East African Journal of Law, Policy and Globalization
Vol. 3. No. 1 (2025), pp:81-100.

Online ISSN: 3057 - 3173
Journal Title Abbreviation: *East Af. JLP&G*

Reflections on War Crimes and Other War-Related Crimes in Sudan and their Implications for East Africa

Yasein Hassan M. Osman,[1] Damina Joshua John,[2] Isaac K. Kipsambai[3], Suubi Daniella,[4] Ainomugisha Pellan,[5] & Turyasiima Florence.[6]

[1]Associate Professor of Law: Department of Public and Comparative Law, corresponding author, Email: yasein@kiu.ac.ug https://orcid.org/0009-0006-8830-8019

[2]Email: John.damina@kiu.ac.ug
[3]Email: kipsambaiisaac@gmail.com
[4]Email: daniellasuubi4@gmail.com
[5]Email: ainomugishapellan@gmail.com
[6]Email: turyasiimaflorence313@gmail.com

[1, 2, 3, 4, 5 & 6:] School of Law, Kampala International University, Kampala, Uganda.

Abstract:
The ongoing conflict in Sudan, which erupted on April 15, 2023, has led to serious allegations of war crimes amid a civil war between the Sudanese Armed Forces and the paramilitary Rapid Support Forces. This study critically analyzes international accountability mechanisms for these war crimes and their implications for the East African Community, particularly Uganda and South Sudan. The study highlights the catastrophic surge in human rights violations, including attacks on civilians and child soldier conscription, often unpunished due to ineffective accountability systems. The study employs qualitative methods, including interviews and document analysis, the study explores relevant legal frameworks and focuses on reported war crimes in 2023. It identifies key challenges such as political fragmentation, humanitarian crises, economic instability, and external influences that hinder peace efforts. Proposed solutions emphasize strengthening diplomatic engagement, enhancing humanitarian assistance, and establishing transitional justice mechanisms to address past grievances. By fostering regional cooperation and promoting accountability, the study aims to inform policymakers on effective strategies to confront these pressing issues and work towards a stable and peaceful Sudan. Ultimately, the path forward requires collective commitment and a vision that includes the voices of all Sudanese people.

Keywords: War Crime, Sudan, Criminal Responsibility, Challenges, International Criminal Court, East Africa.

DOI: https://doi.org/10.5281/zenodo.19418243

This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).

1. INTRODUCTION

The ongoing conflict in Sudan, which erupted on April 15, 2023, has raised serious allegations of war crimes amid a civil war between the Sudanese Armed Forces (SAF) led by Abdel Fattah al-Burhan and the paramilitary Rapid Support Forces (RSF), along with their allies, collectively known as the Janjaweed coalition under Hemedti.[1] This escalation followed a failure to integrate the RSF into the National Army, as previously agreed by military commanders after the ousting of former President Omar al-Bashir. As the humanitarian crisis deepens, this article aims is to critically analyze and assess international accountability mechanisms for the war crimes committed during this conflict and their implications for the East African Community (EAC), particularly focusing on the responses and challenges faced by Uganda and South Sudan. The ongoing conflict in Sudan highlights the pressing need for international accountability regarding war crimes and widespread human rights violations. [2] This study examines the repercussions of the conflict on regional stability, particularly for Uganda and South Sudan, while identifying key obstacles to peace. It advocates for strengthened diplomatic initiatives and transitional justice mechanisms.

The central research questions are: What specific war crimes were reported in Sudan during 2023? How are these crimes defined under international law? How effective are the existing accountability systems? What are the implications for security and humanitarian challenges in Uganda and South Sudan? And what actions can the East African Community (EAC) take to mitigate these crises[3]? To address these questions, this qualitative study will delve into the relevant areas of public international law. Furthermore, it will adopt a case study approach which will examine the diplomatic relationship between Uganda and South Sudan, emphasizing its broader significance for the EAC. The study will also analyze reports from international organizations, NGOs, and legal documents concerning war crimes in Sudan[4].

