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CRIMES AGAINST HUMANITY AND THE ROLE OF THE INTRNATIONAL CRIMINAL COURT: CHALLENGES AND PROPOSED SOLUTIONS (SUDAN MODEL)

Crimes Against Humanity and the Role of the International Criminal Court: Challenges and Proposed Solutions (Sudan Model)

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Abstract

The study is related to the crimes against humanity and the role of the ICC in reducing it, Sudan model. Problems of the study focus on the continued commission of crimes against humanity and the weak role of the International Criminal Court to stop these violations. The importance of the study is to understand the fundamental concepts of crimes against humanity and the role of the International Criminal Court in mitigating these crimes. The objectives of the study include clarifying the role and powers of the International Criminal Court in imposing penalties, the legal challenges it faces, and proposed solutions. The thematic boundaries of the study focus on the legal framework for contemporary crimes against humanity, while the geographical boundaries are centered on Sudan. The temporal boundaries address the knowledge of crimes against humanity committed in Sudan between 2003 and 2024. We utilized historical and analytical methods to describe and analyze crimes against humanity. The study consists of five sections discussing the concept and nature of crimes against humanity, the role of the International Criminal Court, including some legal precedents, challenges, and proposed solutions. The study concluded with several findings, the most significant being that military leaders and heads of state in military and dictatorial regimes are the most likely to commit crimes against humanity. Additionally, criminals often evade punishment due to the limitations imposed on the International Criminal Court. Key recommendations: Encourage countries to adopt democratic civilian governance systems and conduct criminal trials for all perpetrators of crimes against humanity, especially presidents and military leaders.

Keywords: crimes against humanity, International Criminal Court, war, violations, challenges.

1.1. Introduction:

The internal and international conflicts in the first quarter of the 21st century have resulted in severe violations against human rights, this result to the loss of lives of millions of civilians. The rules of international humanitarian law and human rights are being continuously and alarmingly violated unabated in most parts of the world Sudan in particular. This indeed threatens international peace and security, especially given the constrained roles of the International Criminal Court visa vis the legal and political challenges that hinder the Court's ability to enforce its decisions. These concerns have become disturbing for the international community, leading to significant concerns and interest from international criminal law scholars which attracted further studies and research that will promote human dignity. There is also a necessity for conducting criminal trials to reduce the commission of these international crimes, as conflicts have increasingly escalated and devastatingly threatened the world, leaving severe and difficult-to-reverse some consequences. If we look at the internal conflicts in Sudan now, they also pose eminent danger and harm at the local, regional, and international levels, therefore, threatening international peace and security.

1.2. Problem Statement:

The problem of the study is the inadequacy of international efforts to prevent the commission of crimes against humanity, along with the weak and absent role of the International Criminal Court in apprehending criminals and imposing penalties on them. Additionally, there is an increase in challenges and numerous violations that threaten human rights, international peace and security.

1.3. Importance of Study:

The importance of the study lies in understanding the reasons for the commission of crimes against humanity and the challenges that hinder the enforcement of international criminal law and the protection of individuals. It seeks to find effective legal alternatives to address the challenges that impede the achievement of justice and maintain international security and peace.

1.4. Objectives of the Study:

The main objective of the study is to contribute to reducing the risks of systematic crimes against humanity, which have become a threat to the safety and security of the international community. It also aims to examine the legal challenges that hinder the enforcement of international law. The specific objectives of the study include analyzing the legal nature of crimes against humanity and their types, understanding the severity of contemporary crimes against humanity and their effects on international peace and security, assessing the role of the International Criminal Court in prosecuting perpetrators of crimes against humanity, and identifying the challenges that hinder the enforcement of international criminal law along with proposed solutions.

1.5. Scope of the Study:

The thematic boundaries of the study focus on the framework of international criminal law regarding crimes against humanity and the role of the International Criminal Court in mitigating these crimes. The geographical and temporal scope of the study addresses crimes against humanity committed in Sudan from 2003 to 2024.

1.6. Research Methodology:

This study adopts a mixed research methodology where historical approach to narrate the historical developments related to crimes against humanity using the existing literatures, along with descriptive and analytical methods to describe and analyze the crimes against humanity committed in Sudan using Non doctrinal methods.

1.7. Structure of the Study:

The study is composed of five sections: the first section covers the introduction, the second discusses the concept and nature of crimes against humanity, the third examines the role of the International Criminal Court and the application of law regarding crimes against humanity committed in Sudan, including some legal precedents. The fourth section addresses the challenges facing the International Criminal Court and proposed solutions, while the fifth section presents the conclusion.

2.1. The Legal Nature of Crimes Against Humanity:

Crimes against humanity are among the most serious international crimes punished by international criminal law. They are heinous acts that inflict severe humiliation on humanity. Crimes against humanity have garnered significant attention from the international community due to the establishment of individual criminal responsibility and the necessity to combat them through international means and mechanisms. We, the researchers, view crimes against humanity as having an international character and consider them to be among the most prominent and serious international crimes¹. We align our opinion with legal scholars on the necessity of codifying crimes against humanity in national laws. According to Article 7 of the Rome Statute, crimes against humanity are defined as the acts listed in paragraph (k), which includes other inhumane acts². Historically, the nature of crimes against humanity represents serious violations of human rights, including genocide, enslavement, forced deportation or transfer of populations, unlawful imprisonment or deprivation of physical liberty, torture, violence, sexual slavery, forced prostitution, forced sterilization, or any other form of sexual violence, persecution, and forced disparities among individuals. For any of these acts to constitute a crime against humanity, they must be committed against civilian populations and not during military confrontations or against non-civilian populations, and they must occur within the context of a widespread or systematic attack. Crimes against humanity differ from "ordinary" crimes due to the scale of the violations committed or through the categories of civilian populations affected³.

