

SUDAN

I. INTRODUCTION

1. The Legal Framework

1.1. The Constitution

Sudan has a population of about 36 million, which is composed of over 570 tribes.¹

Sudan became independent in 1956. Since then, each of the three democratic governments used a transitional Constitution while both the second and third military regimes adopted their own Constitutions, in 1973 and 1998 respectively.² The present Constitution, adopted in 1998, declares Sudan to be a Federal Republic.³ Part II, Chapter I of the Constitution contains a list of rights and freedoms guaranteed under the Constitution, encompassing a number of civil and some political rights.⁴ It also provides for a right to access to justice, including the right to lodge complaints before the Constitutional Court.⁵

The judiciary is divided into a three-tiered system of first instance, appeal courts and a supreme court, both for civil and criminal matters.⁶ There are also special courts having jurisdiction over members of the Special Security Forces, the Army and the Police.⁷ The Constitutional Court, established by the 1998 Constitution, has been in operation since April 1999.⁸

The independence of the judiciary is set out in the Constitution.⁹

1.2. Incorporation and Status of International Law in Domestic Law

Sudan has become party to the following relevant international treaties¹⁰:

¹ See for background information Core Document forming part of the reports of States Parties: Sudan, UN Doc. HRI/CORE/1.Add.99/Rev.1, 10 November 1999. See also Minority Rights Group International, *Sudan: Conflict and minorities*, 1995.

² See for an overview of the constitutional history, Ilias Bantekas and Hassan Abu-Sabeib, Reconciliation of Islamic Law with Constitutionalism: The Protection of Human Rights in Sudan's New Constitution, 12 African Journal of International and Comparative Law, (2000), 531- 553, pp.534, 535.

³ Article 2, See Part I on the guiding principles of the State.

⁴ Freedom and sanctity of life (Article 20); Right to equality (Article 21); Sanctity of nationality (Article 22); Freedom and right of movement (Article 23); Freedom of creed and worship (Article 24); Freedom of thought and expression (Article 25); Freedom of association and organization (Article 26); Sanctity of cultural communities (Article 27); Sanctity of earning and property (Article 28); Inviolability of communication and privacy (Article 29); Immunity against detention (Article 30); Right of innocence and defence (Article 32); Sanctity from death save in justice (Article 33).

⁵ Article 31 and 34 of the Constitution.

⁶ See Article 103 of the Constitution and Judiciary Act of 1986.

⁷ The Security Forces Courts (Article 62 of the National Security Forces Act of 1999); the Armed Forces Court (Article 72 and 73 of the Armed Forces Act of 1986) and the Police Courts (Article 50 of the Police Forces Act of 1999).

⁸ Article 105 of the Constitution.

⁹ Article 101 of the Constitution.

¹⁰ Date of accession or receipt of instrument by UN.

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- Geneva Conventions (23 September 1957)
- Refugee Convention (22 February 1974)
- ICCPR (18 March 1976)
- ICESCR (18 March 1976)
- ICERD (21 March 1977)
- African Charter on Human and People's Rights (11 March 1986)
- CRC (3 August 1990)

Sudan signed the Convention on Torture on 4 June 1986 but to date has not ratified it.

Neither the Constitution nor statutory law provides any guidance on the incorporation of international treaties into domestic law. As a matter of practice, Sudan follows the dualist tradition.¹¹ Thus, any rights or obligations flowing from international law only become national law after being incorporated through a legislative act. Consequently, the status of international law depends on the status of the law implementing the international obligation. Sudan has not adopted any legislation implementing the human rights instruments listed above.

2. Practice of torture: Context, Occurrence, Responses

2.1. The practice of torture

Sudan has gone through several periods of military rule, from 1958-1964 under General Abboud and from 1969 to 1985 under Jaafar Mohammed Nimeiri, all of which were marked by serious human rights violations.¹² The country is presently ruled by a military regime headed by Hassan Omer al-Bashir and the Islamic Front. It came into power following a coup on 30 June 1989 that brought to an end a four-year period (1985-1989) which, after an initial transitional period, had brought back a democratic system, including the election of a multi-party government in 1986.¹³ Since independence, there have been constant tensions between the predominantly Muslim North and the largely Christian South of the country that led to a military conflict from 1955 to 1972, which resumed in 1983. The conflict has continued since that date, the main protagonists being the military regime under Hassan-al Bashir and the Sudan People's Liberation Movement. In its policy of Islamisation of the Sudan, Nimeiri first introduced Shari'a law in Sudan in 1983, and al-Bashir announced its full implementation in Northern Sudan in 1991.¹⁴

Over the last decade, torture has been used systematically and the cruelty and brutality of torture in the so-called ghost houses and other places of detention has been notorious, often resulting in serious injuries or death of the victims.¹⁵ Reportedly, the police forces¹⁶ routinely torture those suspected of having committed a criminal offence with the aim of extracting

¹¹ See Amin Mekki Medani, **Crimes Against International Humanitarian Law in Sudan: 1989-2000**, Cairo, 2001, p.79.

¹² See *ibid.*, pp.9 et seq.

¹³ See *ibid.*, pp. 21 and 22 and P.M. Holt and M.W. Daily, **A History of the Sudan, From the Coming of Islam to the Present Day**, Fifth Edition, Pearson Education Ltd., Harlow, England, 2000, pp.180 et seq.

¹⁴ The Shari'a punishments, as specified, shall according to Article 5 (3) of the Criminal Act of 1991 not apply to the Southern States unless the accused himself requests the application of the said provisions on him or the legislative body decides to the contrary.

¹⁵ See for further information on the torture methods used in Sudan and for testimonies of victims of torture the website of the Sudanese Organisation against Torture www.soatsudan.org.

¹⁶ Article 123(1) of the Constitution: "The Police Forces are regular forces of national composition whose mission is to serve the security of the country and citizens, combat crime, protect property, prevent disasters and preserve the morality and conduct of the society and public order."

confessions. Members of the security forces¹⁷ are said to be responsible for the torture of political opponents of the regime. The Army personnel¹⁸ and paramilitary forces have used torture in the course of their military campaign. Members of the prison administration have also reportedly tortured prison detainees.

Victims of torture have been all those who happen to be accused of a crime and detainees in police custody and prisons. Political opponents and human rights defenders have also been subjected to torture and ill-treatment. There has also been a recent increase of rape and sexual harassment in custody, in particular against young women students. Under the current regime, the rape of male political detainees has become more regular. One of the main objectives is said to be to destroy the self-esteem of political opponents. Children have also been tortured and ill-treated, especially in social care houses and other places of detention. Other victims include various minorities in the war zones, such as the Nuba, the southern Sudanese and some inhabitants of the Blue Nile areas.

