Private Networks) downloaded on their smartphones could bypass the blocked network. Selfishly, I was more concerned about the effects this turmoil would have on my poll than about the state of my country. The truth is that there was no perfect time for the uprising in Sudan. However, it did come at the worst possible time for my poll, and undoubtedly contributed to the slow response rates. I believe that, irrespective of how controversial my poll was, people would have taken it, and some might have even taken the time to comment something they were displeased with. I am certain that the lack of a steady internet connection coupled with

participation in protests, or knowing someone that had been affected by or injured in protests are all combined to discourage people from participating in my poll.

More than three months after the December 18th protests, protests still continue with no near end in sight.

### **4.3 Data Analysis and Findings**

The last day for data collection was January 25th 2019, which meant that the poll was online for a period of one month. I must admit that I was extremely anxious about looking at the results. As I have previously mentioned, my journey with data collection, including obtaining ethics approval, has been difficult; coupled with the protests that began simultaneously with the release of my poll; I had several reasons to be anxious. My anxiety stemmed from two things: the first was not knowing whether or not I would have as sufficient number of responses to analyze, and the second was questioning whether or not my results would even be valid, given the currently unstable state of the country. Would my results really provide an accurate representation of how Sudanese people interpret religion and rape? Would people still be interested in taking the poll or would they find offence in it and skip it? Of course, the last question is one that I would have asked irrespective of the volume of responses to the poll.

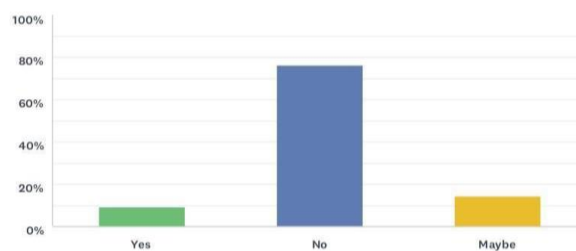
Upon looking at the poll, I found that 221 people had taken the poll-which was extremely disappointing. Unlike my originally planned method of data collection, which was of qualitative nature (focus group discussions and analysis of the transcriptions), the poll was intended to yield exclusive quantitative data. Although I did not receive the 10,000 plus responses for which I had hoped, my data was nevertheless significantly scaled up from the focus groups totaling 21 participants to the 221 people who participated in the poll. To protect the identities of participants, I opted not to take screenshots of the polls but rather to

synthesize the results; using into a website called SurveyMonkey. Utilized by students from elementary school to PhD thesis level to efficiently create, disseminate and analyze surveys and polls, SurveyMonkey was the best choice for me as it helped me create the visual aids that I have used for data analysis. I simply titled my survey “Sudan’s Islamic Views on Marital Rape”, input the number of responses to each of the questions, as well as the responses; and the website was able to create charts for me(<https://mobile.surveymonkey.com/web/surveys/163825006?from=home>). I opted for bar graphs rather than pie charts because bar graphs provide a better visual representation of my results. The SurveyMonkey charts are included in the following pages as Figures 1-6. I will reflect on the responses to the individual questions in turn, but I would like to preface that discussion with this synthetic finding: The poll yielded seemingly egalitarian responses. By this I mean, the popular consensus was that Islam in fact *does not* condone or sanctify marital rape.

**Figure 1**

Q1 “Your wives are a place of sowing of seed for you, so come to your place of cultivation however you wish and put forth [righteousness] for yourselves. And fear Allah and know that you will meet Him. And give good tidings to the believers” (2:223) In your opinion does this quote sanctify marital rape?

Answered: 217 Skipped: 4



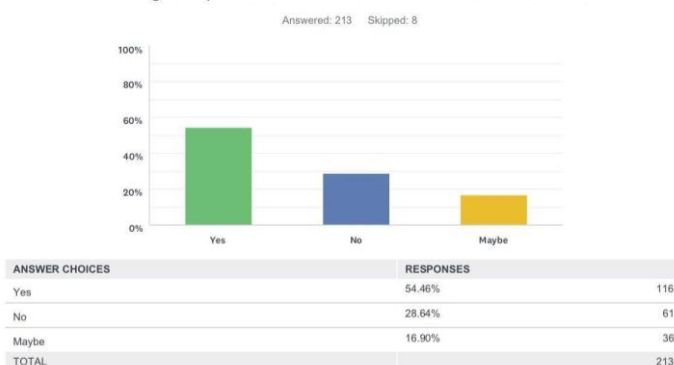
ANSWER CHOICES	RESPONSES
Yes	9.22% 20
No	76.50% 166
Maybe	14.29% 31
TOTAL	217

With respect to the first question, out of 221 people, 4 people opted not to answer, leaving 217 responses. In this question, I wanted to use concrete textual evidence from in the *Qu'ran*,

in order to show multifaceted *tafsirs*. In this question I was curious to see how participants would interpret the quote, and 166/217 or about 76.5% of participants were in favor of a more egalitarian reading of the quote, and answered that the quote was not a sanctification of marital rape. 31/177 or 14.29% of participants answered “maybe”, which was thought-provoking. Upon looking at the maybes, I was reminded of a conversation that had ensued after I had brought up my research subject over the past summer. During that conversation, most people agreed upon the fact that in Sudan, irrespective of how seemingly egalitarian the *Ahadith*, *Fiqh* or an *Ayah* from the Qu’ran was, it would only be as egalitarian as the person reading it. I, of course, knew this, and for that reason I was intrigued by the amount of maybes, because I thought: “as it stands, according to the responses to this question, there is minimal room for a justification of marital rape according to Sudanese Muslims! Herein lies the discrepancy between theory and praxis. Although not all Sudanese men rape their wives in Sudan, it does seem that this population displays egalitarian tendencies on paper, yet practices Islam differently domestically.

