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Risiko for dobbeltstraf i Sudan

Det fremgår af den sudanesiske straffelov af 1991 (The Criminal Act 1991) vedrørende "Offences committed outside Sudan", at en person der har begået en forbrydelse, der er strafbar i Sudan, ikke vil blive straffet i Sudan såfremt det kan bevises at denne person har fået prøvet sin sag ved en domstol uden for Sudan og har udstået sin straf eller er blevet frikendt. Uddrag af Sudans straffelov af 1991 vedlægges som bilag (se bilagets side 9).

Uddraget af straffeloven er fremsendt til Dokumentationskontoret den 3. november 2003 af det norske Utlendingsdirektoratet (UDI).

Jens Weise Olesen

Dokumentationskontoret



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Bilag:

Uddrag af Sudans straffelov af 1991

In the Name of Allah, the Gracious, the Merciful

The Criminal Act, 1991

Accompanying Note

The promulgation of an Islamic Penal Law has, over the years, remained a persistent demand of the masses of the Sudanese people. Such a demand has been pursued with successive Sudanese governments since Independence.

One of the major preoccupations of the Revolution for National Salvation, after completion of the necessary measures for ensuring the security and unity of the country, is the confirmation of national identity, and the Issuance of authentic Sudanese Laws derived from Islamic Sharia in response to the aspirations of the Sudanese. It is equally in fulfillment of the undertaking made by the Revolution when it committed itself to that noble objective.

We have made a thorough review of the literature at our disposal, and of previous studies on the Penal Code of 1974 and 1983 as well as of the Criminal Bills prepared by the Arab League, the Azhar El-Sharif, the State of the United Arab Emirates, the Islamic Republic of Pakistan and the Arab Republic of Egypt. All of these efforts have been helpful in the preparation of the Criminal Bill, 1988 which was tabled before the last constituent Assembly where it was passed at the stages of the First and Second Readings. Petulant and petty altercations of the sectarian political parties and foreign intermeddling, however, have resulted in the frustration of the efforts to pass that Bill.

Our review has led us to draft and purpose this new Bill while carefully preserving the basic features which were the subject of consensus in the past. These are basically the following:

(1) INDEXING

The Indexing of this Bill is divided into two parts. A general part at the beginning of the Bill which consists of preliminary provisions, enforcement of the



Act, the bases of criminal responsibility and its exceptions, attempt, criminal conspiracy and principles of criminal punishment. This is followed by a special detailed part consisting of the provisions of the offences of Hudud, Retribution and Ta'zir which are reorganized as to substance.

(2) DRAFTING

The drafting of this Bill has been made more precise by using classical Arabic expressions, by observing strict meticulousness in expressing fine meanings, with due consideration to modern criminal jurisprudence and by avoiding the defects which have been experienced in the application of previous laws. The method adopted is stating of the basic principles of each offence in precise expressions, avoiding extravagance in subdividing the different forms of the same offence, so as to give the Court the chance to look into the details of the particular facts and the aggravating and mitigating circumstances. Examples that may be cited are property such as theft, robbery, cheating, and offences committed by public servants.

(3) SHARIA

The Bill aimed at observing sharia as the main source of legislation, so that its spirit shall infiltrate into the Act and its principles intermingle with the provisions thereof, and its guidance manifests itself in the added or omitted provisions. The Bill uses Sharia terminology to link the Act with Arabic and Islamic jurisprudential heritage to the extent of maintaining compatibility with the modern or current terminology in the Sudan. The Bill included provisions from the Sharia rules relating to Hudud, Retribution, (qisas) and Dia.

The Bill has adopted, in relation to offences and penalties, an independent outlook (Ijtihad) which observes the bases (Usul) of Sharia and Islamic schools of jurisprudence and takes into consideration the changes of modern conditions and the diverse circumstances of the country. There are many published researches and materials concerning the modern criminal theories which have been referred to in the drafting of the provisions of the Act.

(4) ADDITIONS

The Bill has introduced new provisions which represent development of criminal justice, such as offences for environmental protection, intimidation, offences against freedom of the person and measures of welfare and reform in relation to juveniles, insane and old persons. The Bill has reintroduced the idea of prescribing penalties in the provisions, giving due regard to lower pun-



ishment in case of imprisonment and whipping cases of crimes where deterrence is required. The Bill has also introduced the punishment of (Nafi) and (Tagrib) and distinguished between penalties and compensatory remedies setting out the detailed rules thereof.