2.2. Concept of Crimes Against Humanity:

The term "crimes against humanity" was first used in a joint declaration issued by the governments of France and Britain on May 24, 1915, addressing the crimes committed by the Ottoman Empire during World War I against its Armenian citizens. Estimates indicate that 20 million people were killed in

¹ Wissam Suleiman Ahmed Al-Sagheer, *The Concept of Crimes Against Humanity (Definition - Elements)*, Legal Research Journal, Issue 11, 2020, pp. 4-27.

² Abdul Fattah Bayoumi Hijazi, *The International Criminal Court - An In-Depth Study of International Criminal Law*, University Thought Publishing, Alexandria, 2015, p. 651.

³ Khalid Tameh Saifak Al-Shammari, *International Criminal Law (Concept of International Criminal Law and Its Sources – International Criminal Liability – Crimes and Their Types – Extradition System)*, 2nd Edition, Kuwait, 2005, pp. 5-9.

World War I, most of whom were combatants⁴. The aforementioned joint declaration highlighted the crimes committed by Turkey against humanity and those responsible for the massacres. In 1919, the Allied Commission, excluding the United States and Japan, called for the prosecution of Turkish officials, referencing the prosecution stated in the preamble of the Hague Convention of 1907⁵. In 2017, the International Law Commission adopted a set of draft articles related to the prevention and punishment of crimes against humanity during its session held on May 22, 2019⁶.

Article 7 of the Rome Statute defines crimes against humanity, stating: "The purpose of this statute is to define any of the following acts as a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape or sexual violence, enforced prostitution, enforced sterilization, or any other form of sexual violence of comparable gravity. Persecution against any identifiable group or collectivity for political, racial, national, ethnic, cultural, religious or other reasons universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the court, enforced disappearance of persons, the crime of apartheid, and other inhumane acts of a similar character intentionally causing great suffering or serious bodily or mental injury."

Crimes against humanity are also defined in paragraph (c) of Article 6 of the London Charter as: "murder, extermination, enslavement, deportation or other inhumane acts committed against any civilian population, whether before,

⁴ **Mahmoud Sherif Basyouni**, *The International Criminal Court: An Introduction to the Study of National Implementation of the Statute*, Dar Al-Shorouk, Egypt, 1st Edition, 2014, pp. 3-4.

⁵ The previous reference, p. 4.

⁶ In its 66th session in 2014, the International Law Commission decided to include the topic of Crimes Against Humanity in its agenda and appointed **Dr. Sean Murphy** as the Special Rapporteur on the subject. In its subsequent sessions, from 67 in 2015 to 69 in 2017, the International Law Commission examined this topic and prepared draft articles regarding the prevention and punishment of crimes against humanity based on three consecutive reports from the Special Rapporteur. Following this, it submitted a memorandum to the UN Secretary-General with the complete set of draft articles related to the prevention and punishment of crimes against humanity for a first reading in 2017. For more information on this topic, see the report of the International Law Commission, 71st session, August 9, 2019, presented to the UN General Assembly, 74th session, Supplement, document A/74/10, paragraphs 34, 35, 36, p. 11, published on the official UN website.

during, or after the war, or persecution on political, racial or religious grounds, in connection with any crime within the jurisdiction of the court, regardless of whether it violates the national law of the state in which it was committed⁷." A concise definition states that they are those severe crimes that occur on a large scale and systematically affect many victims⁸.

2.3. Types of Crimes Against Humanity:

Crimes against humanity are diverse, and their elements are numerous; importantly, the commission of any of these elements constitutes an independent crime against humanity. Crimes against humanity can be divided into:

1. **Slavery:** The crime of slavery occurs when the accused exercises any authority related to ownership over one or more persons, such as buying, selling, leasing, or exchanging, while imposing upon them a similar deprivation of the enjoyment of liberty, and this act is part of a widespread or systematic attack against a civilian population, including human trafficking, particularly of white slaves, women, and children. This crime is committed with the mere repetition of enslavement⁹.

2. **Forced Deportation and Transfer of Population:** This occurs when the accused forcibly deports or transfers one or more people to another state or location through expulsion or other coercive acts for reasons not permitted by international law. The affected person(s) must be lawfully present in the area from which they are deported or transferred, and this act must be part of a widespread or systematic attack against a civilian population¹⁰.

3. **Imprisonment and Severe Deprivation of Liberty:** This refers to the severe deprivation of physical liberty in violation of fundamental rules of international law, where the accused unlawfully incarcerates one or more individuals or severely restricts their physical freedom in another manner¹¹.

⁷ Freyja Mohammed Hisham, *The Development of the Codification of Crimes Against Humanity: A Study on the Concept and Elements of Crimes Against Humanity*, Issue 1, Serial Number 21, March 2018, pp. 368-398.