**Figure 2**

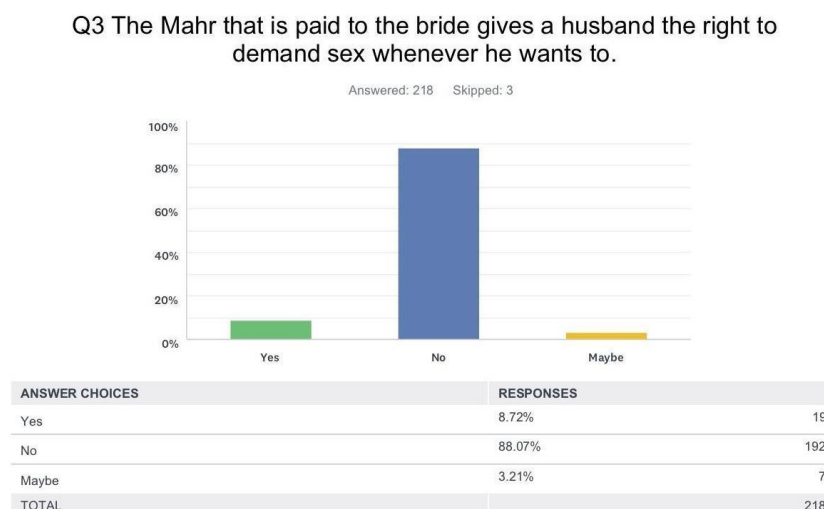
Q2 Can the following Hadith be interpreted as a way to de-sanctify marital rape? “When a man calls his wife for sexual intimacy and she refuses him, thus he spends the night in anger, the angels curse her until morning.” (Sahih al-Bukhari & Sahih no. 281). A man spending the night in anger implies he does not force himself on his wife.





As with the first question, 4 out of 221 people opted to skip the second question. The second question was based on a popular *hadith*, found in Sahih al-Bukhari, that I came across many years ago. This questions almost begs participants to examine the *hadith* carefully and find egalitarianism in it. I find that this was the most difficult question I posed, because (unlike the others), it required participants to actively *unread* patriarchy. The quote states that if a woman refuses to yield to her husband’s advances for sexual intimacy, thus resulting in the husband’s anger, he should sleep in his anger; it in no way indicates that he should/can force himself upon her. Instead, it asks for the husband to forfeit his “divine marriage right” and sleep angry. About 55% of the participants answered “yes” meaning that they found that a man spending the night in anger implies that he does not force himself upon his wife. About 29% answered “no”, and about 17% said maybe. The fact that the angels will curse her until morning may be interpreted as religious pressure for a woman to submit to her husband’s sexual needs, if she does not want to appear to be disobedient to Allah’s wishes. Once again women are made to carry the burden of men’s sexual desires.

**Figure 3**

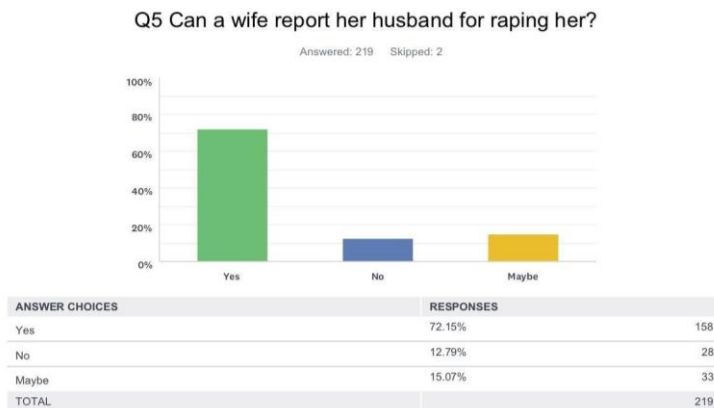


The third question was rather straightforward. It was about the *mahr* which is the dowry a man pays upon asking for a woman’s hand in marriage. Paid to the bride at the time of marriage, the *mahr* legally becomes the bride’s property. This question gathered the greatest number of “No’s”, as 88% of participants felt like the *mahr* does not symbolize a husband’s right to demand sexual relations with his wife. I will comment further on the importance of the third question towards the end of this chapter.

**Figure 4**



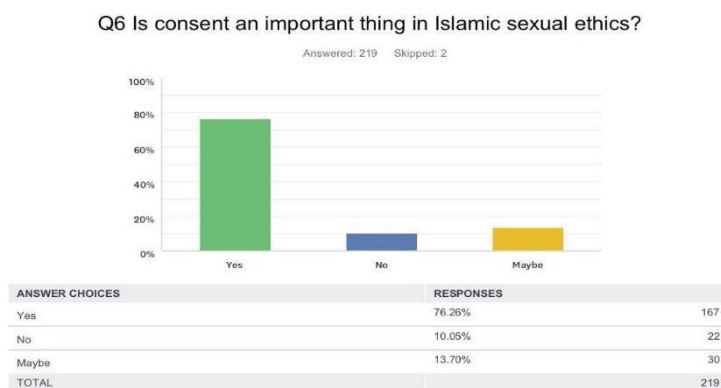
**Figure 5**



I would like to examine questions 4 and 5 together as they are somewhat related. Question 4 asks if a man *can rape* his wife, and question 5 asks if a woman *can report* her husband for raping her. 73.97% answered “no” to the former question, stating that a man

cannot rape his wife; however, in the following question (which asks if a woman can report her husband for raping her), 72.15% of participants answered “yes”. These questions, have yielded apparently polar opposite results. In trying to find a logical explanation for these responses, I ask: How can a woman report a marital rape if her husband cannot rape her? In my attempt to understand the apparent incoherency of the responses, I thought I had two options. The first was to reach out to participants to see what they understood about these questions, while the second was to try and figure it out myself. In the end I chose the path of coming to my own conclusion, largely due to being circumspect about the ethical correctness of approaching the participants. I arrived at the conclusion that the manner by which I phrased the question may have been difficult to decipher. Rather than asking if a man can rape his wife, I should have asked a more concrete question of: “If a man sexually assaults his wife, can that it be considered rape”. I believe that this question would have been much more straightforward resulting in fruitful responses.

**Figure 6**



The last question asked about the importance of consent in Islamic sexual ethics. Surprisingly, the overwhelming majority of the participants (77%) answered “yes” to this question, affirming the importance of consent. The response initially struck me as hypocritical because I find that-even of consent in matters of sexual intimacy is a both

mandatory and logical there is a very fine line between a Muslim woman's freedom of *choice* and her widely accepted so-called conjugal “duties”. If a person believes that a woman has a “conjugal duty” to her husband (as most Sudanese people do), then believing that consent is also an important aspect of Islamic sexual ethics points to a dichotomy between thought and action.

This however, another way to understand the dichotomous results of my poll: Along *social desirability bias*. “Social desirability bias refers to the tendency of research subjects to give socially desirable responses instead of choosing responses that are reflective of their true feelings” (Grimm, 2010:8). Found in almost all “self-report” measures and nearly all social sciences literature, *social desirability bias* aids in the understanding of the discrepancies visible in projects such as mine. “Respondents are often unwilling or unable to report accurately on sensitive topics for ego- defensive or impression management reasons” (Fisher, 1993:303). Even participants in anonymous surveys, questionnaires or polls find the need to present a version of themselves that may not be true, so this dynamic may have been a function in my research.

