

Explanatory Note

Draft of (Amended) Criminal Act 2008

The Criminal Act adopted in 1991 did not include the crimes of genocide, crimes against humanity and war crimes. The latest developments, which have witnessed the commission of a number of war crimes, genocide and crimes against humanity, such as in the Omdurman attack, prompted [such an amendment].

In addition, the provisions of *dia* [*blood-money*] were amended to the effect that the state undertakes to pay the *dia* for any offence committed by a member of the police forces or the armed forces in the context of his work.

The offence of “Female Circumcision” has been added together with the appropriate sentence because of the psychological and physical damage caused by this custom. This [measure] was needed to overcome existing shortcomings in the criminal act.

The features of the bill are as follows:

1/ In Article 3 the following terms and definitions have been added:

Protected Persons, Compensation, Female, Practitioner and Professional

2/ In Article 45 a subsection has been added to provide for the state pledge to pay *dia* for offences committed by members of police forces and armed forces in the course of their work.

3/ In Chapter 14, an offence of “female circumcision” has been added.

4/ Chapter 18 has been added to include crimes against humanity, genocide and war crimes.

In the name of Allah the Merciful the Companionate

Proposed Bill of the Criminal Act (amended) 2008

In accordance with the provisions of Sudan Interim National Constitution 2005, the National Assembly approved and the President of the Republic signed the following Act :

Title and Commencement

1. This Act maybe be cited as the Criminal Act (amended) of 2008, and shall come into force from the date of signing.

Amendments

2. The Criminal Act 1991 shall be amended as follows:

(1) In Section 3

The following new terms and their definitions shall be added:

Protected persons	Shall mean: Firstly: in International armed Conflicts: Persons protected under the Four Geneva Conventions and its First Additional Protocol 1977. Namely those who are Wounded, Sick and Shipwrecked Members of Armed Forces, Prisoners of War, Civilian Persons, Members of armed forces who laid down their arms and those placed hors de combat by any cause. Secondly: In Non International Conflicts: Persons protected under common article 3 of the four Geneva conventions 1949 and its second additional protocol 1977
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namely, persons taking no active part in the hostilities, including members of armed forces who laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, any other cause, as well as medical staff and religious figures

Compensation: means reparation for female circumcision to the victim.

Female: means female child under the age of eighteen.

Practitioner: means any person who is not specialized in the medical field.

Professional: means any person specialized in the medical field.

(2) In Article (45)

(a) The following new subsection shall be added:

(3) In accordance with the provisions of subsection (1) and (2) the state shall pay *dia* (compensation) in the offences of intentional and semi intentional homicide or wounds and mistaken killing caused by any member of the police force or armed forces in the context of his duties .

(b) The subsections shall be reorganised accordingly.

(3) in Chapter 14:

The following new Article shall be added:

Female circumcision

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- (1) - There shall be deemed to have committed female circumcision any professional or practitioner using any or all methods that lead to the deformation or partial or total removal of the external sexual organs of the female.
- (2) Whoever commits female circumcision shall be punished with:
 - (a) Ten years imprisonment and compensation if the act resulted in the death of the victim;
 - (b) Imprisonment for a term not exceeding three years with compensation if the crime is committed for the first time;
 - (c) Life imprisonment in case of repetition.
- (3) The Court may withdraw the work license for first-time offenders and in case of repetition the Court must withdraw the license and close the Premises.

(b)The Articles shall be reorganized accordingly.

(4) After chapter 17 the following new chapter shall be added:

Chapter 18

Crimes against humanity, Genocide and War crimes

Crimes against humanity

187- There shall be punished with the death penalty, life imprisonment or any other lesser punishment whoever either alone or with others, commits any of the following acts, when committed as part of a widespread or systematic attack directed against any civilian population pursuant to a State's or an organisation's policy which is actively promoting or encouraging such an attack or such a policy and with knowledge of the attack and in that context:

- a. Intentionally killing one person or more;
- b. Intentionally inflicting harsh living conditions intended to destroy part of the population;

c. Exercising power related to the right of ownership over one or more persons or impose on them a similar deprivation of liberty, which would include exercising such powers for trafficking persons, and in particular women and children;

d. Deporting or transferring a person or part of a population from the protected persons, forcibly, from the area in which they are lawfully present to any other country or place, using methods in violation of international law provisions;

e. Imprisoning one or more persons, or otherwise severely depriving them of their physical liberty in violation of the fundamental rules of international law;

(f) the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; this does not include pain or suffering resulting from lawful punishments, or if it is part or a consequence of it;