⁸ Susan Tamir Khan Bakr, *Crimes Against Humanity in Light of the Provisions of the Statute of the International Criminal Court*, Halabi Legal Publications, First Branch, Beirut, Lebanon, 1st Edition, 2006, p. 5.

⁹ <https://political-encyclopedia.org>, D.15/5/2021.

¹⁰ Basyouni, previous reference, pp. 84-128.

¹¹ The same source. (ibid)

4. Torture: The crime of torture involves inflicting severe pain and suffering, whether physical or mental, on one or more individuals, who must be under the accused's supervision or control, such as the torture of prisoners or detainees ¹².

5. Rape and Sexual Violence, Coercion into Prostitution, and Forced Prostitution: The term sexual violence refers to acts of a sexual nature imposed by force or coercion, or by coercive psychological means or abuse of power against any victim, whether male or female, or by exploiting a coercive environment, or the incapacitation of the person(s) to express consent, which also constitutes a form of coercion. Sexual violence includes rape, sexual violence, coercion into prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence of comparable gravity. This violence can be part of patterns of abuse and violence, including murder and the freezing of children, destruction of property, and looting, and systematically be used as a means of war aimed at destroying social fabric¹³.

6. Persecution of Any Specific Group or Collectivity for Political, Religious, Ethnic, or Racial Reasons: This involves the persecution of any specific group or collectivity of civilians for political, racial, national, ethnic, cultural, or religious reasons under the jurisdiction of the court. Persecution entails the deliberate and severe deprivation of the basic rights of a group or population in violation of international law, based on the identity of the group or population and targeting them on political, racial, national, national, national, ethnic, cultural, religious, or gender grounds, or any other grounds universally recognized as prohibited by international law¹⁴.

7. Enforced Disappearance of Persons: This crime occurs when an offender apprehends or abducts one or more persons by a state or political organization or with its permission or support, subsequently denying that these individuals are being deprived of their liberty or providing information about their fate or whereabouts to deprive them of legal protection for an extended period¹⁵.

¹² The same source.

¹³ The same source.

¹⁴ Ibid.

¹⁵ Ibid.

8. Crime of Apartheid: This involves inhumane acts committed in the context of a systematic oppression and domination by one racial group over one or more other racial groups¹⁶.

9. Other Inhumane Acts: These are any acts that cause serious harm to physical or mental integrity or health, or human dignity, intentionally causing severe suffering such as mutilation, serious bodily injuries, or systematic discrimination for religious, ethnic, or national reasons, reaching the degree of violating the fundamental rights and freedoms guaranteed to individuals under laws and constitutions¹⁷.

3. Crimes Against Humanity Committed in the Sudan War 2023 and the Role of the International Criminal Court in Protection:

Since the outbreak of fighting on April 15, 2023, the Sudanese Armed Forces and the Rapid Support Forces have committed horrific acts of violence, killing, and destruction across Sudan. Prisoners have been mistreated, with some killed in detention sites operated by both the Sudanese Armed Forces and the Rapid Support Forces. The Rapid Support Forces and their affiliated militias have terrorized women and girls throughout Sudan through sexual violence, attacking them in their homes, abducting them from the streets, and raping them. Civilians from the Masalit tribe have been hunted down, left to die in the streets, and denied access to humanitarian aid¹⁸. They have committed crimes against humanity and numerous atrocities that deprive the Sudanese people of freedom, peace, and justice¹⁹.

¹⁶ **Laib Kawther**, *Crimes Against Humanity: A Case Study of Sudan and Libya*, Master's Thesis, Faculty of Law and Political Science, Abdel Rahman Mira University - Bejaia, Algeria, 2013, pp. 8-68.

¹⁷ **Abdullah Suleiman Suleiman**, *Basic Introductions to International Criminal Law* University Publications Office, Algeria, 2013, pp. 98-123.

¹⁸ **Aneayas Callamar**, *Amnesty International Report, Sudan: Rampant War Crimes as Civilians Killed in Both Deliberate and Indiscriminate Attacks*, August 3, 2023, <https://www.amnesty.org/ar/latest/news/2023/08/sudan-war-crimes-rampant-as-civilians-killed-in-both-deliberate-and-indiscriminate-attacks-new-report/>, accessed December 12, 2024.

¹⁹ **Iyanuoluwa F. Olaniyi**, *Examine the Strengths and Weaknesses of the Procedure and Principles of the International Criminal Court*, Master Thesis, Political Science, Babcock University Ilishan-Remo Ogun State, International Journal of Advanced Academic Research, Vol. 7, Issue 5 (May, 2021), pp. 48 – 51.