It might, therefore be the case that the seemingly egalitarian, womanist outcome of the poll was not a true reflection of Sudan’s society. It has been argued that, in order to reduce social desirability bias, researchers should avoid sensitive topics that may make participants feel the need to lie or use indirect questioning. “Indirect questioning is a projective technique that asks subjects or respondents to answer structured questions from the perspective of another person or group” (Fisher, 1993:303). This would have been an excellent solution had I been able to conduct my original research project. Unfortunately, the structure of the online poll would have made this difficult.

#### **4.4 Final Thoughts**

“The first revelation Allah sent him [Prophet Mohammed PBUH] through his angel Gabriel was the first verse of Surah 96, *Iqra*(read). So Islam began with an order to read and **inform oneself**”.

- Mernissi 1991:28

As my journey begins to wind to an end, I have found that this poll has yielded more insights than I anticipated. Clouded by my disappointment over not being able to pursue my original method of data collection, this learning process has taught me not only to be creative in research methodology, but has also taught me the power and significance of using people’s voices about the very thing that governs people’s existence.

Yet I am left with one question which I regret not including in the poll. When I framed my questions, I was looking at the three sources of Islamic religious authority (*Qu’ran, AHadith, Fiqh*) as a whole, rather than individually. Yet the more I learn about traditions, the more I see the need to interrogate the function of each religious text. In retrospect the question I wish I had asked is: which of the three types of Islamic texts do you privilege as a reference point for answering your questions about religion? Do you prioritize one text or do you reference all equally? I feel as though asking that question would have aided in my identification of which text to emphasize myself when constructing alternative *tafsirs* that can be derived from a certain passage.

## **Chapter 5- The Beginning of the End**

Abu Hurairah reported that the Prophet Mohamed said:

"كَمَلُ الْمُؤْمِنِينَ فِي مِلَّةٍ أَحْسَنُ مِنْهُمُ غَلَقًا وَخَيْرُكُمْ فِي نِسَائِهِمْ" "The most perfect man in his faith among the believers is the one whose behavior is most excellent; and the best of you are those who are the best to their wives."

- Book 1, Hadith 628

As my journey comes to an end, I have yet to find answers to some my most pressing questions. As a result, I have enlisted the aid of a number of different theorists to attempt to understand the results of my study; and ultimately to understand popular religious consensus in Sudan.

### **5.1 Seeking Guidance from Philosophers and Social Theorists**

Stephanie Montesanti(2016) describes gender as a symbolic institution that “prescribes what is expected of a woman in her roles” (Montesanti 2016); this supports my claim in that a majority of Sudanese Muslim women resign to their fates often citing systematic religious misinterpretations. This brings up “the habitus”, a concept addressed by Montesanti and coined by French sociologist Pierre Bordieu(1984), in which women internalize their roles, thus both accepting and normalizing them. The habitus is socialized norms or tendencies that guide behavior and thinking (Navarro 2006:16). Here, the socialized norms are disguising incident(s) of sexual assault into a marital norm, and the fact that a husband can indeed rape his wife becomes an outlandish idea; even though through wrongly interpreted Islamic texts wives are referred as being an extension/adjunct of their husbands-not worthy of standing on her own. It [the habitus] influences the identity, actions and choices of the individual. The habitus structures inherent qualities of mind and character in an individual and is produced by the conditionings associated with a particular class of conditions of existence; this constitutes systems of durable and transposable dispositions (Bourdieu 1984:167). Those very systems Bordieu addresses are the systems that can only be

challenged when one is made aware of them; thus, initiating the process of self-actualization. The reason being is that those systems are often “reproduced unconsciously without any deliberate pursuit of coherence and without any conscious concentration” (Bordieu 1986). As women begin to realize that their self-worth is jeopardized through the need of marital ‘submission’ the journey of attempting to try to regain self-worth begins. This process is called conscientization. Conscientization is a term coined by Brazilian educator Paulo Freire and is defined as the “development of critical consciousness through a process of reflection and action” (Lloyd 1972:4). “The first revelation Allah sent him [Prophet Mohammed PBUH] through his angel Gabriel was the first verse of Surah 96, *Iqra*(read). So Islam began with an order to read and **inform oneself**”(Mernissi 1991:28). If anything is to be taken away from Islam, why shouldn’t it be this?

The ongoing dichotomy of Islamic thought an action has lead me to think about al-Ghazali’s *Etiquette of Marriage*, to help further understand the results of my poll and form an opinion about Sudanese society and Sudanese individuals in Sudan. al-Ghazali(1056–1111) was an Islamic theologian, philosopher, jurist, and mystic known for his contributions to Islam. al-Ghazali believed “...the foundations of Islam are the Qu'ran and the life and practice of the Prophet(PBUH), everything after them being human speculation grounded in the intellectual and social conditions of the times when Islamic scholars wrote”(al-Ghazali and Farah 1984:11). In light of this, I would like to employ the following quote by al-Ghazali as a point of discussion. al-Ghazali states: Of the three deficiencies in a man as professed by the Prophet(PBUH), one of them is if “...he approaches his concubine or wife and have sexual contact with her without exchanging tender words and sweet kisses...”(al-Ghazali and Farah 1984:295). In this quote, al-Ghazali seems to promote the initial consent when approaching a woman in a tender manner; one she may respond to. As I see it now, if this is reflective of the Prophet’s approach to sexual intimacy, then men all over the Muslim world are mimicking an

act void of consent. Consent is not static, it is ongoing. While consent may have been obtained during the act of foreplay, “Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time”(Muehlenhard,Humphreys, Jozkowski and Peterson 2016:459), and al-Ghazali makes no mention of ongoing consent. Mimicking the Prophet’s actions has long been used to sanctify seemingly divinely permitted behavior. Respectfully, I find that the above mentioned *can be* interpreted as the Prophet neglecting the importance of *ongoing* sexual consent, and this is mirrored not only in the actions of Sudanese men but men Muslim men worldwide. Nonetheless, I find that this example should be not an indicator of the sanctification of marital rape.