Since the introduction of Shari'a law in 1983, Sudan has also applied corporal punishments and death penalties by means of stoning and crucifixion.¹⁹

2.2. Domestic Responses

While the Sudanese government has taken a hostile attitude towards criticism of its human rights record until the latter part of the 1990s, its stance has recently become more accommodating. It has also taken various measures, such as the adoption of the 1998 Constitution, the establishment of the constitutional court and the provision of nation-wide human rights training which have been commended as significant steps towards an improvement of its human rights record.²⁰ However, the government has neither acknowledged torture nor has it shown any political will as evidenced by concrete steps to tackle the systematic use of torture by law-enforcement and military personnel.

In 1994, the Advisory Council for Human Rights was created by Presidential Decree. Its functions are to provide advice and consultancy, conduct human rights research and studies, require necessary information and data from any State or agency, organise and prepare for visits by individuals and organisations related to human rights in the Sudan and make international regulations necessary to regulate the business of the Advisory Council for Human Rights.²¹ The Council has thus no powers of investigation and, while it can make

¹⁷ Article 124 (1) of the Constitution: "Security Forces are national regular forces whose mission is to care for the internal and external security of the Sudan, monitor relevant events, analyse the significance and dangers of the same and recommend protection measures."

¹⁸ Article 122 (1) of the Constitution: "The People's Armed Military Forces are military forces of national composition; their mission is the protection, security, preservation of the safety and participation in the construction of the nation; they also protect the achievements of the people, and the civilisational orientation of the national community. They also safeguard the constitutional order."

¹⁹ The legal basis for the use of such methods is Article 27 of the Criminal Act of 1991 (hereinafter CA), Article 35 for whipping and the various provisions in the Criminal Act providing for corporal punishments or the death penalty for the *hudud* offences (i.e. the offences of drinking alcohol, apostasy (*ridda*), adultery (*zina*), defamation of unchastity (*quazf*), armed robbery and capital theft. See, on the carrying out these punishments, the Annual Reports and Newsletters of the Sudanese Organisation against Torture as well as Human Rights Watch: Sudan **Justice: Stonings, Amputations; Emergency Courts violate Fair Trial Standards**, 1 February 2002.

²⁰ See Core Document, supra, paras.20 et seq. and the regular reports of the Special Rapporteur on Human Rights in the Sudan, available at www.unhchr.ch.

²¹ See Human Rights Watch, **Protectors or Pretenders? Government Human Rights Commissions in Africa**, Sudan, 1 January 2001. According to this report, the Council defined its role in 1998 as follows: "To insure that the government meets its regional and international reporting requirements and to participate in the drafting of the country reports; to respond when allegations against the government are raised and to provide information to the international community about human rights concerns; and to follow up with cases of persons detained by the security forces to press for release and for charges to be brought."

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recommendations and has played a meaningful role in such areas as requesting the establishment of Committees for Human Rights Education, it has provided neither safeguards for torture survivors nor an avenue for redress. The creation of a Sudanese Commission for Human Rights has been contemplated for some time but has not come into being at the time in writing in early 2003.

2.3. International Responses

The dismal human rights record of Sudan has received the attention of a wide range of international human rights bodies throughout the 1990s and early 2000s.

The Commission on Human Rights appointed a Special Rapporteur on the situation of human rights in Sudan in 1993 following Sudan's examination under the 1503 procedure by the Commission on Human Rights from 1991 to 1993. The Rapporteur has, from that date until the present, chronicled a series of serious human rights abuses, including torture. The Special Rapporteur has condemned the practice of torture and the prevailing impunity for serious human rights violations.²² In a report in early 2002, he stated that: "The Special Rapporteur remains of the view that not only does the institutional and legal framework remain basically unchanged, but the overall human rights situation has not improved since the presentation of the fifty-sixth session of the General Assembly."²³

The Special Rapporteur on Torture has repeatedly expressed his concern over torture cases transmitted to him from the Sudan and observed in its 2001 report: "The Special Rapporteur appreciates the Government responses, but finds insufficient information in the denial of allegations of torture to displace the concern aroused by the allegations. Cases of corporal punishment involving (sometimes multiple) amputation of limbs are a blatant violation of the prohibition under international law of torture or cruel, inhuman or degrading punishment."²⁴

The Human Rights Committee stated in 1997 that it is: "troubled by the number of reports of extrajudicial executions, torture, slavery, disappearances, abductions and other human rights violations from United Nations and NGO sources, and by the delegation's assertions that such human rights violations are relatively infrequent."²⁵ Moreover, "The Committee notes the explanation that prosecution of security personnel under the National Security Act 1994, as amended, is restricted when such persons act in the course of their duties. It is also concerned that permission must be obtained for any such prosecution."²⁶

²² Situation of Human Rights in the Sudan, Interim Report of the Special Rapporteur, Gerhart Baum, on the situation of Human Rights in the Sudan, UN Doc. E/CN.4/2002/46, 20 August 2002, paras 101 and 102.

²³ Situation of Human Rights in the Sudan, Report of the Special Rapporteur, Gerhart Baum, submitted in accordance with Commission resolution 2001/18, UN Doc. E/CN.4/2002/46, 23 January 2002, para.79.

²⁴ Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission of Human Rights resolution 2000/43, UN Doc. E/CN.4/2001/66, 25 January 2001, para.1024.

²⁵ Concluding Observations of the Human Rights Committee: Sudan, 19 November 1997, UN Doc. CCPR/C/79/Add.85, para.12: "It welcomes the State party's declaration that it will investigate any reports of human rights abuses by police, security forces, the Popular Defence Forces or others under its responsibility. The Committee therefore recommends that: (a) Permanent and independent mechanisms be set up to investigate alleged abuses of power by police, security forces and the Popular Defence Forces; (b) The methodology of such investigations and their outcome should be made public; (c) Such investigations should lead to the release of any person improperly detained, with proper compensation, and to disciplinary or criminal proceedings against those found responsible; (d) The Government of the Sudan should continue to cooperate with United Nations bodies and non-governmental organizations on these matters; (e) Complete information, including statistics, about such investigations and their outcome should be included in the State party's next periodic report."

²⁶ *Ibid.*, para.17: "Therefore: Members of the police and security forces should be subject to prosecution and civil suits for abuse of power without any legal restriction; the provisions of the National Security Act 1994, as amended, are inconsistent with that concept and should be repealed. Moreover, statistics on complaints filed, prosecutions, convictions and sentences of members of the police

The Committee on the Rights of the Child²⁷ and the Special Representative of the Secretary-General on Human Rights Defenders²⁸ also expressed their concern over the ill-treatment of children and human rights defenders respectively.