(5) OMISSIONS:

The Bill, in view of substantial considerations in criminal justice, has omitted the detailed provisions relating to political crimes. A substantial change has been made, for the benefit of broader freedom, regarding political offences against the State. The Bill also omits sections which included Vague meanings, and those that are not precise or suitable with the definite Criminal laws and the principles of legality, also it omits the offences nearly to administrative contraventions, and many of the explanations and the rules of included in the other laws.

(6) THE SOUTHERN STATES:

In conformity with the political obligation agreed upon the Bill has excluded the Southern States from the enforcement of the provisions of drinking alcohol, or dealing with it and sale of dead animal, capital theft, defamation of unchastely (qasf), apostasy (rida) as well as the hud punishment in offences of armed robbery (hiraba), adultery (zina) and the penalty of retribution (qisas). All this is made until completion of its federal legislative bodies, and decision on such provisions and punishments, having full regard to the recommendations of the national deliberation conference on peace problems.

(7) TRANSITIONAL

The Bill has treated what resulted from the non-execution of hudud sentences before the coming into force of this Act and considered the delay in execution of the punishment a doubt (shubha) that remits the hud punishment. In so doing, the Bill has followed the opinion of Abu Hanifa and his two disciples which provides for a substitute punishment of Ta'zir.

In the Name of Allah, the Gracious, the Merciful

The Criminal Act 1991



Be it here by passed by the National Salvation Revolution Command Council in accordance with the provisions of the Third Constitutional Decree 1989, as follows:-

Part I

Preliminary Provisions and Enforcement of the Act

Chapter 1

Preliminary

Title and Commencement

1. This Act may be cited as, "The Criminal Act, 1991" and shall come into force after one month from the date of its publication in the Gazette.

Repeal

2. The Penal Code, 1983 is hereby repealed.

Interpretations and Explanations

3. In this Act, unless the context otherwise requires, the following expressions shall the meanings and explanations assigned thereto:

"JUDICIAL PROCEEDING" - includes any proceeding in the course of which evidence may be taken in accordance with the law.

"LIKELY" - an act is said to be "likely" to have a certain consequence, or a certain effect if the occurrence of that consequence or effect is foreseeable to a reasonable man.

"GRIEVOUS HURT" - means wounds as defined in this Act, with the exception of scratches or wounds which affect the skin only.

"GRAVE PROVOCATION" - means causing of grave anger which prevents the complete self-control and reflection and takes beyond the moderate state. It shall not be deemed provocation which:

- a. is sought or intentionally caused by the offender as an excuse for committing the offence.
- b. results from any act done in execution of the law by the public authority.
- c. results from any act done in the lawful exercise of a legal right.

"HARBOR" - a person is said to harbor another when he supplies that other with shelter or food or assists that other in any way to evade arrest.



"ADULT" - means a person whose puberty has been established by definite natural features and has completed fifteen years of age. Whoever attains eighteen years of age, shall be deemed an adult even if the features of puberty do not appear.

"OFFENCE" - includes every act punishable under the provisions of this Act, or any Act.

"HUDUD OFFENCE" - means the offences of drinking alcohol, apostasy (hir-aba) , adultery (zina) defamation of unchastely (quazf), armed robbery and capital theft.

"GOOD-FAITH" a person is said to have done something or believed in it in "good faith" if such act or belief occurs with good intention and the use of due care and attention.

"ALCOHOL" - include any intoxicant of which the drinking of a small or large amount, whether the same is in a pure or mixed form causes intoxication.

"MAN AND WOMAN" - "Man" means the adult male, and "Woman" means the adult female.

"CONSENT" - means acceptance, and it shall not be deemed consent which is given by;

a/ a person under the influence of compulsion or mistake of fact where the person doing the act knows the consent was given as a result of such compulsion or mistake; or

b/ a person who is not an adult; or

c/ a person unable to understand the nature or consequence of that to which he has given his consent by reason of mental or psychological instability.

"PUBLIC AUTHORITY" - means any competent authority of the state and includes the public corporations and companies of the public sector.