In an effort to find an answer to the discrepancies of theory and praxis, I have borrowed W.E.B. Du Bois’ Concept of *Double Consciousness* (1903). *Double consciousness* is one I have struggled to comprehend; however I am finally able to understand and adopt it to my work. Du Bois(1868-1963), was a civil rights, activist, socialist and historian. His life’s work was dedicated to reinforcing that "The problem of the twentieth century is the problem of the color-line" from his critically acclaimed work: *The Souls of Black Folk* written in 1903. In the same work, Du Bois coins the term “double consciousness” which according to is: “a peculiar sensation...the sensation of always looking at oneself through the eyes of others...two souls, two thoughts, two unreconciled strivings...” (Du Bois 1903:17). I will attribute the discrepancies of the answers from my poll, versus social reality in Sudan to *double consciousness*. In conjunction to double consciousness, I would like to reiterate a concept that was introduced early on this work-*cognitive dissonance*. Early on I introduced *cognitive dissonance* as a term to help explain the mental discomfort that one may experience when negotiating between what is right versus what is wrong. Cognitive dissonance and double consciousness are phenomena that occur due to the immense pressure experienced by Sudanese men to conform to and portray masculinity at all times. Essentially, cognitive



dissonance is identifying the existence of incongruent beliefs and double consciousness is being conscious enough to co-exist with both sides of the internal conflict; which may ultimately lead to conflict resolution. This extreme need to portray themselves as men (or *rujaal*) creates an internal conflict that I believe atrophies their real intentions. Although the Prophet(PBUH)- who all Muslim men aspire to live like- was what today would be considered a professed womanist, his actions have somehow managed to be skewed through a patriarchal lens. This moral conundrum, depicts a womanist man as a weak man, one that should not be aspired to. "...virility emerges as the essence of Arab masculinity..."(Ouzgane 1997:3) This is where the importance of culture comes in, especially in Sudan. In Sudan, what defines a man is not his religion, but also his culture. A man's tribe is contributory to how he views himself. For example, *Zaghawa* men from the North East are not only ultra conservative but hyper-masculine, as are the *Batahi* men from the Gezira state, *Jaalyee* men from the Northern State tribes-to name a few.

In both chapter 1 and chapter 3, I struggled to find reasons to explain people's behavior. Here, I would to provide a possible explanation for said chapters. With respect to chapter 1, I was struggling with the Mualima's response to marital rape when I asked her about it during my visit to the mosque. I wondered if she as a married woman had experienced marital rape but hadn't processed the fact; and using her own words against her, didn't consider it rape because it was her husband. Now, I suggest that she may have in fact considered marital rape but as a woman occupying a powerful religious position she cannot admit that religion may sanctifying marital rape. There was a verbal denial of the existence of marital rape in Islam. Nevertheless, I am hopefully that our discussion would have created lingering thoughts about the subject-which is exactly what I wanted- to instigate the process of re-assessing religion from an individual point of view. Chapter 3 chronicles the story of Noura; here I am concerned with the actions of her parents, more specifically her father.

After going back home to seek refuge from her tragic experience, Noura's father disowned her and immediately turned her into the authorities. I am not suggesting that he should have not informed the authorities (because a man had been killed), but ideally he should have supported his daughter. Be it emotional, financial, Noura should have been supported by her father. This is a prime example of where culture and religion create an unfortunate concoction. As previously mentioned, Noura's family is from the *Zaghawa* tribe-notorious for their stringent, hyper masculine men. Noura's father had an image to uphold, because he was the man who forced the marriage initially. Irrespective of whether or not he sympathized with his daughter, he ultimately rejected his fatherly instincts and succumbed to society's expectations. This double consciousness internal struggle between maintaining a masculine image and being a good father. Therein in lies the discrepancy, between knowing what is morally correct versus the fear of appearing to not exert enough of one's masculinity. Unfortunately, until Sudan and many countries like it worldwide come to the realization that *actually* advocating for and practicing a more **just** version of religion brings you closer to Allah and mirror the life of the Prophet, we won't be able to begin to discard patriarchal readings that have plagued us for far too long.

## **5.2 The Future? Sigheh, a Shia Solution to a Sunni Problem**

I first came across the term *Sigheh* as I was reading Geraldine Brooks' *Nine Parts of Desire*, in her second chapter, she recounts her time in Iran as she introduces the concept of *Sigheh*. Having never heard of it, after completing the chapter, I began to try to understand exactly how it worked. A Shia practice, that was started over 20 years ago, has actually become written into Iranian law. While people from other Muslim/Arab majority countries do not follow this, Iran has seen a great increase of Arab men coming to Iran to take advantage of this practice.

Essentially, *Sigheh* is a temporary marriage contract that is specified by both parties (the man and woman) and both of them have to consent. This practice is usually sanctioned by a cleric and can last anytime between a few minutes to 99 years. Because the usual motivation for men is sex, many women enter this agreement as a means to earn money as the man usually pays the woman a sum they have both agreed upon. Widows may use this to support their children; however, money is not the only motive. There may be other motives that are agreed upon. For a great number of years, *Sigheh* caused heated debates throughout Iran. However, when Akbar Hashemi Rafsanjani-one of Iran's founding fathers and its fourth president (1989-1997) advocated for it after the end of Iran-Iraq War of 1988. His argument was that many women were left widowed after the war, and simultaneously young men were not financially stable for marriage which resulted in delayed marriages and a nation that was sexually frustrated (Brooks 1995:43). While many women in Iran found this to be a sanction to exploit vulnerable women, many succumbed to the logic of the practice. It was also argued that the state should provide for women and their children, rather than forcing them into something that *can be* viewed as prostitution.

*Sigheh* has been practiced since the 20th century; however it was not until 2012 that it made into law in Iran. *Sigheh* was added to Iran's constitution with article Article 21 of the Family Protection Law officially sanctioning the practice (Mirzadegi, 2018). Locations that permit *Sigheh* in Iran are called "Guesthouses" and it has been discovered that as of this year, there are over 5,000 locations in Mashhad (the capital of Razavi Khorasan), a province located in the north eastern part of Iran ( Mirzadegi, 2018).