The Commission on Human Rights, in its resolution 2001/18 on the situation of human rights in the Sudan, expressed its concern at continuing violations of human rights in areas under the control of the Government of the Sudan.²⁹

In 2002, the Working Group on Enforced or Involuntary Disappearances "reminds the Government of its obligation, under article 13 of the Declaration to conduct impartial and effective investigations into alleged cases of disappearance (the Group mentions 267 reported cases) until the fate and whereabouts of the victims are established beyond reasonable doubt. It also reminds the Government that, under article 14, the perpetrators should be brought to justice and that, in accordance with article 19, all victims of acts of enforced disappearances and their families shall obtain redress and shall have the right to adequate compensation."³⁰

II. PROHIBITION OF TORTURE UNDER DOMESTIC LAW

Article 20 of the Constitution stipulates an explicit prohibition of torture: "Every human being shall have the right to life, freedom, safety of person and dignity of honour save by right in accordance with the law; and he is free of subjection to slavery, forced labour, humiliation or torture." The prohibition of torture is non-derogable.³¹

The Criminal Act, 1991 contains an offence criminalizing the use of torture.³² While other statutory laws do not expressly forbid torture, there are several provisions prohibiting the infliction of harm on detainees and calling on officials to preserve the dignity of detainees.³³

and security forces for abuse of power should be included in the next report. Statistics on the number of requests for compensation and the amount of compensation actually awarded to victims of human rights violations should also be included."

²⁷ Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Sudan, UN Doc. CRC/C/15/Add.190, 9 October 2002, para.35: "The Committee is concerned that corporal punishment is widely practiced in the State party, including within the family, schools and other institutions; that children have been the victims of violence by, amongst others, the police; and that acts of torture, rape and other cruel, inhuman or degrading treatment have been committed against children in the context of the armed conflict."

²⁸ Report submitted by Ms. Hina Jilani, Special Rapporteur of Secretary-General on Human Rights Defenders, pursuant to the Commission on Human Rights resolution 2000/61, UN Doc. E/CN.4/2002/106, 27 February 2002, paras. 327-331.

²⁹ It noted in particular: 2 (ix) The arbitrary arrest and detention without trial, in particular of political opponents, human rights defenders and journalists, as well as acts of intimidation and harassment against the population by the security organs, and the provisional amendment, which came into force, in December 2000, of the National Security Forces Act, in which the period of detention without judicial review was extended to six months;(x) The detention in precarious conditions, use of torture, and violations of human rights by the security organs, intelligence agencies and the police, while encouraging the judiciary to exercise more control over such agencies;(xi) The extent of the use of most cruel forms of corporal punishment in contravention of human rights norms and standards."

³⁰ Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc. E/CN.4/2002/79, 18 January 2002, paras.296 and 297.

³¹ Article 132 (a) of the Constitution.

³² See Article 115 (2) of the Criminal Act, 1991. *infra* III, 1. Torture is not defined in the Criminal Act.

³³ Articles 4 (d), (e) and 83 Criminal Procedure Code 1991. Articles 30 and 32 (3) of the National Security Forces Act of 1999 and Article 17 of the Treatment of Detainees Bylaw of 1996.

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Moreover, an accused should not be forced to give evidence against him/herself³⁴ and a confession obtained by means of coercion is deemed inadmissible.³⁵

Torture is not defined in Sudanese law. There is no jurisprudence on what constitutes torture.³⁶

III. CRIMINAL ACCOUNTABILITY OF PERPETRATORS OF TORTURE

1. The Substantive Law: Criminal offences and punishment

There is no specific criminal offence of torture in the Sudanese criminal law. The Criminal Act 1991, codifying Shari'a law, contains several crimes that could be applied in cases of torture.

The offences of influencing the course of justice and threatening carries a punishment of up to three years imprisonment and/or a fine and the offence of torturing a witness or accused is subject to a punishment not exceeding three months imprisonment and/or a fine.³⁷ Illegal detention with the intention of obtaining a confession is punishable by up to three years imprisonment.³⁸ Articles 89 and 90 of the Criminal Act incriminate public officials, including the police and army, who disobey the law with intent to cause injury or misuse their power to commit persons for trial or to confinement, offences which carry a punishment of two years and three years, with or without fine, respectively.³⁹ Article 47 of the National Security Forces Act lays down a punishment of up to ten years imprisonment for abuse of power by a member of the security forces.⁴⁰

Criminal offences relating to bodily injury are categorised as *qisas*, if committed intentionally, which means that they carry a punishment of retribution, to be exercised by the victim or

³⁴ Article 4 (d) Criminal Procedure Code.

³⁵ Article 20 of the Evidence Act, 1993: "(1) The confession will be deemed incorrect if it was contrary to the appeared reality; (2) confession in criminal matters will not be correct if it was the result of coercion or temptation; (3) despite the provision of Article (2) the temptation will not influence the correctness of the confession in the transactions." However, Article 20 has to be seen in the light of Article 10 of the Evidence Act, which allows the judges admit forced confessions as evidence: "10. (1) With adherence to provisions of confession and the inadmissible evidence, the evidence will not be inadmissible just because it was obtained through incorrect procedure provided that the court is confident that it is independent and acceptable; (2) The court may, when it consider it suitable for justice, to refrain from granting conviction on the basis of the evidence mentioned in part (1) unless it is corroborated by another evidence."

³⁶ See in this regard the 1993 Supreme Court judgment, which is considered in more detail, *infra*, III, 3.3. No other cases are known in which the use of torture was at issue.

³⁷ Article 115 CA: "1. Whoever intentionally does any act which tends to influence the fairness of judicial proceedings relating thereto, shall be punished with imprisonment for a term not exceeding three years or with fine or with both. 2. Every person who, having public authority entice or threaten or torture any witness or accused or opponent shall be punished with imprisonment for a term not exceeding three months or with fine or with both."

³⁸ Article 165 CA: "(1) There shall be deemed to have committed an offence of illegal detention whoever detains another person in a certain place without legal justification or continue to detain him knowing that a release order has been issued, shall be punished with imprisonment for a term not exceeding one year or with fine or both; (2) If the detention was carried out in a secretive way or with the intention of extracting a confession from the detainee or compelling the detainee to return assets or to perform an act contrary to the law or if the detention would endanger his life shall be punished with imprisonment for a term not exceeding three years and may also be punished with a fine."

³⁹ Article 89 CA: "Any public servant disobeying any direction of Law as to the way in which he is to conduct himself as a public servant or omits to perform any of the duties of his post as such public servant intending thereby:- a) to cause injury to any person or to the public or to cause any unlawful benefit to any other person"; Article 90 CA: "Every person, who being a public servant authorized by law to commit persons for trial or to confinement, commits any of such things knowing that in so doing he is acting contrary to law, shall be punished with imprisonment for a term not exceeding three years and he may also be punished with a fine."