(g) Using coercion in sexual intercourse with a female, or sodomy with a male, or in an indecent assault accompanied by penetration in any form. Coercion will still be assumed, if the previous acts were committed against a person incapable of expressing his/her consent;

(h) Exercising one of the powers related to the right of ownership on one or more persons to force them to commit acts of a sexual nature, or to impose upon them a similar deprivation of liberty;

(i) Forcing one or more persons to commit an act or acts of a sexual nature with the intention of obtaining money or other benefits in exchange for or in connection with these acts;

(j) Detaining one woman or more to force her to become pregnant, with the intent of affect the ethnic composition of any population or to commit other grave violations of international law;

(k) Depriving one or more persons of biological reproductive capacity without medical justification or treatment received by the concerned with his genuine consent;

(l) Committing act or acts of a sexual nature against one or more persons, or forcing that person or persons to perform an act of a sexual nature by force, or by threat of force;

(m) Intentionally depriving one or more persons of their fundamental rights because of their affiliation to a category or certain group, or because of the targeting of that category or group for political, racial, national, ethnic, cultural, religious, gender-related, or other reasons, when the deprivation is related to any act referred to in this act;

(n) Arresting, detaining or abducting one or more persons in the name of a state or a political organization or with its permission, support or acquiescence, with the knowledge that this act will be followed in the ordinary course of events by a refusal on the part of the State to acknowledge that deprivation of freedom or to provide information about the fate or whereabouts of those persons, or by a refusal in the name of the state or the political organization –during or after that– to acknowledge the arrest, detention, or abduction and being aware

of them, whenever the intention is to deprive for a prolonged period of time that person or persons of the protection provided by the law;

(o) Committing an inhumane act against one or more persons similar in nature. Intentionally committing one of other inhuman acts of similar nature to the previous acts included in this article which inflict severe suffering on the victim or grave damage to the body or the mental health;

(p) Intentionally committing one of other inhuman acts of similar nature to the previous acts included in this article which inflict severe suffering on the victim or grave damage to the body or the mental health.

Genocide

188- There shall be punished with the death penalty, life imprisonment or any other lesser punishment whoever commits, attempts or abets the commission of the offence or the offences of homicide against an individual or individuals of a national, ethnic, racial or religious group upon that entity with the intention of exterminating it or destroying it partially or totally in the context of a systematic and widespread conduct directed against that group and commits in the same context any of the following acts:

- (a) Killing one or more members of the group;
- (b) torturing or inflicting serious bodily or mental harm or deformation members of that group;
- (c) Deliberately subjecting one or more persons of the group to living conditions intended to bring about its physical destruction in whole or in part;
- (d) Imposing any measures targeting the prevention of one or more persons from the group from giving birth:
- (d) Forcibly transferring one or more of the group children to the children of another group.

War crimes against Persons

189- There shall be punished with the death penalty, life imprisonment or any other lesser punishment whoever commits in the context of international or non-international armed conflict and related to it, which the perpetrator is aware of, the following acts:

- (a) Intentionally killing one or more protected persons.
- b) Torturing one or more protected persons or treating them inhumanely by

Inflicting on them grave mental or physical pain to acquire information or a confession, or with the aim of punishing, intimidating or coercing him or for any other reason based on discrimination;

(c) Subjecting one or more persons to sustained disability, permanent incapacity, or mutilating parts of their body causing death or seriously putting at risk their mental or physical health;

(d) Violating the personal dignity of one or more protected persons, particularly by treating them in a degrading and humiliating manner;

(e) Arresting, detaining, or taking as hostage one or more protected persons in any way, and threatening to kill, injure, or continue to detain that person or persons to compel a state, international organisation, natural or legal person or groups of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of that person;

(f) Using duress in sexual intercourse with a female, or sodomy with a male, or in an indecent assault accompanied by penetration in any form. Duress will be assumed if the previous acts were committed against a person incapable of expressing his/her consent;

(g) Compelling a protected person or more to commit act or acts of sexual nature by the use of force or by threat to use it for the purpose of obtaining money or any other benefits in exchange for these acts or other related reason;

(h) Depriving one or more protected persons of biological reproductive capacity, without medical justification or treatment received by the concerned person according to their genuine consent.

(i) Detaining one or more protected women and forcing them to get pregnant, with the intent of affecting the ethnic composition of any group of the population;

(j) Enlisting one or more children under the age of fifteen years in the armed forces or in armed group or using them for actual participation in the military operations;

(k) Deporting or transferring a person or part of a population from the protected persons, forcibly, from the area in which they are lawfully present to any other country or place, using methods in violation of international law provisions;

(l) Detaining one or more protected persons illegally;

(m) Passing sentences or carrying out execution sentence on one or more protected persons without previous trials before a competent court that takes into consideration all judicial and procedural guarantees envisaged by international law.