At this point, if you must think that I am somewhat advocating for the introduction of *Sigheh* into countries that practice Sunnism, I would like to cautiously say that I am. Upon reading the aforementioned book this past summer, I experienced a range of emotions about this topic. As a womanist myself, I understood the standpoint from which Iranian women

expressed the exploitative nature of *Sigheh*. However, different to the lack of consent attached to marital rape, *Sigheh* is a consensual contract. In the way both the man and woman have to consent to a marriage, both the man and woman entering a *Sigheh* contract have to consent in front of a cleric. Both women and men who enter this contract are aware of their rights, can negotiate terms and can set an expiration date. If so, why then is Iran the only Muslim nation in the world that has *Sigheh* written into their law? I speculate that due to the fact that the Sunni Muslim population is about 87% of the world's Muslim population, the 13% are practice Shia Islam. Of that minimal percentage, only seven countries in the world have a majority Shia population: Pakistan, Iran, Iraq, Bahrain, Syria, Lebanon and Azerbaijan. Of these countries Iran is the only one that has written this law into practice, due to the difficult nature of justifying such a practice into Islam. Then again this makes me think of how Iran has created this law, how has it for years veiled this practice as an Islamic one? The answer is as simple as it is unfortunate: because it can. Iran can be one of the most oppressive Muslim countries especially in the treatment of women, nonetheless, for all intents and purposes, *Sigheh* is a practice that makes sense. I believe utmost certainty that it will never be practiced or legalized in Sudan, but perhaps a version of it can be customized? If a woman enters this marriage contract, and she knows that the motives for the man initiating the marriage contract, then there *may* be a chance that this may reduce the occurrences of marital rape. However, this does not mean that a woman should be sexually obliged to her husband-which is still a problematic aspect of *Sigheh*. Thinking practically, perhaps that should actually be a clause included in upon the signing of the *Sigheh*. A contract has terms and conditions, so is it that outlandish that this should be a written condition of the marriage? I do not see any concrete reason why it would be. This may not completely solve the problem of marital rape but it does illuminate the flexibility of Islamic law.

### **5.3 Reimagining Islam**

*Feminists Roundtable: Feminism and Islam: Exploring the Boundaries of Critique* is by far the most valuable source I have encountered all my readings about Islam, and is only preceded by The Holy Qu'rān, *Ahadith* and the books of Sunna. Providing views from a multitude of Muslim scholars, this roundtable has also allowed me to both question and ground some pre-existing notions about the Qu'ran and *Ahadith* I may have had. A very circumspect Asmaa Barlas begins the roundtable discussion by rejecting the idea of viewing the Qu'ran as a divine-human text. Barlas explicitly opines that humankind's critical re-thinking about God's words "violates God's self-disclosure in the Qu'ran" (Barlas 2016:118). This is problematic to me personally and to scholars who participated in the round table discussion as she criticizes those who have attempted the imaginative re-interpretation of the Qu'ran.

Barlas accuses current Muslim feminist scholars of being too radical and only looking at verses that seemingly promote violence and undermine the egalitarian underpinnings of the Qu'ran. I think the most important takeaway from Kecia Ali's response to Barlas was that the issue is not necessarily with what is written and the way it is written, rather "their[interpretations of the Qu'rān] *ability* to always yield sufficiently equalitarian meanings" (Ali 2016:124). The consensus among all the roundtable participants cited above is "As soon as we acknowledge that none can know fully what Allah meant, then the door is open to both patriarchal and feminist egalitarian readings" (Wadud 2016:132).

Like the roundtable respondents to Barlas, Hafez Barazangi's work entitled: *Why Muslim Women Are Re-interpreting the Qur'an and Ahadith: A Transformative Scholarship-Activism* is another work that encourages activist Muslim women to re-interpret the Qu'rān. Barazangi introduces the concept of *Tawhid*, which "reminds Muslims of their humanness, that is, their ability to reason" (Barazangi 2013:259). According to Barazangi, The Qu'ran

indeed paves the way for the exercise of this ability. Each woman needs to self-identity with Islam (Barazangi 2013:259). Re-emphasizing once more the importance of individual enlightenment over collective enlightenment, Islam (unlike other religions) encourages individuals to pave their own path to enlightenment. However, I understand the difficulty of acting on this suggestion in a country in Sudan where it is common actuality that wives display a façade of domestic bliss. As an unmarried woman, I cannot fully speak to the conversations of married women with their counterparts but the one thing I have ascertained is that it is believed that domestic issues should never leave the four walls of a house. When an abuse occurs, it is generally considered best to solve it internally, and not alert the neighbors as that would be *aeib* (shameful) and possibly create a *fadiha*-(scandal).

In Sudan, *shai al Maghrib*(tea that is served after Maghrib prayers) is often accompanied by *al-shamar*(Sudanese-Arabic slang for gossip). Why not rethink this? Why not dedicate some of *shai al Maghrib* to self-reflection? Perhaps to non- superficial topics and use it as a time confide in one another? In a society where women are reared to compete with one another, why don't we anchor one another? Why not confide in each other, and ultimately find strength in that? Why not utilize intellectual discussions about life, religion, and society to raise our consciousness? Unfortunately we have been taught otherwise, and a woman that has been raped by her husband, will never reveal that, in part because (the sad reality is), she hasn't even begun to conceptualize the pain.

Thus far there have been no publications about adult sexual abuse. This explains why talking about sexual abuse openly and honestly within the Muslim community can be fraught with difficulty. Zareena Grewal, from her book: *Islam is a Foreign Country: American Muslims and the Global Crisis of Authority* notes that The Qu'ran and Islamic Prophetic traditions are replete with “references to sex and sexuality which are celebratory and what we might today call ‘sex positive’, but which have typically been interpreted by Muslims in ways

that privilege men and patriarchy” (Grewal, 2014). While discussions of consensual sex in the context of marriage are acceptable and often do occur outside of the media, sexual assault and abuse of power fall outside these boundaries.

Baranzangi states that “the Qur’an does not prescribe one timeless and unchanged social structure for men and women” (Baranzangi 2011:258). Pushing for religious revivalism, Baranzangi suggests that in order to get women to embrace such revivalism, the proposed solutions themselves have to be determined by the way the problem is identified and defined. I do not agree Barlas that the act of treating the Qu’ran as a discourse, “is a rather obvious attempt to desacralize it” (Barlas 2016:116). Finding paths to justice and equality in egalitarian readings of the holy book will only reinforce and further reveal its sacredness.

As I reflect upon myself and where I stand in the midst of the Sudanese society, I find myself at a crossroads. Delving deep into such a sensitive and religious topic, I find myself scared not of how my message is being conveyed, but rather by the fact that I am conveying it. In Brooks’ book, she cites Fatima Mernissi’s experience with a similar struggle that I am facing. Mernissi worried whether her readers read past the messenger and try to accept the message. She fretted that, “No matter how precise her[my] research into the *Ahadith*, the male-dominated Islamic establishment doesn’t seem willing to open its ears to the scholarship of a Muslim woman who doesn’t veil or otherwise flaunt her piety”(Brooks 1996: 282). My hope is that people are able to fathom the message of this work rather than shift the focus onto the messenger. Because every survivor of rape, be it marital or otherwise, deserves not only to be heard, but also to be validated.