Additionally, the research will delve into the Sudan Criminal Act of 1991, focusing on Sections 51(a) & (b), 188, and Article 192, which define waging war against the state as a serious offense with severe penalties. It will explore relevant international legal frameworks, including the Geneva Conventions and the Rome Statute of 2002, to understand the implications of war crime responsibility in Sudan amid the 2023 conflict. Geographically, the study will mainly focus on Sudan, investigating reported war crimes in 2023, the individuals involved, and the context of these offenses. It will also evaluate

[1] Au Soudan en guerre, les trésors des musées au cœur de pillages. 19 september 2024. https://www.lorientlejour.com/article/1427780/au-soudan-en-guerre-les-tresors-des-musees-au-coeur-de-pillages.html. Accessed 20th November, 2025.

[2] Ibid.

[3] Mulgavh, Lucy, Nelson John & Jackson Dorothy. 2005. 'Central Africa: Great Lakes Region and Cameroon' in The Indigenous World, IWGIA's Yearbook.

[4] Sudan's lost treasures: war fuels artefact trafficking. 22 january 2025. https://www.dabangasudan.org/en/all-news/article/sudans-lost-treasures-war-fuels-artefact-trafficking Accessed 22th November, 2025.

the impact of the situation in Sudan on neighboring EAC member states, especially Uganda and South Sudan, with a temporal focus on events and incidents from 2023.[5]

2. HISTORICAL OVERVIEW OF WAR CRIMES IN SUDAN

Sudan's history is deeply tragic, characterized by war crimes and human rights abuses primarily resulting from civil wars, ethnic strife, and military governance. Among the most egregious violations are mass killings, sexual violence, forced displacement, and the enlistment of child soldiers, especially during the Darfur conflict and the Second Sudanese Civil War. These actions, which include ethnic cleansing and systematic rape, have sparked widespread international outrage and calls for accountability. A number of Sudanese leaders, military officials, and militia commanders are accountable for these atrocities, whether through direct orders or under the principle of command responsibility. Organized government actions have led to prolonged assaults on civilian populations, with minimal consequences for those responsible. Both government and rebel forces are obligated to adhere to international humanitarian law, which prohibits acts of violence against civilians, such as murder and torture. While the International Commission of Inquiry did not identify a formal genocide policy by the government, it recognized that crimes indicating genocidal intent may have taken place, highlighting the need for judicial intervention.[6]

The escalating violence in Sudan has triggered a catastrophic surge in human rights violations, including brutal attacks on civilians, rampant sexual violence, and the forced recruitment of child soldiers. These heinous acts clearly constitute war crimes under international law, yet they often go unpunished due to ineffective accountability mechanisms. The International Criminal Court (ICC) and other international bodies are severely obstructed in their efforts to prosecute these offenses by a lack of state cooperation, insufficient political will, and the complex geopolitical dynamics of the region. The ensuing humanitarian crisis has displaced millions, placing an unbearable burden on Uganda and South Sudan, both of which are grappling with heightened security threats and immense challenges in supporting vulnerable populations. The East African Community (EAC) is ill-equipped to confront these crises effectively, hindered by political discord and a fragmented approach to regional strategy.[7]

[5] http:www.forestpeoples.org/documents/Africa/iwgia_yrbk_c_af_2005_eng.shtml, Nannyonjo Justine 2004 Conflicts, Poverty and Human Development in Northern.
[6] Uganda, paper for WIDER Conference on Making Peace Work, Helsinki, 4-5 June.
[7] Au Soudan, les combats ont gagné des sites classés au patrimoine mondial. 17 january 2025. https://www.france24.com/fr/afrique/20240117-au-soudan-les-combats-ont-gagn%C3%A9-des-sites-class%C3%A9s-au-patrimoine-mondial. Accessed 20th November, 2025.