⁴⁰ "Any member who abuses the exercises of powers invested on him by this act, or takes advantage of his post in the organ in order to achieve any material or moral benefit for his sake or the sake of another person, or to cause damage to another person shall be sentenced with imprisonment for a term not exceeding ten years or with fine or with both."

his/her relatives.⁴¹ The relatives have the choice of accepting *día* (blood money) instead of insisting on retribution.⁴² In such case, a court can still impose a punishment but not one of the same severity as retribution.⁴³ If bodily injury was caused semi-intentionally or by mistake, i.e. grossly negligently or negligently, victims have the right to *día* but not retribution, as these offences are subject to imprisonment only.

The Criminal Act recognises three offences of causing wounds,⁴⁴ intentional, semi-intentional and by mistake,⁴⁵ and hurt.⁴⁶ If the hurt is committed with the intention to extract a confession or compelling a person to do an act contrary to the law, it is subject to a punishment not exceeding two years and a fine.⁴⁷ Further *tazir* offences recognised in this part of the Criminal Act are criminal force⁴⁸ and intimidation,⁴⁹ both subject to short terms of imprisonment.

Murder, i.e. intentional homicide, semi intentional homicide and homicide by mistake are criminal offences subject to *Dia*. It could also be punished with retribution or imprisonment not exceeding ten years for intentional homicide, or seven years, and three years for the other two respectively.⁵⁰ Culpable homicide, which would qualify as murder is deemed to be semi-intentional where a public servant or a person charged with a public service, exceeds, in good faith the limits of the power authorized thereto believing that his act which has caused death is necessary for the performance of his duty.⁵¹ The same applies where the offender commits culpable homicide by exceeding, in good faith, the limits prescribed by law for the exercise of the right of self-defence.⁵²

Rape is punishable with a hundred lashes and with imprisonment for a term not exceeding ten years, unless it constitutes the offence of adultery or homosexuality, which are punishable by death.⁵³ Rape in custody is not recognised as an aggravating circumstance. Sexual harassment is punishable with whipping and imprisonment for a term not exceeding one year.⁵⁴

⁴¹ Articles 28-32 CA.

⁴² Articles 42-46 CA.

⁴³ *Tazir* punishments which covers all punishments not fixed by Shari'a, i.e. all crimes carrying another penalty than *hudud* or *qisa*. See Article 3 CA.

⁴⁴ Article 138 (1) CA: "Whoever causes to another person a loss of an organ in his body, or the mental function or of any of the senses or limbs or causes any fracture or wound in body, shall be deemed to cause wounds."

⁴⁵ Articles 139-141 CA.

⁴⁶ Article 142 (1) CA: "There shall be deemed to commit the offence of hurt whoever causes any pain or disease to another person and shall be punished with imprisonment for a term not exceeding six months or with fine or with both".

⁴⁷ Article 142 (2) CA: "Where hurt occurred by dangerous means such as poison or intoxicating drugs or where hurt is caused with the intention of drawing a confession from another or compelling that other to do an act contrary to the law, the offender shall be punished with imprisonment for a term not exceeding two years and may also be punished with fine."

⁴⁸ Article 143 CA: "There shall be deemed to commit the offence of the use of criminal force whoever uses force upon another person without that person's consent intending to commit any offence or to cause harm or fear or annoyance to such person, and shall be punished with imprisonment for a term not exceeding one year or with fine or with both."

⁴⁹ Article 144 (1) CA: "There shall be deemed to commit the offence of intimidation whoever:- a) threatens to harm another or any person in whom that other is interested, intending thereby to threaten or compel him to do what he is legally not bound to do or forbear from doing what he is legally bound to do; b) makes any gestures or preparation intending thereby to use criminal force or knowing that such gesture or preparation is likely to make any person present apprehend that he is about to use criminal force against him," (2): "Whoever commits the offence of intimidation shall be punished with imprisonment for a term not exceeding six months or with fine or with both."

⁵⁰ Articles 130-132 CA.

⁵¹ Article 131 (2) a) CA.

⁵² Article 131 (2) b) CA.

⁵³ Article 149 CA.

⁵⁴ Article 151 CA.

While superior orders are not explicitly recognised as a defence, Article 11 CA stipulates that “no act shall be deemed an offence if done by a person who is bound or authorised to do it by law or by a legal order issued from a competent authority or who believes in good faith that he is bound or authorised to do so.” However, as there is no legal authorisation in Sudanese law that permits the commission of acts tantamount to torture, perpetrators of torture cannot invoke Article 11 CA as a defence against torture.

Disciplinary sanctions can be imposed by virtue of the acts governing the conduct of the respective forces.

2. The procedural law

2.1. Immunities

There is no express immunity for public officials for acts of torture.

2.2. Statute of Limitations

Article 28 of the Criminal Procedure Act 1991 provides for the following period of limitations: “no criminal action can be initiated, in *tazir* crimes, after the lapse of the limitation period which commences from the date at which the crime was committed. The limitation period is: a) ten years for any crime punishable by capital punishment or imprisonment of ten years or more; b) five years for any crime punishable by imprisonment of more than one year; c) two years for any other crime.”

Consequently, the crimes relating to abuse of office, homicide, semi-intentional or by negligence, causing semi-intentional wounds and hurt are subject to a five-year limitation period. The less serious offences mentioned above are prescribed after two years whereas *qisas* and *hudud* crimes are not subject to any period of limitation.

2.3. Criminal investigations

A victim of a crime or his/her lawyer has the right to lodge a complaint.⁵⁵ Such a complaint may be lodged to a police officer or, if the complainant is a detainee, either to the legal adviser of the director of the general prosecution office in charge of security or directly to the competent magistrate.⁵⁶

The police and the general prosecution office are competent to carry out investigations whereby investigations by the police are conducted under the supervision of the general prosecution office.⁵⁷ Besides these two agencies, various courts as provided by law and the assigned judge from the constitutional court are also competent to prosecute officials for human rights violations.⁵⁸ The victim of a *qisas* crime may, upon approval of the general prosecution office, be

⁵⁵ See on lodging complaints, Chapter II of the CPA, in particular Article 34.

⁵⁶ See also Article 15 of the Treatment of Detainees Bylaw of 1996.

⁵⁷ See Articles 39 and 136 CPA.

⁵⁸ Article 15 of the Treatment of Detainees Bylaw and Article 3 of the National Security Forces Act.

solely responsible for the prosecution of such crimes.⁵⁹ There are no independent agencies charged with investigating and prosecuting human rights violations.