(n) Subjecting a protected person or more to any biological experiments that is not justified by medical treatment and which is not carried out for the benefit of that person or persons and lead to death of subjecting the physical or the psychological health to severe danger;

(o)) Subjecting the life a protected person or more, who is under the authority of a hostile party, to death or to sever health problems through conducting any medical experiments, dental treatment, or hospital treatment that are not justified by medical treatment, dental treatment or hospital treatment and which is not done for his benefit;

(p) Killing or injuring a combatant who has laid down arms or who no longer possesses a means of defense after voluntarily surrendering being present outside the combat zone.

2- There shall be punished by twenty years imprisonment whoever commits the following acts in International Conflicts:

(a) Depriving a prisoner of war or other protected person of a trial before a competent court that provide all judicial and procedural guarantees envisaged by law;

(b) Compelling a prisoner of war or other protected person to serve in the forces of a hostile power;

(c) Compelling one or more persons of the hostile party to take part in the operations directed against their own country or armed forces

War Crimes against Property and other rights

190- There shall be punished by twenty years imprisonment whoever, in the context of international or non international armed conflict, knowingly commits, against properties protected under the provisions of international law applied on armed conflicts, any of the following acts:

(a) Looting any properties belonging to the opponent's party with the intention of personal use or ownership:

(b) Causing extensive destruction to the property of the opponent party or confiscating it by unlawful and abusive means unjustified by military necessity;

(c) Depriving the subjects of the opponent party from their right to access courts by abolishing or suspending it or by ending the admissibility of their suits before the courts.

War Crimes against Humanitarian operations

191- There shall be punished with imprisonment for a term not less than twenty years, whoever, in the context of international or non-international armed conflict and related to it, which the perpetrator is aware of, commits an act intending to launch an attack directed against persons, buildings, materials, units, or transport used for humanitarian relief or peacekeeping missions in accordance with the Charter of the United Nations, and protected under the international law applicable on armed conflicts.

War Crimes of Prohibited Methods of Warfare

192- There shall be punished with the death penalty, life imprisonment or any other lesser punishment whoever in the context of an international or non international armed conflict and related to it, which the perpetrator is aware of, commits any of following acts:

- (a) Intentionally directing attacks against the civilian population as such or against civilian individuals not taking direct part in military operations;
- (b) Intentionally directing attacks against civilian locations, or other protected neighborhoods that do not constitute military targets, especially buildings dedicated to religious, educational, scientific or charitable purposes, and historical monuments, artifacts, hospitals, and places where the wounded and sick are assembled;
- (c) Intentionally attacking and bombing towns, villages and unprotected, dwellings or buildings that does not constitute military targets;
- (d) Intentionally launching attacks that would cause loss of life or injury to civilians or damage to civilian objects or inflicting widespread and long-term and severe damage to the environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- (e) Transfer or taking advantage of the presence of one or more civilian persons form protected persons to render certain points, areas or military bases immune from military operations;
- (f) Starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, or impeding relief supplies in violation of the rules of humanitarian international law;
- (g) Declaring or ordering that no one will remain alive, while in a position of leadership or actual control over subordinate forces with the intention of threatening the enemy or of engaging in acts of war on that basis;
- (h) killing or wounding one or more persons or opponents' combatants deceitfully after leading them to believe or trust that they are entitled to protection, or that its their duty to provide protection under the rules of international law applicable in armed conflict.
- (i) Ordering the displacement of the civilian population without justification related to providing security for the concerned civilians or for military necessity.

War Crimes of Using Prohibited Weapons

193 - There shall be punished with the death penalty, life imprisonment or any other lesser punishment whoever in the context of international or non international armed conflict and related to it, which the perpetrator is aware of, commits any of following acts:

(a) Using poison or a weapon that releases a poisonous substance that causes death, or severely damage to health in the ordinary course of events, through its toxic properties;

(b) Using gas, or liquid or any material or substance that results in death or severe damage to health in the ordinary course of events, through its asphyxiating or toxic properties;

(c) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core of the bullet, or bullets with sharp edges;

(d). Employing weapons, projectiles or materials or methods of warfare which in their nature cause excessive injuries or unnecessary suffering or which are inherently indiscriminate, in violation of international law applicable on armed conflict.