3. CONCEPTUAL, LEGAL, AND INSTITUTIONAL FRAMEWORK OF WAR CRIMES IN SUDAN

The Sudanese Human Rights Monitor Report identifies the ongoing conflict as rooted in a power struggle between General Abdel Fattah Al Burhan and his deputy, General Mohamed Hamdan Dagalo, leading to significant humanitarian crises and loss of life among civilians.[8] highlights the importance of international law in holding accountable those responsible for violations, emphasizing the need for legal sanctions against the Sudanese government and military factions.[9] reiterates the severe toll of the conflict on the population,[10] while pointing out Sudan's obligations under various international human rights treaties, particularly against torture and inhumane treatment. Despite being a signatory to several conventions, Sudan has not effectively integrated these treaties into its legal framework, with significant discussions around customary international humanitarian law emphasizing the need for accountability. Reports from the International Commission of Inquiry on Darfur have documented severe human rights abuses, including abduction and sexual violence, particularly affecting women and internally displaced persons. Scholars studying Sudan's war crimes are urged to meticulously document their findings, as the nation's history reflects one of the most catastrophic conflicts in modern times[11].

3.1 Conceptual framework

The rules governing international humanitarian law (IHL) in the context of non-international armed conflict are primarily found in: Common Article 3 of the four Geneva Conventions of 1949; the Second Additional Protocol to the Geneva Conventions of 1977 (known as Additional Protocol II), and customary international humanitarian law. IHL imposes restrictions on the means and methods of warfare during non-international armed conflicts and ensures the protection and assistance of the civilian population. It also allows impartial humanitarian organizations the right to initiate relief operations (refer to GCI-IV Common Art. 3; GCI, GCII, GCIII Art. 9; GCIV Art. 10; APII Art. 18.2).

Some scholars argue that the differing definitions of non-international armed conflict in Common Article 3 and Additional Protocol II indicate the existence of two distinct types of such conflicts. Conflicts that do not fulfill all the criteria outlined in Additional Protocol II may only be governed by Common Article 3.[12] In contrast, Additional Protocol II would apply solely in situations where all the specified criteria are

[8] Cockett, R. (2010). Sudan: Darfur and the Failure of an African State. Yale University Press.
[9] Sudan: UNESCO steps up its actions as the conflict enters its third year. 16 april 2025. https://www.unesco.org/en/articles/sudan-unesco-steps-its-actions-conflict-enters-its-third-year. Accessed 20th November, 2025.
[10] The UN Human Rights Council (2023).
[11] ***Rifaat Al-Mirghani***, Transitional Justice in Arab Contexts, Evaluating the Sudanese Experience, Arab Organization for Human Rights, First Edition, 2014, pp. 120-128.
[12] Common Article 3 of the Geneva Convention 1949.

met, particularly regarding the organization of non-state armed groups and their control over territory. This interpretation is viewed as a rigid legal stance that contradicts the essence of humanitarian law, which recognizes only two categories of armed conflict: international and non-international.

When Additional Protocol II mentions armed groups that act (1) under responsible command and (2) exercise control over a portion of territory sufficient to (3) conduct sustained and concerted military operations, it seeks to differentiate between structured conflict situations and mere internal unrest or insecurity, where confrontations lack organization and identifiable leadership. Additional Protocol II emphasizes that non-state armed groups engaged in military operations have specific organizational responsibilities. These include maintaining discipline and upholding International Humanitarian Law (IHL) during combat. While these groups are subject to the same obligations as state actors, their capacities may differ significantly. For example, the requirements related to detention are closely tied to a non-state group's ability to control territory.

The criteria for the organization of non-state armed groups outlined in Additional Protocol II do not change the classification of non-international armed conflict or the corresponding obligations of the state involved[13]. Instead, they serve to stress the organizational responsibilities placed on the non-state group and adjust the level of accountability for individuals and commanders within those groups for violations of humanitarian law, based on their organizational structure. Despite any shortcomings in the non-state group's organization, the state remains bound by its own obligations under Additional Protocol II.