3.1. Nature and Types of Crimes Against Humanity Committed in the Internal War in Sudan:

The Sudanese Armed Forces, the Rapid Support Forces, and their allied forces are responsible for widespread patterns of violations that include indiscriminate and direct attacks through air raids and shelling against civilians, schools, hospitals, communication networks, and vital water and electricity supplies. The parties to the conflict have targeted civilians through rape and other forms of sexual violence, arbitrary detention and arrest, torture, ill-treatment, assaults on life and persons, and violations of human dignity. As a result, women and children have suffered from sexual violence²⁰. Civilians in Sudan have endured severe suffering and harsh living conditions, along with looting in Khartoum, Darfur, Al-Jazirah, and some cities in the Sennar and Kordofan states, which constitute 60% of Sudan's states. The destruction of property has risen to numerous crimes against humanity, including murder, torture, slavery, sexual enslavement, acts of a similar serious nature, ethnic and gender-based persecution, forced displacement of populations, and racially motivated attacks in West Darfur, where many members of the Masalit ethnic group have sought refuge in Chad²¹. Civilians across Sudan live in unimaginable terror instilled by the Rapid Support Forces and the Sudanese Armed Forces, with people being killed in their homes, and dozens of women and girls subjected to rape and other forms of sexual violence by combatants²².

3.2. The Role of the International Criminal Court in Protecting Civilians in Sudan:

The role of the International Criminal Court (ICC) is to complement the work of national courts in Sudan, not to replace them. This means that the ICC will not adjudicate all alleged international crimes committed in the country, as the UN Security Council's mandate limits the ICC's jurisdiction to crimes committed in

²⁰ The same source.

²¹ The report is based on investigations conducted between January and August 2024, following the mandate of the Human Rights Council, which established a fact-finding mission in October 2023. The investigations included visits to Chad, Kenya, and Uganda; direct testimonies from over 182 survivors and family members, as well as eyewitnesses; in addition to extensive consultations with specialized experts and civil society organizations; along with the gathering and analysis of evidence through additional information provided to the mission.

²² The UN fact-finding mission records extensive human rights abuses and significant international crimes, demanding the safeguarding of civilians, <https://reliefweb.int/report/sudan/sudan-un-fact-finding-mission-outlines-extensive-human-rights-violations-international-crimes-urges-protection-civilians-enar>, accessed 01.10.2025.

Darfur. Although Sudan is not a party to the Rome Statute of the ICC, the Security Council previously determined on March 31, 2005, that the situation in Sudan still posed a threat to international peace and security. Accordingly, it referred to the situation in Darfur to the ICC under Resolution 1593²³, leading to the establishment of a set of modern legal principles witnessed by the ICC. These events include:

- The first time the UN Security Council has referred a state to the ICC.
- The first time an investigation has been conducted on the territory of a state that is not a party to the Rome Statute.
- The first time the ICC has investigated allegations of crimes against humanity and issued an indictment against a president (*Omar Bashir*).

3.3. Crimes Against Humanity Committed in the Darfur 2003:

The situation in Darfur has led to five cases being raised in the ICC against suspects, including former Sudanese government officials and militia leaders, or Janjaweed leaders, and members of the Resistance Front. Among the five suspects, *Mr. Ali Muhammad Ali Abd al-Rahman (Ali Kushayb)* is the only one currently in custody and on trial at the ICC, while the other four remain at large: *Omar Bashir, Abd al-Rahim Muhammad Hussein, Ahmed Harun, and Abdullah Banda*. Except for Banda, who is alleged to have led a rebel attack on a UN peacekeeping base in Haskanita, the other four cases before the ICC relate to a series of attacks carried out by the government or militias against civilians in Darfur from 2003 to 2008²⁴. The charges against Omar Bashir, Hussein, and Harun include murder, rape, and forced displacement as crimes against humanity in the Wadi Saleh area of Central Darfur from 2003 to 2004²⁵. In addition to facing a range of charges like those against *Harun, Hussein, and Ali Kushayb*, *Mr. Bashir* is accused of committing genocide and crimes against humanity

²³ Pierre-Yves Guigne, *Rafou (Sisi Camp – West Darfur)*, Sudanese Organization Against Torture Report, Federation for Human Rights, International Criminal Court and Sudan: Access to Justice and Victim Rights, Roundtable, Khartoum, October 2-3, 2005, Issue 441, March 2, 2006, pp. 8-43.

²⁴ Kawthar, op. cit., pp. 8-68.

²⁵ Sam Sasan Shwamanysh, *The International Criminal Court and the Arab World: The Situation in Darfur (Sudan)*, Resources, Amnesty International, Issue 14, 2010, pp. 26-36.

alleged to have resulted from actions taken in Darfur from 2003 to late 2009²⁶. The ongoing war in Sudan since April 15, 2023, is seen as an extension of the same regime, merely with a change in leaders and an expansion of the scope of war and crimes²⁷.

The Human Rights Council established the Fact-Finding Mission in October, through resolution *A/HRC/RES/54/2*. In December 2023, the President of the Human Rights Council appointed Mohamed Chande Othman, as the Chair of the Fact-Finding Mission and *Joy Ngozi Ezeilo and Mona Rishmawi as Members*. The Secretariat of the Fact-Finding Mission is based in the UN Office at Nairobi, Kenya. The mandate of the Fact-Finding Mission is, inter alia, “to investigate and establish the facts, circumstances and root causes of all alleged human rights violations and abuses and violations of international humanitarian law, including those committed against refugees, and related crimes in the context of the ongoing armed conflict that began on 15 April 2023, between the Sudanese Armed Forces and the Rapid Support Forces, as well as other warring parties.” The Mission, which was established for an initial duration of one year, was further requested to collect and analyze evidence in view of any future legal proceedings; to identify, where possible, individuals and entities responsible; and to make recommendations with a view to ending impunity and ensuring accountability and access to justice for victims²⁸.