Upon receiving a complaint or information about the commission of a crime, the police or general prosecution office should commence a preliminary investigation to confirm the facts or suspicions that a crime has been committed.⁶⁰ In deciding whether to open an investigation the police and prosecution enjoys a degree of discretion.⁶¹ Thus, if an officer in charge considers that the information received is not correct or that it does not give rise to a suspicion that a crime has been carried out, he or she may refuse to open an investigation provided that he/she informs the complainant of the right to raise the matter with the Attorney General.⁶² If the general prosecution confirms such decision or closes the case file for lack of sufficient evidence, the victim may complain to the hierarchically superior officer to reconsider the decision. In respect of those offences resulting in bodily injury or the death of the victim, the following steps are to be taken in an investigation: a) to inspect the scene of the crime immediately; b) to take all steps to find and arrest the suspect; c) to take necessary measures to summon a competent doctor to examine the corpse in case of death or transfer the victim to nearest hospital and to inform the relatives of the deceased or the victim; d) to write down any statement by the victim in the investigation record.⁶³ It is also provided that no corpse should be buried without the permission of the Attorney General officer unless required by utmost necessity.⁶⁴

If the investigation establishes a prima facie case on the basis of witness statements or a medical report, the officer of the Attorney General informs the Attorney General who in turn is to contact the director of the respective forces with a request to withdraw immunity. In general, the prosecution of members of the national security forces, the police and the army is subject to the permission of the respective director or head of staff.⁶⁵ While the Supreme Court held in 1993 that permission was not required in cases concerning torture, some later Court decisions did not challenge the practice of the authorities to withhold permission in a case of alleged torture.⁶⁶ The decision not to grant permission to prosecute can be appealed to the senior prosecution officer up to the Attorney General. There is no explicit right to challenge such a decision but a petition to defend a constitutional right might be brought. The public officials accused of a crime can themselves initiate a case before the competent special court in place for each forces, i.e. the Security Forces Courts, the Police Courts or the Armed Forces Court.⁶⁷ In such proceedings, the competent court will decide whether a prima facie case has been made out against the concerned official to grant permission to prosecute. If permission to prosecute is granted, the concerned officer may be suspended from work and taken into custody.⁶⁸

⁵⁹ Article 136 (1) CPA.

⁶⁰ Article 33 and 47 CPA. The nature of investigation differs depending on the crime in question. Where the crime concerns offences for which a suspect may be arrested without a court order as provided for in Article 68 (2) CPA, preliminary investigations are to be carried out pursuant to Article 44 (1) CPA.

⁶¹ See Chapter IV of the CPA on investigations.

⁶² Article 44 (2) CPA.

⁶³ Article 48 (1) CPA.

⁶⁴ Article 48 (2) CPA.

⁶⁵ See Article 33 of the National Security Forces Act, Article 61 of the Police Forces Act and the Army Act respectively.

⁶⁶ See for a detailed description of the Supreme Court case, *infra*, III, 3.3 and on the latest practice case Nr. 2181/2001, decided by the Dueim Criminal Court on 25 March 2002, in which the Court denied a request by the defence to grant permission to open a case according to Article 35 CPA against members of the Security Organ, including its director, for the offences laid down in Articles 115; 144; 164 and 165 CA.

⁶⁷ According to the respective acts for each of the forces, see *supra*.

⁶⁸ See Article 26/1 Security Forces Act, Article 62 (1) Police Forces Act and the relevant Articles on arrest in the CPA, i.e. Articles 67-77 and 105-116.

There is no specific legislation ensuring the protection of victims and witnesses.⁶⁹ Victims, their relatives, guardians or legal representatives may launch a private prosecution in respect of *qisas* crimes or offences that involve private interests. However, such private prosecution requires the approval of the Attorney General.⁷⁰

2.4. Trials

If the general prosecution indicts the suspect, the first instance criminal courts, which may pass any punishment except the death penalty, are competent to try cases.⁷¹ However, members of one of the forces may be tried by the competent special court for trying their cases if the immunity is withdrawn on condition that the suspect be tried before a competent special court.⁷² While legal representation and publicity may be restricted in proceedings before such special courts, all criminal proceedings are adversarial in nature. The accused has to be proven guilty beyond doubt.⁷³ Victims have the right to participate in a trial and examine and refute documents presented by the accused, either by themselves or through their lawyer. They may cross examine defence witnesses and have the right to present documents and witnesses in support of their case. However, evidence may be withheld on grounds of public security.⁷⁴ For any criminal offences relating to bodily injuries, the court should refer the complainant to a public hospital so that a medical form called form 8 can be issued by a medical doctor following an examination.⁷⁵ Form 8 is available through the police or prosecution service. A torture survivor may, in cases where there are no public hospitals in the vicinity or no form 8 is available, have a medical report drawn up by a private doctor. While such a report would be admissible as evidence, it carries less weight. The Attorney-General has the power to stop criminal proceedings any time before judgment is entered. Such a decision shall be final and not subject to appeal.⁷⁶ The courts exercise discretionary sentencing power in regard of *tazir* crimes and *qisas* crimes in those cases where the victim chooses *dia* instead of retribution. The Head of State has the power to suspend or pardon any conviction or sentence and to grant a general amnesty.⁷⁷

3. Practice

3.1. Complaints

There are no recent official statistics about the number of complaints about torture and ill-treatment.⁷⁸ The majority of torture survivors or relatives of victims appear to refrain from

⁶⁹ However, Article 4 (e) CPA provides that witnesses should not be subject to any injury or ill-treatment.

⁷⁰ Article 136 (2) CPA.

⁷¹ Article 10 CPA.

⁷² See Article 62 of the Security Forces Act, Article 50 of the Police Forces Act and Articles 72, 73 of the Armed Forces Act.

⁷³ Article 5 (b) Evidence Act.

⁷⁴ Article 25 of the Evidence Act.

⁷⁵ Article 162 (1) CPA.

⁷⁶ Article 58 (1) CPA.

⁷⁷ See 208 and 211 (1) CPA.

⁷⁸ According to figures provided by sources in the Sudan, 18 complaints of torture were lodged with the authorities in the period from October 2001 to January 2003 most of which were at the time of writing pending with the Attorney General or before the Courts.

lodging complaints. This is largely due to the hostile attitude of members of the forces, particularly in the Nuba mountains, western areas (Dafour) and the conflict zone in the South, who have over the years consistently threatened and harassed torture survivors and those working on their behalf.⁷⁹ Another reason is that victims either lack awareness of their right to complain or do not know how to exercise it, especially in remote areas.