Practically speaking, it is crucial to recognize that Common Article 3 operates outside the typical framework of humanitarian law. It encourages conflict parties to establish some or all of the conventions through special agreements right from the conflict's outset. The regulations applicable to non-international conflicts are generally less detailed than those for international conflicts. Common Article 3 is complemented by Additional Protocol II, which consists of twenty-eight articles. However, trends in customary international humanitarian law indicate a movement toward aligning the rules governing both types of conflicts, particularly regarding limitations on warfare methods and the rights to assistance and protection for affected populations. The ICRC's 2005 study on customary IHL identifies 161 rules[14], with 147 being applicable to both international and non-international armed conflicts. This trend toward harmonization reduces the relevance of strict textual interpretations associated with definitions of armed conflicts in Additional Protocol II. Non-International Armed Conflicts represent some of the most common and complex forms of violence in the modern world[15]. They occur

[13] Additional Protocol II of 1977 to the Geneva Convention 1949.
[14] ICRC, Commentary on the Second Geneva Convention, 2017, para. 526.
[15] An elaboration of these arguments may be found in the ICRC's 2015 Challenges Report. See: ICRC, International

within the territory of a single state and involve either fighting between government forces and organized armed groups, or between such groups themselves.

International humanitarian law particularly Common Article 3 of the Geneva Conventions and Additional Protocol II provide the minimum standards that must be respected to reduce suffering, even when conflicts remain internal in nature. A NIAC[16] is triggered not by labels such as "rebellion" or "terrorism," but by objective criteria: the intensity of hostilities and the level of organization of the armed groups. Once these thresholds are met, all parties are legally bound to protect civilians, treat detainees humanely, and avoid prohibited acts such as torture, murder, and collective punishment. Overall, NIACs highlight the tension between state sovereignty and humanitarian imperatives. While states retain the right to maintain internal order, they must also uphold international humanitarian obligations. Strengthening compliance, promoting accountability, and addressing the root causes of such conflicts remain essential for lasting peace and civilian protection.

3.2 Legal framework

3.2.1 Universal Declaration of Human Rights (UDHR) 1948

The UDHR, adopted in 1948, is a non-binding document outlining fundamental human rights, serving as a moral basis for condemning war crimes like torture and executions. While it does not explicitly sanction war crimes, it emphasizes the inherent dignity and rights of individuals, establishing principles essential for protecting individuals during conflicts[17]. UDHR was replaced with two legally binding treaties like the International Covenant for civil and political Rights (ICCPR) and International Covenant for Economic and Social Cultural rights (ICESCR) against violations of human rights.

Key articles related to war crimes:
Article 3: Right to life, liberty, and security, relevant to the 2023 Sudan War, which has resulted in civilian deaths. Article 5: Prohibition against torture and inhumane treatment. Article 7: Equality before the law without discrimination. Article 9: Protection against arbitrary arrest or detention. Article 10: Right to a fair and public hearing by an impartial tribunal[18].
The conflict in Sudan, particularly in Darfur, is characterized by severe human rights violations, including:

Humanitarian Law and the Challenges of Contemporary Armed Conflicts, ICRC, Geneva, 2015, p. 13: https://www.icrc.org/en/document/icrc-report-ihl-and-challenges-contemporary-armed-conflicts. Accessed 21st November, 2025.

[16] In NIACs, IHL normally applies in the whole territory of the parties, whether or not actual combat takes place there.

[17] The Universal Declaration of Human Rights of Human Rights.

[18] The Universal Declaration of Human Rights of Human Rights Articles (3, 5. 7, 9, 10).

3.2.2 Genocide

Genocide is a term that describes a severe crime defined by the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. It encompasses various acts committed with the intent to annihilate people based on their identity, including. The Rome Statute of 2002 is the treaty that established the International Criminal Court (ICC). It defines several core crimes, including genocide, and sets out the legal framework for prosecuting such crimes. Under Article 6 of the Rome Statute, genocide is defined as any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group. killing: direct attacks that result in the death of members of a group[19]. Other aspects of the definition include causing serious bodily or mental harm: Inflicting serious injuries or psychological trauma; deliberately Inflicting conditions of life: creating circumstances meant to induce the group's destruction, such as starvation or lack of medical care; imposing measures to prevent births: forcible contraception or abortion aimed at specific groups, and transferring children, forcibly removing children from one group to another.