3.4. ICC Intervention in Sudan and Its Constraints:

Based on the report of the ICC Prosecutor Karim Khan during his semi-annual report to the UN Security Council on July 13, 2023, he is investigating new allegations of crimes against humanity in the Darfur region resulting from the armed conflict that erupted in Sudan on April 15, 2023, between the Sudanese Armed Forces and the Rapid Support Forces for committing crimes against humanity during the armed conflict. He announced, including the killing of 87 members of the Masalit ethnic group, and noted in the report that the court continues to exercise its jurisdiction under Resolution 1593 of 2005 regarding

²⁶ Ismail Abd al-Rahman, *The Basic Principles of International Humanitarian Law*, Cairo, International Committee of the Red Cross, 2006, p. 30.

²⁷ Omar Idlibi, *The Role of Universal Jurisdiction in Prosecuting Perpetrators of Crimes Against Humanity in Syria*, Harmoon Center for Contemporary Studies, 2024, pp. 6-15.

²⁸ <https://reliefweb.int/report/sudan/sudan-un-fact-finding-mission-outlines-extensive-human-rights-violations-international-crimes-urges-protection-civilians-enar>, accessed 01.01.2025.

genocide, crimes against humanity, and war crimes committed in Darfur since 2003²⁹. He also mentioned that his office prioritizes crimes committed against children and gender-based violence. The Prosecutor's office has repeatedly focused its resources on those cases for which arrest warrants have already been issued, issuing them only for a few alleged perpetrators, while local authorities or any other mechanisms, such as hybrid courts, must undertake all other accountability processes, whether historical or contemporary³⁰.

It is worth noting that the ICC has established a trust fund for victims to compensate them in the event of a post-trial conviction if the convicted person is unable to provide such compensation. For victims in Darfur to access meaningful or effective redress for the harm they have suffered, the local system must complement the work of the court, particularly regarding the resettlement of hundreds of thousands of internally displaced persons who still reside in camps in Darfur and Chad³¹. This report also encompasses all Sudanese states affected by crimes against humanity, war crimes, and genocide committed during this conflict³².

3.5. Sudanese Cases Pending Before the International Criminal Court:

The situation in Darfur was the first to be referred to the ICC by the United Nations Security Council, and the first ICC investigation on the territory of a non-State Party to the Rome Statute. It was the first ICC investigation dealing with allegations of crimes against humanity³³.

3.5.1. *Al Bashir* Case (Pre-trial):

Former Sudan's President ***Omar Al Bashir*** is the first sitting President to be wanted by the ICC, and the first person to be charged by the ICC for the crimes against humanity. Neither of the two warrants of arrest against him have been

²⁹ **Mohammed Hassan Al-Qasimi**, *The Criminal Court and the Security Council: Coexistence or Collision*, Journal of Sharia and Law, College of Law, United Arab Emirates University, Issue 57, January 2014, pp. 50, 65, 70.

³⁰ **Hussein Hanifi Omar**, *Immunities of Leaders and Their Prosecution for War Crimes, Genocide, Aggression, and Crimes Against Humanity*, Cairo, Arab Renaissance House, 2006, p. 215.

³¹ **Waiyamu Foundation**: *Sudan's Electronic Justice Center - News and Resources on the Conflict and Tools to Address Human Rights Violations*, <https://www.wayamo.com/archives/our-projects/sudan/>, accessed 01.10.2025.

³² United Nations Publications, *International Legal Protection of Human Rights in Armed Conflict*, Beirut and Geneva, 2011, pp. 32-42, 100-109.

³³ **Al-Qasimi**, op. cit., p. 76.

enforced, and he is not in the Court's custody³⁴. The first warrant for arrest for **Omar Hassan Ahmad Al Bashir** was issued on 4 March 2009, the second on 12 July 2010. The suspect is still at large. Until **Omar Al Bashir** is arrested and transferred to the seat of the Court in The Hague, the case will remain in the Pre-Trial stage. The ICC does not try individuals unless they are present in the courtroom³⁵.

3.5.2. *Harun Case (Pre-trial):*

The warrant of arrest for alleged war crimes and crimes against humanity allegedly committed in Darfur (Sudan) was issued in this case on 27 April 2007. Ahmad Harun is still at large. Until Ahmad Harun is arrested and transferred to the seat of the Court in The Hague, his case will remain in the Pre-Trial stage. The ICC does not try individuals unless they are present in the courtroom³⁶.

3.5.3. *Banda Case (Trial):*

Case also involved **Abdallah Banda Abakaer Nourain** On 7 March 2011, Pre-Trial Chamber I unanimously decided to confirm the charges of war crimes brought by the ICC's Prosecutor against **Abdallah Banda** and committed him to trial³⁷. Though **Mr. Banda** appeared voluntarily before the ICC during the Pre-Trial stage of his case, on 11 September 2014, the Trial Chamber judges issued an arrest warrant to ensure his presence at trial. The Chamber stressed that should **Mr. Banda** nonetheless appear voluntarily before the Court; the Chamber will take the voluntary appearance into consideration and revisit accordingly the conditions of his stay in The Netherlands during the trial. The accused is still at large³⁸.