#### **5.4 The Audacity of Hope**

The truth about stories is, that's all we are.”

-Thomas King

Feminists such as Kecia Ali have found that female Muslim activists still employ feminism to challenge doctrines; and that it is fundamentally problematic. Ali finds that the reason being is because it “focus[es] on isolated rights without paying attention to how they are embedded in a system of interdependent spousal obligations and historical norms that no longer hold true today” (Quraishi-Landes 2011:139). As a result, she pushes forth for “a wholesome rethinking of the whole paradigm of Islamic Laws to better fit modern sensibilities and practice” (Quraishi-Landes 2011:139), as do I.

It is important that Muslim women in Sudan are aware of the power of Tawhid and acquiring knowledge, and use them as a means to liberate themselves. It is important that they find their own means behind the texts, rather than blindly accept current traditional and patriarchal ones. If they fail to do so: “These meanings will continue to be taken up and/or privilege electively by those who are interested in rather interpretive agendas of egalitarianism or interpretive agendas of patriarchy and lay claim to that the text says” (Hidayatallah 2016:136). I find that we must teach both women and men the importance of mercy and compassion in Islam. Additionally, it is important for men to actively engage with religion through reason, and instill the importance of personal accountability in their learning of religion. “Humans are to be held accountable for their decisions and actions here and in the final life. God’s choice to trust humans was elicited by our gift of *rationality* but, at the same time, it created a burden of *accountability*” (Abou El Fadl 2017:9).

In an effort to combat this problem, like many scholars, I move for the exegesis of the Qu'ran, *Fiqh* and Ahadith to empower Muslim women. If a pious woman’s greatest strength is her religion, then in the words of Hiba Hidayatullah: “Since the problem is theological, so must the solution be theological” (Hidayatallah 2016:137). Now that I have told my story, and found the power of stories through religion, I hope that women in Sudan and women



everywhere, can write their own.

## **Appendix A: INFORMATION LETTER and CONSENT FORM**

**Study Title:** Examination of the divergent interpretations of what Islam preaches about marital rape in the Sudanese context

### **Research Investigator:**

Miraaj Yousif  
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### **Supervisor:**

Professor Supervisor: Felice Lifshitz  
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Edmonton, AB  
EMAIL: felice.lifshitz@ualberta.ca  
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### **Background**

- You are being asked to participate in a research study, as a member of the ISTIBYAN group. I am a graduate student at the University of Alberta and am interested in exploring people's divergent opinions and views related to Islamic preaching of marital rape. As part of the ISTIBYAN group, your perspectives on this topic are important to me.
- The study involves answering some poll questions on this topic. I will be using the final results of the poll to try to form possible opinions about how Sudanese women & men view marital rape in an Islamic context. The hope of this poll is to understand discourse amongst one of the most controversial topics around the world through a religious lens and if it has any religious foundations.
- While anonymity cannot be ensured within this group (people will be able to see participants who took the poll but not the answers the participants chose), no identifying factors about you will be released to outside of this group.

### **Purpose**

- In this work, I aim to unveil several complexities of interpretations concerning how Islam may or may not perpetuate, (condone, or indeed even sanctify) marital rape in the Sudanese context. Ultimately, my goal is to offer an alternative of thinking to Sudanese women who have become conditioned to accept patriarchal interpretations of Islam. I (the researcher) aim to use your voices and views to build a thesis that can appeal to Muslim women not only in Sudan, but worldwide.

### **Study Procedures**

- If you agree to participate in the study, there will be 3 poll questions that will be posted in the group, which you will answer. I will post another set of 3 questions one week later, which you can also choose to answer (but are not required to). The questions will be up for a period of 1 month, which I will begin counting from the day the second set of questions is released. I will not be collecting any data about you or your Facebook profile as part of this study – just the results of the polling.

### **Benefits**

- There will be no direct benefit to you for being in this study however your voices will help shape together my thesis, and provide critical information in helping women and men in the Muslim world allow themselves to view religion differently, hopefully viewing Islam through the lens of mercy, equality and kindness.

### **Risk**

- I do not anticipate there will be any risk to you by participating in this poll. As stated earlier, we will not be collecting any data for the research that can identify you personally. However, this study does pose questions that deal with a sensitive topic (marital rape). It is possible that

thinking about this topic may bring up memories and/or issues which may cause you distress. If you are concerned that this topic may be difficult for you to think about, it may be best that you not participate. If answering the questions causes you distress, there may be online resources, or local resources that you could seek out to talk to someone. You can also connect with me and I may be able to help connect you with some available resources.

Here are some options:

1. Salmah Women's Resource Centre, Khartoum  
<http://www.wluml.org/contact/wrrc/content/salmah-women%E2%80%99s-resource-centre-khartoum>
2. Ask Dxr Clinic- Certified Therapists in Sudan  
Al-doha Street, Al-Manshiya, Khartoum Sudan  
Telephone:+249110063804

You are also free to withdraw from the poll at any time.

Voluntary Participation

- *Participating in this poll is completely voluntary and you do not have to do the poll as part of this Facebook group. If you change your mind about allowing your poll responses to be part of this study, you can simply go back and unclick your responses- which will erase your participation from the study. I have also provided another option which is option (d): I wish to withdraw my answers*
- Your responses will remain in the poll until the end of the time the poll is posted, but you free to go back and change or withdraw your responses anytime during that period, but this must be before the deadline. If you would like to withdraw all your data, you will need to withdraw each question separately.
- The deadline for data withdrawal is a month after the second set of polling takes place (January 25<sup>th</sup> 2019).

Confidentiality & Anonymity

- Data collected will be anonymous-anything identifying you will never be attached
- This data collected through this poll will be used as a source of information for my Master's thesis. As stated earlier, I will not collect any data that identifies you personally for this study. The data I collect on the poll responses will be kept confidentially by me at the University of Alberta and will be retained for 5 years after the study is over.
- The only exception to this promise of confidentiality is that I am legally obligated to report evidence of child abuse.
- If you would like to receive a copy of a report of the research, please email me, I will be happy to provide you with one

Further Information

- If you have any further questions regarding this study, please do not hesitate to contact me or my supervisor, I'll be happy to help.  
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Research Ethics Board  
Email: [reoffice@ualberta.ca](mailto:reoffice@ualberta.ca)

"The plan for this study has been reviewed by a Research Ethics Board at the University of Alberta. If you have questions about your rights or how research should be conducted, you can call +1(780) 492-2615. This office is independent of the researchers."