The term "genocide" was coined during World War II by Polish-Jewish lawyer Raphael Lemkin. The Holocaust, in which six million Jews were killed, exemplified the consequences of unchecked hatred and bigotry, prompting the need for international laws against genocide. Genocide is addressed by various international treaties and laws, including the Genocide Convention (1948): This treaty defines genocide and obliges nations to prevent and punish the crime.The Rome Statute of 2002 establishes the International Criminal Court (ICC) and includes genocide as a prosecutable offense. Understanding genocide is crucial for preventing future atrocities. Education about the signs and implications of genocide can help promote tolerance, human rights, and global accountability. Therefore, efforts by organizations and activists aim to raise awareness, memorialize victims, and push for justice in cases of genocide.

The genocide in Sudan, particularly in the region of Darfur, is a tragic example of systematic targeting and mass killings of specific ethnic groups. This conflict, which escalated in the early 2000s, has roots in complex socio-political issues, including ethnic tensions, resource competition, and governmental policies[20]. The divides that were exacerbated by colonial rule laid the groundwork for ethnic tensions. The British favored certain tribes over others in administrative roles, which created lingering disparities. After Sudan gained independence in 1956, tensions escalated due to political marginalization and economic imbalances, particularly between the northern and southern regions and among various ethnic groups. The Sudanese government, led by President Omar al-Bashir, initiated a campaign against the Darfuri people, particularly

[19] Article 6 of The Rome Statute of 2002.

[20] As Sudan's civil war rages on, its heritage is under siege. 14 february 2024 https://www.theartnewspaper.com/2025/02/14/sudan-civil-war-rages-on-heritage-under-siege. Accessed 21st November, 2025.

targeting the non-Arab ethnic groups like the Fur, Masalit, and Zaghawa. [21] The government armed and supported the Janjaweed militia to carry out atrocities against these groups. Reports detailed mass killings, rapes, and the burning of villages. Over 300,000 people are estimated to have been killed, and millions displaced.[22]

Villagers were slaughtered indiscriminately. For example, in 2004, the village of Tawila was attacked, resulting in the deaths of hundreds. Sexual violence was used systematically against women and girls to instill fear in targeted communities. Even after the initial international outcry, violence continued, with various humanitarian organizations documenting ongoing attacks and displacement. The UN Security Council issued resolutions and established the African Union-United Nations Hybrid Operation in Darfur (UNAMID) to protect civilians and facilitate humanitarian aid; however, in 2009, an arrest warrant was issued for Omar al-Bashir for genocide and war crimes, representing a significant acknowledgment of the atrocities committed.

The genocide in Sudan highlights the devastating impact of ethnic conflict mixed with political oppression. The systematic targeting of specific ethnic groups has had long-lasting effects on the region, leading to profound humanitarian crises and a need for sustained international attention and intervention[23]. Efforts to heal and rebuild the affected communities continue, but challenges remain, as the legacies of violence and displacement persist. Understanding these events is crucial not only for justice but also for preventing future genocides and promoting lasting peace in the region.

3.2.3 Crimes against humanity

Crimes against humanity are among the gravest offences recognized under international law. They refer to widespread or systematic acts committed against civilian populations, often during war or peace, by governments, armed groups, or individuals. These crimes include murder, enslavement, torture, rape, persecution, forced displacement, and other inhumane acts that intentionally cause great suffering. The concept emerged strongly after World War II during the Nuremberg Trials, where leaders were held accountable for atrocities committed against civilians. Unlike ordinary crimes, crimes against humanity are characterized by their scale, organization, and deliberate targeting of civilians[24].

The ICC issued an arrest warrant for Ali Kushayb in 2007, accusing him of 31 counts of war crimes, and 22 counts of crimes against humanity, committed in Kodoom, Bindisi, Mukjar, and Arawala areas in West Darfur. Crimes included: Murder and

[21] Bryden Alan 2005 'Shaping the Security Governance Agenda in Post-Conflict Peacebuilding' (eds.)
[2222] Azarya, Victor. 1994. 'Civil Society and Disengagement Africa' in Civil Society and the State in Africa eds. Harberson John W., Donald Rothchild and Naomi Chazan, Lynne Rienner Pub.