3.5.4. *Abu Garda Case (Charges not Confirmed):*

On 8 February 2010, Pre-Trial Chamber I decided not to confirm the charges against **Mr. Abu Garda** and later rejected the Prosecutor's application to appeal

³⁴ See the ICC Prosecutor's reports to the UNSC on the investigation International Criminal Court, Situation in Darfur, Sudan ICC -02/05, <https://www.icc-cpi.int/darfur>, 28.12.2024.

³⁵ Al-Qasimi, op. cit., p. 76.

³⁶ Al-Qasimi, op. cit., pp. 50-70.

³⁷ Khouja Abdelrazak, *Guarantees of a Fair Trial Before the International Criminal Court*, master's Thesis, Faculty of Law and Political Science, Hajj Lakhdar University, Batna, Algeria, 2013, pp. 86, 102, 128.

³⁸ <https://www.icc-cpi.int/darfur/banda>, *The Prosecutor v. Abdallah Banda Abakaer Nourainn*, ICC-02/05-03/09, 31,12,2024.

the decision. Next steps: The case is considered closed unless and until the Prosecutor presents new evidence³⁹.

3.5.5. Jerbo Jamus Case (Closed):

Saleh Mohammed Jerbo Jamus Sudanese Liberation Army-Unity's Chief of Staff (and later integrated into the Justice and Equality Movement), at time of Summons to appear: 27 August 2009 - Unsealed on 15 June 2010, Charges: three war crimes allegedly committed during an attack carried out on 29 September 2007 in Darfur, Sudan. Proceedings terminated by Trial Chamber IV on 4 October 2013 after receiving evidence pointing towards his death⁴⁰.

3.5.6. Hussein Case (Pre-trial):

A warrant for arrest for **Abdel Raheem Muhammad Hussein** was issued on 1 March 2012. The suspect is at large. Charges The warrant of arrest for **Abdel Raheem Muhammad Hussein**, "**Hussein**" lists 13 crimes on the basis of his individual criminal responsibility under article 25(3)(a) of the Rome Statute as an indirect (co)perpetrator including: Seven crimes against humanity: persecution (article 7(l)(h)); murder (article 7(1)(a)); forcible transfer (article 7(1)(d)); rape (article 7(1)(g)); inhumane acts (article 7(l)(k)); imprisonment or severe deprivation of liberty (article 7(l)(e)); and torture (article 7(1)(f)). Six war crimes: murder (article 8(2)(c)(i)); attacks against a civilian population (article 8(2)(e)(i)); destruction of property the case remains in the Pre-Trial stage, pending the suspect's arrest or voluntary appearance before the Court. The ICC does not try individuals in their absence⁴¹.

3.5.7. Kushayb Case (Under Consideration):

Ali Muhammad Ali Abd-Al-Rahman Nicknamed **Kushayb** was transferred to the ICC's custody on 9 June 2020, after surrendering himself voluntarily in the Central African Republic. The initial appearance of **Mr. Kushayb** before the ICC took place on 15 June 2020. According to the Prosecution's submission of the Document Containing the Charges, **Mr. Kushayb** is suspected of 31 counts of war crimes and crimes against humanity allegedly committed between August

³⁹ Al-Qasimi, op. cit., pp. 50-70.

⁴⁰ <https://www.icc-cpi.int/defendant/saleh-mohammed-jerbo-jamus>, 31.12.2024.

⁴¹ *The Prosecutor v. Abdel Raheem Muhammad Hussein* ICC-02/05-01/12, ICC-PIDS-CIS-SUD-05-004/18_Eng Updated: July 2021, <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/HusseinEng.pdf>, 31.12.2024.

2003 and at least April 2004 in Darfur, Sudan⁴². The confirmation of charges hearing took place from 24 to 26 May 2021. On 9 July 2021, Pre-Trial Chamber II confirmed all the charges of war crimes and crimes against humanity brought by the Prosecutor against *Ali Muhammad Abd-Al-Rahman* and committed him to trial. The trial in the case opened before Trial Chamber I on 5 April 2022. The judges started their deliberations, and the judgment will be pronounced in due course⁴³.

4. Challenges Preventing the Implementation of ICC Decisions and Proposed Solutions:

In this chapter, we will summarize the challenges facing the International Criminal Court (ICC) in executing its decisions, which hinder the desired protection of civilians in Sudan. We will also present solutions that we see as suitable for addressing these challenges.

4.1. Challenges Preventing the Implementation of ICC Decisions in Sudan:

Several challenges prevent the ICC from enforcing international criminal law and achieving civilian protection, including:

1. Lack of an International Enforcement Mechanism: The ICC lacks an international police force to enforce its rulings and orders, relying primarily on international cooperation.

2. Objections from Major Powers: Influential international powers may oppose ICC decisions regarding UN Security Council interventions to maintain international peace and security, using their veto power. This encourages the commission of crimes against humanity and evasion of accountability, as seen with Russia's objection to international forces intervening in Sudan, citing the need to respect state sovereignty⁴⁴.

3. Insufficient Previous Experience: The ICC has a track record of failing to execute arrest warrants issued for individuals accused of war crimes and crimes against humanity. Notable cases include the arrest warrants for former Sudanese President Omar al-Bashir and Russian President Vladimir Putin.