*By clicking the link to take this poll, you are agreeing to participate in the research as described above.*

*Thank you*

## **Appendix B: INFORMATION LETTER and CONSENT FORM(SET 2)**

**Study Title:** Examination of the divergent interpretations of what Islam preaches about marital rape in the Sudanese context

### **Research Investigator:**

Miraaj Yousif  
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### **Supervisor:**

Professor Supervisor: Felice Lifshitz  
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### **Background**

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- The study involves answering some poll questions on this topic. I will be using the final results of the poll to try to form possible opinions about how Sudanese women & men view marital rape in an Islamic context. The hope of this poll is to understand discourse amongst one of the most controversial topics around the world through a religious lens and if it has any religious foundations.
- While anonymity cannot be ensured within this group (people will be able to see participants who took the poll but not the answers the participants chose), no identifying factors about you will be released to outside of this group.

### **Purpose**

- In this work, I aim to unveil several complexities of interpretations concerning how Islam may or may not perpetuate, (condone, or indeed even sanctify) marital rape in the Sudanese context. Ultimately, my goal is to offer an alternative of thinking to Sudanese women who have become conditioned to accept patriarchal interpretations of Islam. I (the researcher) aim to use your voices and views to build a thesis that can appeal to Muslim women not only in Sudan, but worldwide.

### **Study Procedures**

- Last week I released the first set of poll questions. This is the second set of questions. You do not have to have participated in the first set of questions to do this set of questions.

### **Benefits**

- There will be no direct benefit to you for being in this study however your voices will help shape together my thesis, and provide critical information in helping women and men in the Muslim world allow themselves to view religion differently, hopefully viewing Islam through the lens of mercy, equality and kindness.

### **Risk**

- I do not anticipate there will be any risk to you by participating in this poll. As stated earlier, we will not be collecting any data for the research that can identify you personally. However, this study does pose questions that deal with a sensitive topic (marital rape). It is possible that thinking about this topic may bring up memories and/or issues which may cause you distress. If you are concerned that this topic may be difficult for you to think about, it may be best that you not participate. If answering the questions causes you distress, there may be online resources, or

local resources that you could seek out to talk to someone. You can also connect with me and I may be able to help connect you with some available resources.

**Here are some options:**

1. Salmmah Women's Resource Centre, Khartoum

<http://www.wluml.org/contact/wrrc/content/salmmah-women%E2%80%99s-resource-centre-khartoum>

2. Ask Dxr Clinic- Certified Therapists in Sudan

Al-doha Street, Al-Manshiya, Khartoum Sudan

Telephone:+249110063804

You are also free to withdraw from the poll at any time.

**Voluntary Participation**

- *Participating in this poll is completely voluntary and you do not have to do the poll as part of this Facebook group. If you change your mind about allowing your poll responses to be part of this study, you can simply go back and unclick your responses- which will erase your participation from the study. I have also provided another option which is option (d): I wish to withdraw my answers*
- Your responses will remain in the poll until the end of the time the poll is posted, but you free to go back and change or withdraw your responses anytime during that period, but this must be before the deadline. If you would like to withdraw all your data, you will need to withdraw each question separately.
- The deadline for data withdrawal is a month after the second set of polling takes place (January 25<sup>th</sup> 2019).
- You can also withdraw data from the first poll, by changing your response to each question

**Confidentiality & Anonymity**

- Data collected will be anonymous-anything identifying you will never be attached
- This data collected through this poll will be used as a source of information for my Master's thesis. As stated earlier, I will not collect any data that identifies you personally for this study. The data I collect on the poll responses will be kept confidentially by me at the University of Alberta and will be retained for 5 years after the study is over.
- The only exception to this promise of confidentiality is that I am legally obligated to report evidence of child abuse.
- If you would like to receive a copy of a report of the research, please email me, I will be happy to provide you with one

**Further Information**

- If you have any further questions regarding this study, please do not hesitate to contact me or my supervisor, I'll be happy to help.

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Research Ethics Board  
Email: [reoffice@ualberta.ca](mailto:reoffice@ualberta.ca)

"The plan for this study has been reviewed by a Research Ethics Board at the University of Alberta. If you have questions about your rights or how research should be conducted, you can call +1(780) 492-2615. This office is independent of the researchers."

*By clicking the link to take this poll, you are agreeing to participate in the research as described above.*

*Thank you*

### **Appendix C: Istibyan Questions First Set:**

**Q: I am fully aware that I will be participating in a university study, and my responses will be used for data analysis as part of the researcher's master's thesis. I also understand that my identity will not be disclosed beyond this group, and that if I wish to withdraw from the study I can simply go back and unclick my responses-which will erase my participation from the study.**

### **Qu'rān:**

1. "Your wives are a place of sowing of seed for you, so come to your place of cultivation however you wish and put forth [righteousness] for yourselves. And fear Allah and know that you will meet Him. And give good tidings to the believers"  
(2:223)

In your opinion does this quote sanctify marital rape?

- a. Yes
- b. No
- c. Maybe, it depends on how it is being read
- d. I wish to withdraw my answer

### **AAhadith:**

1. Can the following Ahadith be interpreted as a way to de-sanctify marital rape? "When a man calls his wife for sexual intimacy and she refuses him, thus he spends the night in anger, the angels curse her until morning." (Sahih al-Bukhari & Sahih no. 281). A man spending the night in anger implies he does not force himself on his wife.
  - a. Yes
  - b. No
  - c. Maybe
  - d. I wish to withdraw my answer

### **Fiqh:**

1. The Mahr that is paid to the bride gives a husband the right to demand sex whenever he wants to.
  - a. Yes
  - b. No
  - c. Maybe
  - d. I wish to withdraw my answer

### **Second Set:**

1. Can a husband rape his wife?
  - a. Yes



- b. No
- c. Maybe
- d. I wish to withdraw my answer

2. Can a wife report her husband for raping her?

- a. Yes
- b. No
- c. Maybe
- d. I wish to withdraw my answer

3. Is consent an important thing in Islamic sexual ethics?

- a. Yes
- b. No
- c. Maybe
- d. I wish to withdraw my answer

## Appendix D-Isiyban Questions-ARABIC

أدرکت ما إذاً أني سأل عن رأيي في دراسة جامعية ، وسيتلقى إجابتني  
تسبب خذمت لي لحياتي كجزء من أطوحه الماجستير في البحث. أنا أيضا أفهم ذلك  
لنيتهم اللش ف عن بيتي وراء هذه الموعده ، وله إذا كنت غيبي اللش احاب من  
الدراسي لئن ييبس اطة ال عود لي الورا عن يوب ذال ردو نال خسة بي - وليي سوفتم حومش ارلتي  
من الدراسة .