[23] Government of Uganda 2003 'Post-conflict Reconstruction: the Case of Northern Uganda', Ministry of Finance, Planning and Economic Development Discussion Paper, April.
[24] ***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.

extermination, Rape and sexual violence, Torture, Attacks against civilians, Destruction of villages and Pillaging. [25] In June 2020, Ali Kushayb surrendered voluntarily to authorities in the Central African Republic and was transferred to The Hague. His confirmation of charges hearing took place in May 2021. The trial began on 5 April 2022 before Trial Chamber I of the ICC.[26]

The significance of the case was that, it marked the first ICC trial arising from the Darfur situation, and the first involving a suspect from Sudan. It demonstrated the power of UN Security Council referrals to extend ICC jurisdiction to non-member states. The case is a milestone in international justice, showing that individual accountability can be pursued despite state non-cooperation. On the current status, as of 2025, the trial of Ali Kushayb has concluded, and the ICC is in the process of deliberating on the verdict. It remains a symbolic and precedent-setting case showing how international law can reach individuals in non-signatory states. The prosecution of Ali Kushayb by the ICC even though Sudan never ratified the Rome Statute was made possible through UN Security Council Resolution 1593 (2005), which legally extended the Court's jurisdiction over crimes committed in Darfur.

3.2.4 War crimes

War crimes are serious violations of the laws and customs of war, usually involving acts committed during armed conflict. These offenses are recognized under international law, particularly by the Geneva Conventions and various international treaties. War crimes typically include acts like willful killing: intentional killing of civilians or captured soldiers; **t**orture or inhumane treatment; inflicting severe pain or suffering, whether physical or mental, on individuals. Others are taking hostages, seizing or detaining individuals to use as leverage in conflict. Another one is unlawful deportation, that is, forcibly transferring individuals from one place to another. War crimes include attacks on civilians: conducting attacks against civilian populations or infrastructure that are not military targets. War crimes represent some of the most egregious violations of human rights during armed conflict. Efforts continue at national and international levels to enforce accountability and reinforce the rules of war. As global awareness and legal frameworks evolve, the hope is for greater protection of human dignity during conflicts.

4. INTERNATIONAL RESPONSE

The International Criminal Court (ICC) has issued arrest warrants for individuals involved in war crimes, including former President Omar al-Bashir, reflecting the global

[25] Articles 7(1)(a), 7(1)(g), 7(1)(f), 8(2)(b) of Rome Statute, 2002.

[26] https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.aba-icc.org/cases/case/prosecutor-v--abd-al rahman/&ved=2ahUKEwjZ6tXQ2MaQAxVuT0EAHRSDEjwQFnoECCQQAQ&usg=AOvVaw3QC9F4t8P8PI5-x6ls46UA. Accessed on 28th October, 2025.

commitment to uphold human rights. The UDHR has influenced the creation of treaties like the Geneva Conventions, which explicitly define and prohibit war crimes, and the Rome Statute, which provides a framework for prosecuting these crimes[27].

4.1 Geneva Conventions of 1949

Sudan is a signatory to the four Geneva Conventions, which protect civilians and combatants during armed conflicts. These conventions establish obligations for parties in conflict to adhere to humanitarian principles. There are some articles in the Geneva Convention related to Suda War Crimes as Article 32: Protection of civilians, prohibiting torture and collective punishment, and Article 5: Protection of persons captured in conflict until their repatriation. In addition, Protocol II: Addresses the protection of victims in non-international armed conflicts and prohibits attacks on wounded civilians and prisoners of war. These conventions ensure that humanitarian assistance is preserved during conflicts, allowing organizations like the International Committee of the Red Cross to operate without obstruction[28].

The legal framework governing war crimes in Sudan encompasses international treaties, including the UDHR and the Geneva Conventions, alongside the Rome Statute. While these frameworks establish crucial protections, their effectiveness is often challenged by political instability and ongoing conflict. Strengthening these legal mechanisms is essential for accountability and the protection of human rights in Sudan.