3.2. Investigations

In a number of cases where torture survivors complained to the police or general prosecutions, the results of investigations were not made public, leaving the impression that the police and prosecution simply took no action. Numerous investigations have been pending for several years without any concrete results. While medical reports appear to be produced impartially in most cases, many torture survivors are only released after traces of torture have at least superficially disappeared. Investigations carried out are often inadequate and result in the closing of files on the grounds of insufficient evidence. The perpetrators routinely deny that torture took place or that they were at the scene of the crime, often buttressed by witness statements of colleagues, or claim that they used legitimate force or plead immunity. Even in cases where a strong prima facie case is readily available, preliminary investigations are usually drawn out. Most cases fail to proceed as the competent directors of the respective forces refuse to lift immunity, even when there is strong evidence pointing to the involvement of officials in torture cases. While some courts have ordered a prosecution and have thus overruled decisions not to grant permission to prosecute, the higher prosecution service and Attorney-General have not taken any vigorous steps in demanding prosecution of those suspected of having committed torture.

Judges, whose independence has not been ensured in practice,⁸⁰ have imposed stern punishments relying on confessions even though there was strong evidence that they were extracted by means of torture. Courts have failed to issue appropriate orders to the authorities in cases where defendants raised allegations of torture before them even though they are empowered to do so.⁸¹

3.3. Prosecutions

Only a single case is known in which perpetrators of torture have been convicted.⁸² The case, dating back to 1993, concerned three police officers who were charged with committing the criminal offences laid down in Article 115 (2) and 142 (2) of the Criminal Act⁸³ for torturing a woman in order to extract a confession for the crime of theft. The Juba Criminal Court found the accused guilty and sentenced them to imprisonment of one year and a 10,000 (ca. \$63) Sudanese Pounds fine for the violation of Article 142 (2) CA and 1,000 Sudanese Pounds for

⁷⁹ In the case of Brig. (Ret) Mohamed Ahmed al Rayah al Faki "Human Rights Watch/Africa in 1994 reprinted Articles of his graphic letter of complaint to the minister of justice and the Attorney General. He alleged he was tortured with electric shock, severe beatings and rape in 1991 and in 1992. A medical certificate from August 1993 detailed physical injuries consistent with the allegations. In November 1995 the government admitted to Human Rights Watch that Brig. Al Rayah was not released in an August general pardon extended to others convicted with him because he had complained about being tortured. Brig. Al Rayah told many people that the government representatives visited him in jail and tried to pressure him into withdrawing his case in exchange for his release. Six month later, however, in February 1996, al Rayah was released, still not having withdrawn his complaint of torture. While his unconditional release is a step forward, the next step must be a full investigation of his torture". See Human Rights Watch Africa, *Behind the Red Line: Political Repression in Sudan*, May 1996, p.80.

⁸⁰ See Ending Impunity in Sudan, Conclusions and Recommendations of the Seminar organised by SOAT and REDRESS which took place from 17-20 October 2001 in London, UK, available at the SOAT website, supra, II., Summary of Presentations.

⁸¹ In case Nr. 2181/2001, decided by the Dueim Criminal Court on 25 March 2002, supra.

⁸² Arabic copy of the Supreme Court judgment in case 875/1993 on file with REDRESS.

⁸³ See supra, III, 1.

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violation of Article 115 (2) CA.⁸⁴ The Court ordered the payment of 8,000 (ca.\$ 50.5) out of the 10,000 Sudanese Pounds to the complainant as compensation. The Appeal Court upheld the decision of the trial court. The Supreme Court delivered its judgment on the case on 28 November 1993. The three judges were unanimous in their finding that the absence of a prior permission to prosecute under Article 61 of the Police Forces Act did not result in the invalidity of the procedure and judgments passed. In so doing, Justice Mohammed Ahmed Abu-Şin referred to Circular Nr. 139 issued by the General Director of Police in 1989 and a similar Circular Nr.140 issued in 1992, according to which such permission is only required if the act in question was required by law.⁸⁵ He concluded that, as the use of torture to extract confessions is prohibited by law, there was for this reason no need to obtain a permission to prosecute. While he upheld the conviction for both offences, which he found to be based on the confession of the perpetrators, the testimony of the complainant and medical evidence, he considered the fine to be too heavy and reduced it to 5,000 (ca. \$31.5) Sudanese Pounds for each accused. 9,000 (ca.\$56.7) out of the total of 15,000 Pounds to be paid to the complainant.

Justice Babikder Zien El-Abdin, Chair of the Supreme Court, found that Article 142 (2) overrides Article 115 (2) CA in those cases where the torture causes bodily harm. He considered that the sentence imposed was disproportionate and should be reduced in the light of the sentences prescribed for such an offence, the level of harm caused and the absence of any previous convictions of the accused. Accordingly, the sentence for each perpetrator should be a term of six months imprisonment and a fine of 5,000 Sudanese Pounds. Justice Abdelrahman Sharfi concurred with Justice Babikder Zein El-Abdin. Consequently, the final punishment for each of the three police officers was six months imprisonment and 5,000 Sudanese Pounds out of which 3,000 (ca.\$18.9) Pounds were to be paid to the complainant as compensation.

IV. CLAIMING REPARATION FOR TORTURE

1. Available remedies

1.1. Constitutional Law

Victims of a violation of any of the rights recognised in Part II, Chapter I of the Sudanese Constitution, including torture, have the right to a remedy and to compensation. Article 34 of the Constitution stipulates that: "Every aggrieved person who has exhausted means of grievance and complaints to the executive and administrative organs, shall have the right of access to the Constitutional Court to protect the freedoms, sanctities and rights set out in this Chapter; and the Constitutional Court may according to due process exercise the power to annul any law or order that contravenes the Constitution and restore the right to the aggrieved or compensate him for damage sustained."

An application to the Constitutional Court can be made at any time provided that the applicant has exhausted all available domestic remedies.⁸⁶ The court may however not review any judgment or decision that has become final prior to the entry into force of the Constitution.⁸⁷ If the authority to which a complaint has been submitted does not respond to it within a period of

⁸⁴ In case of non-payment of fine, the punishment will be two months imprisonment.

⁸⁵ "We conclude that any act which is imposed by laws and by-laws for official work deserves to be treated according to Article 58 (i.e. of the former Police Forces Act). In any other case, legal procedures should be taken directly without the need to obtain permission." (Unofficial translation).

⁸⁶ Article 18 (2) of the Constitutional Court Act 1998.

