

Annex V

Public

Subject: Cooperation with the International Criminal Court

With reference to the above subject, we wish to inform you of the following:

A) The proscription had been provided for in Article 3 of the Criminal Procedure Act of 1991 following the amendment of the said Act in 2009, with the addition of two new paragraphs to the said Article. Paragraph 2 stipulated the following:

“Notwithstanding the provisions of Paragraph 1, no criminal proceedings, inquiry, investigation, or prosecution shall be conducted against a person for an act or an omission that constitutes a violation of International Humanitarian Law, including crimes against humanity, genocide, and war crimes, except by the Sudanese police, attorney-general, or judiciary.” Paragraph 3 of the same article stipulated the following:

“Notwithstanding any provision in any other law, no government entity at any level of government or person shall assist or provide any support to whomsoever in transferring a Sudanese national to courts abroad on account of being accused of committing a crime that constitutes a violation of International Humanitarian Law, including crimes against humanity, genocide, and war crimes.”

B) The Miscellaneous Amendments Law of 2020 Repealing and Amending Provisions Restricting Freedoms has been promulgated. By virtue of the said Law, the Criminal Procedure Act of 1991, among other laws, was amended by nullifying Paragraph 2 and Paragraph 3 of the above-mentioned Article 3, which determined the scope of application of the Law. Therefore, interaction with the International Criminal Court and other foreign institutions is not criminalized by law. Furthermore, the gravity of the acts referred to in in the Criminal Procedure Act, stipulated in Paragraph 2 and Paragraph 3, was erroneous, since the Criminal Procedure Act is a procedural law and is not concerned with criminalizing acts committed in violation of the provisions stipulated therein. The Criminal Act of 1991 would be more appropriate since it is criminal law that criminalizes conduct and determines the penalty applicable to violation of its provisions.

With thanks and appreciation