4.2 The Rome Statute

The Rome Statute is a foundational document for the International Criminal Court (ICC), established in 1998 and entering into force in 2002[29]. Its signvificance in international law can be understood through several key aspects. The Rome Statute created the ICC, the first permanent court to prosecute individuals for war crimes, crimes against humanity, genocide, and the crime of aggression. This marked a historical shift towards accountability for individuals rather than states. The Statute embodies the principle of universal jurisdiction in international law. This allows the ICC to prosecute crimes regardless of where they were committed, effectively promoting global accountability. It provides a comprehensive legal framework that defines key crimes, outlining their elements and establishing procedures for prosecution. This clarity helps reduce impunity for heinous acts and sets standards for international humanitarian law.

The Rome Statute recognizes the rights of victims to participate in proceedings. This inclusion helps ensure that the suffering of victims is acknowledged and considered in the judicial process, enhancing the court's legitimacy. By prosecuting grave crimes, the

[27] *Ellingsen, T., and Gleditsch, N. P.* (1997) "Democracy and Armed Conflict in the Third World." In K. Volden and D. Smith (eds.), *Causes of Conflict in Third World Countries*, 69–81. Oslo: North-South Coalition and International Peace Research Institute.
[28] Geneva Conventions 1949, Article 32 and 5.
[29] The Rome Statute of 2002.

Rome Statute reinforces the rule of law at an international level. It promotes justice in conflict and post-conflict situations, contributing to transitional justice efforts. The existence of the ICC acts as a deterrent against potential perpetrators of serious crimes by creating a legal risk. The prospect of prosecution may discourage individuals and leaders from committing atrocities. The Statute encourages states to cooperate in the investigation and prosecution of crimes covered by the court's jurisdiction. This fosters collaboration and strengthens international legal norms. Despite its significance, the Rome Statute faces challenges, including non-ratification by some major powers, limited enforcement capability, and political obstacles that can impede justice. These challenges highlight the ongoing struggle within international law to enforce accountability.

The Rome Statute is a landmark in international law, symbolizing the global commitment to combating impunity for serious crimes. While it has made significant strides in promoting justice, the effectiveness of the ICC and the Statute continues to evolve in response to geopolitical realities and the complexities of international relations.

4.3 Jurisdiction and crimes

The ICC's jurisdiction includes serious crimes that concern the international community. Specifically, the Rome Statute prohibits acts such as genocide, torture, and sexual violence. Although Sudan has not fully implemented the Rome Statute, the international community can respond to atrocities, support civilian protection, and impose sanctions on those responsible for conflict-related violence. In the framework of the jurisdiction of ICC, we see the author the ongoing Sudan war is categorized as an international (Internal) Armed conflict. Based on principles of international law, the international community can support efforts to end the fighting and protect civilians. The international community can use sanctions against those responsible for conflict-related sexual violence.

4.4 NATIONAL LEGISLATION

4.4.1 Sudanese Criminal Code 1991

The Sudan Criminal Act of 1991 replaced the Penal Code of 1983, aiming to align national law with Islamic principles. It criminalizes waging war against the state, with penalties ranging from imprisonment to death. Although the Sudanese Penal Code includes provisions addressing crimes against humanity, it lacks comprehensive regulations on war crimes, and amendments have been made under international pressure. The War Crimes Against Individuals is included in article 188 with punishments (Life Imprisonment or Death Penalty. Anyone who commits the following acts during international or non-international armed conflict, knowing that it is part of a conflict, can be punished with life imprisonment or the death penalty. The article clarified the elements of war crimes and provided for them harsher penalties than those stipulated in the Rome Statute.

The statements address serious violations of international humanitarian law during armed conflict, emphasizing the prohibition against plundering property for

personal gain and the unlawful destruction or seizure of civilian property that is not essential for military objectives. They highlight the importance of ensuring individuals can pursue legal claims and not be denied access to justice or have their claims suspended. Additionally, targeting humanitarian operations or obstructing aid delivery constitutes a grave offense. Collectively, these points underline the necessity of safeguarding property and individual rights in conflict situations to uphold humanitarian principles[30].