نبن أوككم حرثلكم همتوا حرثكم أني شرتهم قدّموا لفسكهم ط وثقوا الله وانجحتموا لكم لقوه ط وبشّر ال مؤيدين  
في رأيك هل هذا الاقبيس يقدس ال غصن ابال زوجي؟

- A. نعم
- B. لا
- C. يمكن
- D. رآغب في سححب لبيتي

هل ين لقتفسري ال حيتال على لظريفة لإلغاء ال غصن ابال زوجي  
إذا دعا ال رجل امرته لوفرن فلكت فببات غيب ان لي هال لقتة ال ام لكتة صيتص .  
رجل يقض لي ليل في ضرب يدل على ه ال يفسه على زوجة .

- A. نعم
- B. لا
- C. يمكن
- D. رآغب في سححب لبيتي

ال م هلذي يف ل عروس ي عطي ال زول ل لحق في طبال جنس كل م أراد ذلك .

- A. نعم
- B. لا
- C. يمكن
- D. رآغب في سححب لبيتي

هل ي سححب ال زوج الغصن اب زوجته؟

- A. نعم
- B. لا
- C. يمكن
- D. رآغب في سححب لبيتي

هل يمكن للزوجة أن تلتغ زوجها عن الغصن ابه؟

- A. نعم
- B. لا
- C. يمكن
- D. رآغب في سححب لبيتي

هل ال م لوفة مة في ال خالقي اتال جنسيه الاسلاميه؟

- A. نعم
- B. لا
- C. يمكن
- D. رآغب في سححب لبيتي





## Appendix F

### رسالة إعلامية واستمارة الموافقة

عنوان الدراسة: دراسة التفسيرات المختلفة لما يعطيه الإسلام حول الاغتصاب الزوجي في السياق السوداني

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#### خلفية:

- يطلب في ظل مشاركة تفصيلية بحث درسي مكثف في مجموعة "السيبان". "الاطالبة دراسات عليا في جامعة ألبرتا أولدي انعام بلسيكشاف اليعقادات الراء حول الغصص ابالزوجي والوعظ في الإسلام كجزء من مجموعة "السيبان" لتعبر وج هاتنظر كحول هذا لموضوع م مهمالسبب في.
- تشمل الدرسه الإجهة على أسئلة الامتطلاع حول هذا الموضوع بسوفأسيتخدمالتتعلقالتي هي قلأهتتراجع الالجهانفي حاولقصيرايغ الأرهالممضلمة حولعليهفي فنظرانساعوالرجاللسونلونيونالي الغصص ابالزوجي في السرياقالإسلامي. الأمل من هذا السيتطلاع والقتراع هوف هالمف اي في أحد للموضوعات الأكرتبارقلجدل من خلال نظرة فييهة ومغفة إذاكلتلي ه أيأسس فييهة.
  - في حين أنه لا يمكن ضمان إخفاء هيتكضمن هذه المجموعة، لن يتم إلصاح عن أي عواملتعريف غصص قبكإلى أي شخص خارج الالمجموعة.

#### الغرض:

- في هذه الدرسة ، أهدف إلى توضيح حل عملي من السريرات لخلق الالغصص ابالزوجي ولاطريقة التي قد يغيغاضيبها ، أو يغيغيدس ، الإسلام هذهالظاهرة توفين طية للمطاف همدفي هوتق فيفكربيللساء لسوديلياتالتيغصصبحن شروطنالتيوتللسريراتالإسلام. بلالباطة (ا هدف إلى استخدام هسوتلكم وأرتكططناء أطروح قيمكن أن تنطبق على الالسلام المرسلاتلسفقطيالسودان ، لوكرفي جيغأن حاءالعالم.

#### إجراءك الدرسة:

- إضافتعمل إلى مشاركتي هذهالواسة ، سريته في نشر لوبول فأسيتطلاع لقتراع فدي الالمجموعة ، والتي هي تتجج عليها . سأل وحتش ريثك أسئلة أخرى غصص بسوع ، والتي هي لمكنك أيضاً الإجهة عن ها (لكن هليست اجبارية . (لوسل هنتككون مفتحو حةفتترة شمر اوشهين ، فين طي هالشهين سرق وجمع اللوقامالتي هي لقت لجيل اللينيات لن أجمع أي بيانات عنك أو عول فالظنلش خصصي على فييهة بولفقط طتتج القتراع.

#### فوتطد:

- قد لكسون في الفططد بدم اشركك من مشاركتك في هذه الدرسة ، ال أن هسوتلك هنتس اعفتيش لي لوس التي ، نتوق في م عمل ومات م هم فمسا اع دلف مبرل هين الالمسلمات التي مسحووا لفسه في سريه ف همالسلام يعرن طرة فالرحم وقال مس اواة واللطف.

#### المخاطر:

- لا يتوقع أن يكون فيك أي خطر فيك من خلال المشاركة في هذا الإيتطلاع. كما أن تكون اسبقاً ، لن نجمع أي بيول انتتغفكش تحريال هذه الدرسة . ومع ذلك فإن هذه الدرسة تطرح لربة حول موضوع حساس (الايغصص ابالزوجي). من الالمكن أن يفتغير في هذا الموضوع ويحس تر جج ذلكريات أوقضطياقتسبب للظنلوق. إذا كنت تعتقد أن هذا الموضوع قد يكون صعباً فيك للفطلي رفي هفتتويكون من الفاضل عدم المشاركة. إذا كان الرد عوى الأوتك فيهببلك للوق ففالك موارد وعل ومات لى اللتنت ، وموارد م لفي هيتك للبحث عن هالتتحدث م غصص خاص م اي لمكنك أيضاً الاغصص ابالبي وقد أكون قادره على عوصل كسب بعض الموارد المتاحة.

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