⁸⁷ Article 26 (3) *ibid.*

30 days of receipt of the complaint, the Court may proceed to hear the case if it deems such a hearing to be reasonable.⁸⁸ If a petition is submitted in the proper form after exhaustion of domestic remedies, the court will declare it admissible and direct the payment of the prescribed fee unless the applicant is excused from such payment by a court order.⁸⁹ In hearings before the court, all generally admissible evidence may be used. The Court has wide powers in restoring the right of an aggrieved person and compensating him or her.⁹⁰ A decision to award compensation made by the Court shall be executed by the competent Court.⁹¹

1.2. Civil Law

A torture survivor or relatives of a torture victim can claim damages for tort, i.e. trespass against the person, under civil law.⁹² The culpable officer and the state are jointly liable. The state is vicariously liable on the grounds of employers' liability.⁹³

Compensation is awarded for pecuniary and non-pecuniary harm. Pecuniary damages include financial loss suffered as a result of the wrongdoing, including costs incurred and lost earnings.⁹⁴ Moral damages will be assessed by taking into account the circumstances of each individual case.⁹⁵ In case of death, the right to compensation becomes the right of the inheritors.⁹⁶ Judges have the power to order other measures than compensation in relation to the wrongdoing.⁹⁷

A suit is to be brought before the competent civil courts⁹⁸ either within five years from the date the plaintiff knew the harm and the person responsible or, if this is not the case, within fifteen years.⁹⁹ While a case can be filed against the responsible state organ, members of the security forces and the police can only be sued with the permission of the competent director.¹⁰⁰ The plaintiff has to pay a fixed percentage of the damages claimed as court fees. Legal Aid is provided according to the Attorney Law 1983.¹⁰¹ The plaintiff carries the burden of proof. He/She has to prove by all means of evidence that the harm resulted from the wrongdoing and the pecuniary damages claimed. The award of damages is not dependent on a criminal conviction and a compensation claim can be brought independent of a criminal claim. However, if a criminal case is pending, the Courts generally suspend the civil proceedings until the conclusion of criminal proceedings. The Court that issued the judgment is responsible for its

⁸⁸ Article 16 (2) *ibid.*

⁸⁹ Article 16 (3) *ibid.*

⁹⁰ Article 11 (1) and (2) *ibid.*

⁹¹ Article 22 *ibid.*

⁹² Article 153 (1) Civil Transaction Act of 1984 (hereinafter CTA).

⁹³ Article 146 (1) CTA.

⁹⁴ Article 156 CTA.

⁹⁵ Article 153 (1) CTA.

⁹⁶ Article 153 (2) CTA.

⁹⁷ Article 154 (2) CTA.

⁹⁸ Articles 33-36 of the Civil Procedure Code of 1983.

⁹⁹ Article 159 CTA.

¹⁰⁰ See *supra*, at III, 2.1.

¹⁰¹ There is also a Department of Legal Aid in the Ministry of Justice.

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enforcement, following the presentation of a writ.¹⁰² A special procedure applies to the execution of judgments issued against the Government.¹⁰³

1.3. Criminal Law

As a general rule, the Criminal Procedure Code stipulates that any private loss caused by crime should be compensated.¹⁰⁴ There are three mutually exclusive ways in which a victim of a crime involving bodily injury may receive compensation: as compensation awarded as part of a supplementary civil suit; as *dia* or in form of a fine designated for that purpose.

A torture survivor may bring a civil claim as part of criminal proceedings. The Court seized with the case shall hear the evidence related to the compensation claim. It may, upon conviction of the accused or on application by the victim or his/her relatives, order compensation for any injury resulting from the offence, in accordance with the provisions of the Civil Transactions and Procedures Act.¹⁰⁵ Its decision should include the amount of compensation awarded. The court should also make clear whether the compensation is independent or is awarded as part of a fine.¹⁰⁶

A torture survivor, or in case of death, his or her relatives, will have the right to demand *dia* which can be claimed for murder, involuntary manslaughter and bodily injury.¹⁰⁷ The amount of *dia*, which is the debt of the offender and his/her clan, is fixed by law.¹⁰⁸ If the death or bodily injury has been inflicted negligently, the amount of *dia* shall be decreased proportionately to the offenders' participation in causing the offence.¹⁰⁹ If a victim of a *qisa* crime opts for *dia*, the courts can still impose a criminal punishment as *Tazir* but such punishment will be lesser than the one provided for as *qisa*. If a victim chooses retribution, he or she may still claim compensation independently.¹¹⁰

Finally, a court may order the payment of a fine either in whole or in part as compensation for any person aggrieved of an offence unless an independent judgment for compensation is issued.¹¹¹ Such a fine can be imposed alongside any other punishment provided for the offence in question. In assessing the amount of the fine, the court shall take into account the nature of the offence committed, the amount of wrongful gain obtained thereby, the degree of the offender's participation and his or her financial status.¹¹²

¹⁰² See Sections 223 et seq. Civil Procedure Code.

¹⁰³ Article 231 Civil Procedure Code: "(1) If a judgement is issued against the government [or against a civil servant for doing any of the actions mentioned in Article 33 (4)] then the judgement must specify the deadline for its payment. If payment of the judgement does not take place by the prescribed deadline, then the Court must report to the Chief of the Superior Court with a copy to the Public Prosecutor; (2) A judgement like this may not be executed unless it has continued to be unpaid for a period of three months from the date of the aforementioned last report (to Chief of Superior Court); (3) As soon as the time period stipulated in clause (2) transpires, the Court must take the measures necessary to execute the judgement without writing to any other authority."

¹⁰⁴ Article 4 (g) CPC.

¹⁰⁵ Article 46 CA.

¹⁰⁶ See Article 204 CPC for details and Article 198 CPC for enforcement of awards.

¹⁰⁷ Articles 43 and 44 CA.

¹⁰⁸ Article 42 (1) CA: "*Dia* (blood money) is one hundred camels of different ages or its equivalent value in money as the Chief Justice may determine from time to time after consultation with the competent bodies," 2): "*Dia* of wounds (*arsh*) and "*ghura*" are determined as set out in the second Schedule attached to this Act."

¹⁰⁹ Article 42 (5) CA.

¹¹⁰ However, as stipulated in Article 42 (2) CA, no other compensation shall be imposed alongside *Dia*.

¹¹¹ Article 34 (2) CA.

¹¹² Article 34 (1) CA.