⁴² **Adel Hamza Osman**, *The International Criminal Court: Between International Legitimacy and American Hegemony*, Thought Journal, Issue 7, pp. 82-84.

⁴³ *Surrender of Ali Kushayb and Paul Gicheru*: New Perspective in Africa's Relationship, International Law and Politics, Vol: 54:23, 2022, P 24-31.

⁴⁴ **Milena Sterio**, *The International Criminal Court: Current Challenges and Prospect of Future Success*, Case Western Reserve Journal of International Law, Vol: 52, Issue 1, 2020, P 467-477.

4. Political Immunity of Leaders: Leaders accused of crimes against humanity, such as Bashir, Netanyahu, and Putin, enjoy political immunity that protects them from prosecution while in office. This immunity often extends for a period after leaving the office, complicating the execution of arrest warrants against them⁴⁵.

5. Economic and Diplomatic Interests: When arrest warrants relate to political issues, such as crimes against humanity or war, some nations may refuse to execute them due to economic or political interests, avoiding intervention for diplomatic reasons.

6. Lack of Awareness of International Humanitarian Law: There is a weak understanding of international humanitarian and criminal law, particularly among military personnel and Rapid Support Forces, leading to non-compliance with international rules during armed conflict⁴⁶.

7. Weak International Cooperation: There is a lack of adequate international cooperation in many cases that require collective efforts to uphold international peace and security, allowing individuals and governments to violate human rights without resolution⁴⁷.

8. Non-cooperation of National Courts: Despite international arrest warrants, Sudanese and Israeli courts often refuse to cooperate with the ICC, insisting that cases should be tried within their national judicial systems. Such local procedures significantly hinder the execution of international arrest warrants⁴⁸.

9. Limited Financial and Technical Resources: The ICC's work in Sudan is constrained by its lack of membership in the court, relying on Security Council decisions, which are subject to the political balances of major states, alongside the fragility of Sudanese justice institutions⁴⁹.

⁴⁵ Murad Kwach, Crimes Against Humanity and Their Impact on the Application of International Humanitarian Law and the Achievement of International Peace and Security, Studies Journal, Volume 12, Issue 1, 2021, pp. 251-279.

⁴⁶ Serge Bourgeau, *Severe Violations by Israeli Armed Forces During Their Aggression Against Gaza* in January 2009, where residential buildings, schools, hospitals, and United Nations Relief and Works Agency (UNRWA) facilities were targeted with all kinds of weapons, including prohibited ones, against military targets, claiming that they were launching offensive operations from these locations and that resistance fighters were hiding there, while the aggression was initiated by Israeli forces, and the role of the resistance was limited to self-defense and resisting the blockade, <https://reliefweb.int/report/israel/opt-operation-gaza-27-dec-2008-18-jan-2009-factual-and-legal-aspects>, accessed 28.12.2024.

⁴⁷ Al-Shammari, op. cit., pp. 75-80.

⁴⁸ Al-Shammari, op. cit., pp. 75-80.

⁴⁹ Renas Ibrahim Mohamed, *The Role of International Criminal Court and its Effectiveness on War Crimes in Africa: Case Analysis – Kenya*, Master Thesis, School of Social Science, Near East University, Nicosia, 2019, pp. 40 – 45.

10. Delay in ICC Action: The ICC has been slow to classify crimes committed during the war as war crimes or crimes against humanity, despite the availability of audio-visual evidence, confessions, and witness testimonies regarding murder, rape, forced displacement, and genocide, due to the inability of investigation committees to function under bombardment and the absence of necessary protection for witnesses⁵⁰.

4.2. Proposed Solutions:

These proposed solutions represent the specific vision adopted by the researchers to address these challenges, and they can help reduce the obstacles that hinder the International Criminal Court from implementing its decisions and applying international criminal law without regard to any legal or political barriers that may benefit the accused.

1. Establishing International Enforcement Mechanisms: There is a need to create international mechanisms for the compulsory enforcement of ICC decisions, such as an international police force capable of executing the court's orders through international cooperation.

2. Preventing Veto Use in Security Council: There should be measures to prevent the use of veto power on Security Council decisions regarding international intervention to maintain peace and security and prosecute those convicted of international crimes under the Rome Statute, to discourage crimes against humanity and ensure justice.

3. The Necessity of Establishing Hybrid Courts: either temporarily or permanently, in regions where human rights violations or threats to international peace and security are prevalent.

4. Joint International Cooperation: Enhanced cooperation between national courts and the ICC is essential for executing arrest warrants against individuals accused of war crimes and crimes against humanity.

5. Revising Political and Diplomatic Immunity: The political and diplomatic immunity of leaders implicated in crimes against humanity and other offenses threatening international peace and security should be revoked.

⁵⁰ Hossam Ali Al-Sheikha, *War Crimes in Bosnia and Herzegovina*, New University Publishing House, Alexandria, 2014, pp. 176-215.

6. Prioritizing Arrest Warrants Over Diplomatic Relations: States should prioritize the execution of arrest warrants related to crimes against humanity or war over economic and diplomatic interests, mandating that state parties surrender suspects to the ICC.

7. Training Military Personnel: Military personnel should be trained in international law principles and compliance during armed conflicts, with international efforts focused on establishing peace and security.