"DOCUMENT OF TITLE" -? means a document which is or purports to be a document whereby, a legal right is created, extended, transferred, restricted, extinguished or released or whereby the existence or the extinction of a legal rights is acknowledged or established.

"DISHONESTY" - a person is said to do a thing dishonestly who does that thing with the intention of causing wrongful gain to himself or another or of causing wrongful loss to any other person, and the expression "wrongful gain"



means obtaining property or retaining it in a wrongful manner, and the expression "wrongful loss", means depriving or preventing any person from his property or retaining it in a wrongful manner.

"PERSON" - includes natural person and any company or association or group of persons, whether incorporated or not.

"INJURY" - means any hurt illegally inflicted upon a person in body, mental or psychological, health, honor, property or reputation.

"MOVABLE AND IMMOVABLE PROPERTY" - immovable property includes land and things permanently attached thereto or fastened permanently to anything which is attached to the land and any property otherwise is considered movable.

"TA'ZIR PENALTY" - means any penalty other than hudud and retribution (qisas).

"KNOWLEDGE" - a person is said to know a thing where he perceives it or has reason to believe therein.

"ACT" - words that denote an act, shall include an illegal omission as well as a series of acts.

"INTENTION" - a person is said to cause a consequence intentionally if he causes it by using means intending thereby to cause the consequences or by using means which he, at the time of using them, knows that the same causes such consequences or has reason to believe that they are likely to cause it.

"FRAUDULENTLY" - a person is said to do a thing fraudulently who does that thing with intent to deceive and by means of such, deceit to obtain some gain or advantage for himself or another or to cause loss to any other person.

"REGULAR FORCES" - includes the Armed Forces, security, police, prisons, fire brigade, the wild life conservation forces, and any other forces to be established thereafter.

"HAS REASON TO BELIEVE" - a person is said to have reason to believe if he has cause, or the circumstances are such as to cause a similar person, so to believe.



"COURT" - includes any court or body exercising judicial proceedings by virtue of any act in force.

"MATURE" - in relation to a natural person means an adult, and in relation to a body corporate, means whoever has the capacity for legal responsibility.

"PUBLIC SERVANT" - means any person appointed by a public authority to undertake a public office whether the appointment is with or without consideration anti whether it is temporary or permanent.

"PROBABLE CONSEQUENCE" - a thing is said to be a probable consequence of an act where the act or the means employed therein leads to the occurrence of that consequence in most cases.

Chapter two

Enforcement of the Act

Retrospective effect of the Act

4. 1/ Notwithstanding the provisions of sub-section (2), the law in force at the time of the commission of the offence shall be applied.

2/ In case of offences in which no final judgment has been passed the provisions of this Act shall be applied where they are beneficial to the accused.

3/ The non-execution of hudud punishments before the coming into force of this Act shall be a doubt (shubha) which remits the hud punishment and penalties imposed in final judgments shall be revised in accordance with the provisions of this Act.

4/ Any final judgment of dia passed before the coming into force of this Act shall be revised in accordance with the provisions thereof for its satisfaction.

Offences committed within the Sudan

5. 1 / The provisions of this Act shall apply to every offence, committed wholly or partly in the Sudan.

2/ For the purposes of this Act, definition of the Sudan includes its air space, its territorial waters, and all Sudanese ships and aircrafts wherever they are.

3/ The provisions of sections 78 (1), 79, 85, 126, 139 (1), 146 (1), (2) and (3), 157, 168, and 171 shall not apply to the Southern States unless the ac-



cused himself requests the application of the said provisions on him or the legislative body concerned decides to the contrary.

Offences committed outside the Sudan

6. 1/ The provisions of this Act shall apply to every person who commits:

a. outside the Sudan an act which makes him a principal or joint offender in any of the following offences:

- (1) offences against the State;
- (2) offences relating to the regular forces;
- (3) offences relating to counterfeiting coins or revenue stamps whose the offender is found in the Sudan.

b. in the Sudan a joint act associated with an act committed outside the Sudan which is an offence in the Sudan and is also an offence under the law of the State where the act is committed.

(2) A person who has committed outside the Sudan any of the offences punishable in the Sudan, shall not be punished in the Sudan, where it is proved that such person has been tried outside the Sudan before a competent court and has served his sentence, or that he has been declared innocent by such court.