2. The practice

While torture survivors have claimed reparation for torture, there has not been a single successful case. There are several reasons for this. Firstly, there is a lack of awareness, in particular amongst those torture survivors living in remote areas, that compensation can be claimed against the perpetrators or the state. Secondly, again especially for people lacking resources, which applies to the majority of torture survivors, there is a lack of access to justice as court fees are prohibitive in the absence of a satisfactory legal aid system. While NGOs have provided some support for torture survivors, they have not been able to offer the comprehensive assistance needed. Thirdly, many torture survivors do not seek compensation from the State as they view it as going against their honour and allowing the government to "pay off" victims. Fourthly, even if a torture survivor contemplates taking legal action, he or she might refrain from doing so in the light of the history of threats and harassment of victims and human rights defenders who have brought cases against torturers and the state. Fifthly, the prospect of a successful outcome of a case is considerably diminished by the difficulty of presenting sufficient evidence to prove the case. In the absence of adequate criminal investigations, torture survivors face immense difficulties in proving that they have been tortured and identifying the perpetrators of these acts. Even if he/she succeeds in securing a Form 8 confirming that he/she has been subjected to torture, the lack of supporting witnesses and the statements or counterclaims raised by defendants put torture survivors in a disadvantaged position. Sixthly, the independence of courts is not ensured and judges are often seen as deferential to state authorities.¹¹³

As a result of the almost complete lack of convictions for torture, torture survivors have also not been able to claim or obtain compensation in the course of criminal proceedings with the exception of the 1993 case described above.

Constitutional remedies have so far not been utilised, as the Court has only been set up in April 1999 and a claim can only be brought after exhaustion of domestic remedies. The latter condition considerably limits the role of the Court in awarding compensation or other measures as victims of torture will have to go through proceedings first which are consuming both in terms of time and resources.

V. GOVERNMENT REPARATION MEASURES

There is no reparation or compensation scheme for victims of past and present violations of human rights or humanitarian law.

There is one treatment centre run by an NGO, the Amal Rehabilitation Centre for the rehabilitation of victims of physical and mental trauma established in December 2000. It does not receive any support from the government. On the contrary, the head of the centre, Dr. Nagib, was arrested on 10 March 2001, the Centre was shut down and the equipment confiscated. It was only after a worldwide campaign that Dr. Nagib was released on 27 March 2001 and the work of the Centre has remained under surveillance of the security forces ever since.¹¹⁴

¹¹³ Supra.

¹¹⁴ SOAT, Press Release, 11 October 2001: Crackdown on Civil Society Organisations and IRCT, Press Release, 15 October 2001, Amal Rehabilitation Centre again targeted by Sudanese security authorities.

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In the context of the present peace talks, the issue of truth and reconciliation has been raised but not formally included in discussions. The Ex-Prime Minister Sadiq al-Mahdi proposed a truth and reconciliation process to deal with all human rights abuses including those of the current regime. According to his proposal, no one will be prosecuted unless it was proved that he concealed evidence from the Truth and Reconciliation Committee. A cross-section of Sudanese human rights and civil society groups as well as political parties declared in 1999 that there should be accountability for perpetrators as well as compensation for the victims of past and ongoing human rights abuses.¹¹⁵

VI. LEGAL REMEDIES FOR ACTS OF TORTURE COMMITTED IN THIRD COUNTRIES

1. Prosecution acts of torture committed in third countries

1.1. The Law

1.1.1. Criminal Law

Sudanese criminal law recognises the protective principle and the active personality but does not allow for the exercise of universal jurisdiction for torture committed abroad. Any person may be punished in Sudan for crimes committed abroad for "offences against the State, offences relating to the regular forces and offences relating to counterfeiting coins or revenue stamps" where the offender is found in the Sudan.¹¹⁶ A Sudanese national shall be punished for an offence committed abroad if the act also constitutes an offence under the law of the State where it was committed.¹¹⁷ However, a person shall not be punished under either Article 6 or 7 of the Criminal Act where it is proved that he or she has been tried by a competent court abroad and has either served the punishment or been acquitted.¹¹⁸ If the latter is not the case, the prosecution service and Sudanese courts can exercise jurisdiction over such cases in accordance with the criminal procedure code as there are no further limitations laid down by law.

Foreign diplomats are granted immunity from criminal proceedings according to the Immunities and Privileges Act of 1956.

1.1.2. Extradition Law

¹¹⁵ See Final Communique, Conference: *Human Rights in the Transition in Sudan*, Kampala, Uganda, 8-12 February 1999, The Kampala Declaration on Human Rights in Sudan: "I. Accountability for Past and Ongoing Human Rights Abuses: The Conference examined the human rights record of the present and past governments of Sudan, particularly those during the last ten years of National Islamic Front rule, and found a long history of human rights abuses including crimes against humanity, war crimes, crimes against individuals and crimes against the constitutional order. The Conference agreed that: 1. Those responsible for grave human rights violations under the current National Islamic Government should not be forgiven but should be brought to court to account for their crimes in accordance with the rule of law and international standards, to ensure that justice is done and seen to be done; 2. Fair trials, either through the regular courts or the office of a special prosecutor, and a truth commission have vital roles to play in this process of accountability; 3. The long history of human rights abuses in Sudan stretching back the 43 years to Independence should be examined and accounted for, through mechanisms such as specified above and the perpetrators thereof shall be brought to justice; 4. Victims of human rights abuses, and their families, are entitled to rehabilitation and compensation for what they have suffered; 5. The democratic forces and civil society should themselves begin the comprehensive documentation of the crimes and criminals of the current regime" in: A.H.Abdel Salam and Alex de Waal (eds.), *Justice Africa, Committee of the Civil Project, The Phoenix State, Civil Society and the Future of Sudan*, 2001, Appendix, pp.291 et seq.

¹¹⁶ See Article 6 (1), a, (1); (2) and (3) CA.

¹¹⁷ Article 7 CA.

¹¹⁸ Article 6 (3) CA.

There is no legislation governing extradition, which is exercised on the basis of extradition treaties. As a general rule, Sudan extradites those suspected of a crime if the criminal offence in question has been recognised in Sudan and the requesting country.

1.2. Practice

There are no known cases in which Sudan exercised universal jurisdiction over torture or ill-treatment committed abroad. While Sudan has extradited Carlos who was convicted for several acts of terrorism, to France, there have been no cases of extradition of persons sought in connection with human rights violations.

2. Claiming reparation for acts of torture committed in third countries

As a general rule: "the courts of Sudan shall be competent to try suits against foreigners who are domiciled or resident in the Sudan except suits in respect of immovable property situated abroad."¹¹⁹ An alternative basis of jurisdiction is the place where the wrong was committed. If the Sudanese courts have no jurisdiction on these grounds, they may still exercise it if the defendant submits to its jurisdiction, either expressly or implicitly.¹²⁰

Victims of torture may also obtain compensation as part of any criminal proceedings that might be instituted according to Article 6 of the Penal Code against perpetrators of torture committed abroad.

Diplomatic personnel are granted immunity from civil suit according to the Immunities and Privileges Act of 1956. There is no act on state immunity, which is granted according to general international law.

No cases are known in which reparation was claimed before Sudanese Courts for torture committed abroad.

¹¹⁹ Article 8 Civil Procedure Code.

¹²⁰ Article 13 *ibid.*