8. Increasing ICC Budget: A dedicated budget should be allocated to the ICC to enable it to fulfill its role effectively, especially in developing countries like Sudan, and strengthen justice institutions.

9. Training National Court Judges: to conduct international trials and apply international law and treaties in national courts and encouraging them to engage in international judicial cooperation.

10. Expedited Trials: The ICC should conduct trials without unnecessary delays, especially when compelling evidence, such as confessions or credible witnesses, is available.

5. Conclusion – Findings and Recommendations

Through our study of crimes against humanity and our discussion of the role of the International Criminal Court (ICC) and the actions and procedures it has taken regarding the crimes against humanity committed in Sudan since 2003 and during the conflict on April 15, 2023, we found that there are several legal and political challenges that hinder the application of international criminal law, despite its binding principles. These challenges pose a continuous obstacle for the ICC, preventing it from prosecuting military and political criminals and moving it further away from achieving the justice it is meant to provide. Therefore, our study concludes as follows:

5.1. Conclusion

Crimes against humanity have severe psychological and physical impacts that persist long after the crime, posing a systematic and ongoing threat to international peace and security. They represent a blatant violation of human rights, making it difficult for the International Criminal Court (ICC) to address or mitigate them due to various international factors related to the dynamics of the United Nations, as well as regional issues such as the lack of regional cooperation in executing ICC orders and national factors linked to local governance systems, like military or dictatorial regimes. Through our study of crimes against humanity, we reached several findings and recommendations as follows:

5.2. Findings:

- 1.** Military leaders and heads of state in military and dictatorial regimes are the most frequent perpetrators of crimes against humanity.
- 2.** The ICC is weak and lacks mechanisms to enforce its decisions; it is constrained by certain principles of international law, such as the veto right, which hinders its ability to carry out its decisions.
- 3.** There is favoritism and laxity in the enforcement of international criminal law and the imposition of sanctions by the ICC, leading to impunity. Most of its decisions face legal challenges, including the use of veto power, diplomatic immunities for officials, and the joint international interests of some influential states (major powers).
- 4.** The non-implementation or delay of ICC decisions for any reason contributes to an alarming increase in the commission of crimes against humanity, allowing perpetrators to evade justice, as seen in the cases of former Sudanese President Omar al-Bashir and his associates, such as Ahmed Harun.
- 5.** The ICC lacks the capacity to execute arrest warrants without international cooperation and is hesitant to condemn or punish leaders of some major countries like Russia and Israel for crimes against humanity.
- 6.** Crimes against humanity will continue to occur in the presence of military or dictatorial regimes, particularly by military leaders, as seen in Sudan (2003-2023) or in totalitarian systems like Russia. The lifting of certain legal restrictions, such as immunity and the veto right, does not stop these violations.
- 7.** The authority and jurisdiction of the ICC are not limited to states parties to the Rome Statute; they extend to non-party states, especially in cases of international crimes like crimes against humanity that threaten international peace and security. The ICC Prosecutor has stated that the court still exercises jurisdiction under Resolution 1593 of 2005, even though Sudan is not a party to the Rome Statute.
- 8.** Individuals responsible within the state are the ones committing crimes against humanity, as evidenced in cases involving Sudanese officials still pending before the ICC against suspects, including former government officials, militia leaders, and members of the Resistance Front.
- 9.** The impunity of criminals due to other restrictions on the ICC, such as weak international cooperation for executing arrest warrants and immunities preventing the ICC from effectively performing its role in Sudan, along with the lack of cooperation between the ICC and the Sudanese government, has resulted in the

failure to deliver suspects to the court, thereby facilitating the continued commission of crimes against humanity.

5.3. Recommendations:

1. Encourage countries to adopt democratic civilian governance systems to ensure respect for the rule of law and achieve local stability and international peace and security.

2. International cooperation among states parties to the ICC should be strengthened to correct its course, ensuring it does not deviate from its objectives, remains apolitical, and prioritizes international security and peace over private interests, to avoid undermining the ICC.

3. To prevent systematic crimes against humanity, international criminal law, humanitarian law, and human rights should be included in the curricula of military and security colleges, ensuring that these principles are applied during combat to enhance awareness among combatants and civilians.

4. Develop a protocol to establish an international mechanism or independent regional police force in most Rome Statute member states tasked with enforcing ICC decisions using force.

5. Urge warring parties to apply the principle of proportionality and avoid excessive use of force beyond mission objectives, considering the principles and rules of humanitarian law when issuing orders and managing battles, ensuring fighters are directed to respect the law and its fundamental principles of distinction, necessity, and proportionality.

6. The authority and jurisdiction of the ICC should not be restricted to states parties to the Rome Statute but should extend to non-party states, particularly in cases of international **crimes** like crimes against humanity that threaten international peace and security.

7. The local judicial system in Sudan or other mechanisms, such as hybrid courts, should complement the work of the ICC, ensuring that criminal trials are conducted against all perpetrators of crimes against humanity, including presidents, military leaders, and leaders of the Rapid Support Forces.

- 8.** The role of international courts must be activated to address crimes against humanity and other offenses, applying judgments to perpetrators regardless of their positions and authorities.
- 9.** All individuals who commit or incite such crimes should be subject to trial without consideration of immunity.

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