Madame Chairperson, distinguished Commissioners, State delegates, representatives of NHRIs and NGOs; all protocols respectfully observed.

The Strategic Initiative for Women in the Horn of Africa (SIHA) and the African Centre for Justice and Peace Studies (ACJPS) would hereby like to express its deep concern about the continuing criminalization of women in Sudan and in particular the criminalization of women based on their assumed moral obligations, which to date remains a major challenge to women’s equality and the possibilities of living a life of dignity. The discriminatory application of laws and practices, which often lead to corporal punishments such as death by stoning, flogging and whipping, are an issue of serious concern for women in Sudan. Several Articles of the Sudanese Criminal Act, such Article 145 and Article 146 defining the crimes and punishment for Zina, Article 149 defining rape, and Article 151 defining sexual harassment as well as Article 152 outlining the crime of “indecent dress”, are all punishable with corporal punishment, are disproportionately applied against women, and represent a continuous threat to women’s well-being in the country.

For instance, Article 145 of the 1991 Sudanese Criminal Act lays out the crimes of Zina (adultery), which defines extra marital intercourse as a criminal offence. Further, Article 146 spells out the punishment for Zina charges, which are death by stoning (if married) and whipping of 100 lashes (if unmarried). These laws are especially problematic, in cases of rape as the rules of evidence and burden of proof make it extremely difficult for women to prove they did not consent to the sexual activity. Since 2012 SIHA has recorded four (4) sentences of death by stoning which however have been suspended, yet the threat of courts applying Article 146 remains present. Flogging, which is prescribed as the sentence for unmarried intercourse, affects women in Sudan on a daily basis.

In early 2015, the Sudanese Government made amendments to the 1991 Criminal Act, aiming at acknowledging rape as a criminal offence and the need for detaching it from the crime of Zina. However, the situation for victims of sexual violence remains precarious as even though a completely new Article 149 came into place, no Amendments have been made to the 1994 Evidence Act, whereby in instances of rape, according to Article 62, four male witnesses are required to testify, and pregnancy is often considered evidence for having committed Zina. Consequently the amendments are insufficient to dissociate the crimes in terms of punishment and victims are still at risk of being sentenced to corporal punishment. Another controversial amendment has further been enacted to Article 151, which now defines sexual harassment in a vague and discriminatory manner, outlines temptation and invitation to sexual harassment as an element of the crime, and is punishable by lashing. The vague nature of the amendment leaves space for wide interpretation and demonstrates a clear gender bias in the laws, putting women at risk. Lastly, all these laws result in silencing women
from speaking out and reporting cases of sexual violence, and shift responsibility away from perpetrators to the victims.

SIHA and ACJPS remain concerned about the gender bias and moral policing that the outlined laws enforce. SIHA and ACJPS furthermore strongly condemns the application of corporal punishments, as they constitute serious violations of women’s dignity and physical integrity and are aimed at subjugating and criminalizing women in Sudan. They furthermore violate Sudan’s obligations to international and regional human rights treaties, as well as the Sudanese Constitution, which according to Article 33, prohibits “cruel, inhuman, or degrading punishments”.

We call upon the African Commission to consider the following recommendations to the Government of Sudan:

- Call upon the Sudanese Government to abolish the use of corporal punishment, inclusive of lashing, flogging and death by stoning, given their incompatibility with Article 5 of the African Charta on Human and People’s Rights on the Prohibition of Torture and Cruel, Inhuman and Degrading treatment, as well as Article 3 of the Sudanese Constitution.

- To urge the Sudanese Government to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Sudan signed in 1986 but has not been ratified to date.

- Call upon the Sudanese Government to review the discriminatory Articles of the 1991 Sudanese Criminal Act, namely Article 145 (articulating the crime of Zina) and Article 146 defining the punishment for it, which remains a threat to women’s dignity and physical integrity and especially the high prevalence of lashing and flogging.

- Call upon the Sudanese Government to provide access to justice and uphold the values of Article 34 of the Sudanese Constitution providing guarantees for fair trial and women’s access to justice, as well as to provide assistance in legal support and psychosocial counseling in cases of sexual violence against women.

- Advise the Sudanese Government to ratify the Protocol to the African charter on Human and People’s Rights on the Rights of Women in Africa as well as the sign the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) alongside the Optional Protocol to it of 2000.