Article 191 comes under the title Specific War Crimes; The statements outline specific war crimes that can lead to severe punishments, including life imprisonment or the death penalty, during armed conflicts. These include intentionally attacking civilians and protected sites like hospitals or schools, bombing non-military targets, and causing excessive harm to civilians in relation to military advantage. Additional crimes involve using civilians as shields, denying essential supplies to them, misleading unarmed combatants into believing they are safe before attacking, and forcibly displacing civilians without justification. Key terms such as "incidental loss" refer to unintended civilian casualties, "protected sites" are locations that require special protection under international law, and "military necessity" justifies actions needed to achieve legitimate military goals.

Article 191 talks about the Use of Prohibited Weapons in War Crimes and the punishments: The statements outline serious offenses during armed conflict that can result in life imprisonment or the death penalty. These offenses include the use of poison or toxic substances that cause death or serious health issues, employing choking gases or harmful liquids, and utilizing prohibited ammunition that causes unnecessary pain or injury. Additionally, the use of weapons that inherently inflict excessive suffering or have indiscriminate effects violates international humanitarian law. Key terms such as "prohibited weapons" refer to those banned for causing undue suffering, while "excessive injury" denotes harm beyond what is necessary for military objectives, and "indiscriminate effects" describe weapons that cannot differentiate between military targets and civilians, leading to unintended casualties[31].

4.5 Implementation challenges

Sudan's failure to fully implement the Rome Statute highlights significant gaps in its legal framework for addressing war crimes. Despite this, the ICC retains jurisdiction over atrocities committed in Darfur and the recent 2023 conflict, underlining the urgent need for effective legal mechanisms to pursue accountability and justice. The weakness in the implementation mechanisms stems from the lack of neutrality, integrity, and independence of the Sudanese judiciary during that period. Although the judiciary conducted international trials, they were largely formal and resulted in the acquittal of all

[30] Sudanese Criminal Code 1991, Article 188.
[31] Sudanese Criminal Code 1991, Article 191.

accused individuals for war crimes committed in Darfur since 2003, despite the ongoing nature of these crimes. Notably, some former state officials, including former President Omar al-Bashir, remain wanted by the ICC. However, one individual sought by the ICC surrendered to the court in 2022 and is currently on trial[32].

To understand how South Sudan and Uganda can help hold violators accountable for war crimes in Sudan, it's important to discuss the principles of law and universal jurisdiction. This principle allows a state to prosecute individuals for certain serious crimes, such as war crimes, crimes against humanity, genocide, and torture, regardless of where the crime was committed, the nationality of the perpetrator, or the nationality of the victim. It's based on the idea that some crimes are so heinous they affect the entire international community, and any nation should have the authority to hold perpetrators accountable.

The aim is to prevent impunity and ensure that those who commit severe crimes don't find safe havens. It enables states to fulfill their duty to prosecute and punish war crimes.

Universal jurisdiction is recognized in the Geneva Conventions of 1949, which address war crimes. It has become consolidated in other international conventions, such as the Convention against Torture (1984). Customary international law also allows its use for crimes considered particularly heinous, like crimes against humanity and genocide. To effectively use universal jurisdiction, states need to incorporate it into their national legislation and have sufficient resources for implementation, including specialized units within prosecution and police authorities. The exercise of universal jurisdiction should respect national sovereignty, territorial integrity, and the political independence of states. It should be approached carefully to avoid allegations of selective application. Some argue that universal jurisdiction should be subordinate to territorial and national jurisdictions, with domestic legal remedies given priority.

4.5.1 How South Sudan and Uganda can help

Universal jurisdiction provides an avenue for victims of war crimes to seek justice, even if they have fled to another country as refugees. Sudanese victims who find themselves in South Sudan or Uganda can potentially report cases to the authorities. For South Sudan and Uganda to effectively prosecute alleged offenders, they must have national legislation in place that establishes universal jurisdiction for war crimes. Both countries can investigate and prosecute individuals present in their territory who are suspected of committing war crimes in Sudan, regardless of their nationality or where the crimes occurred. If prosecution in South Sudan or Uganda is not feasible, they could consider extraditing the accused to another state or an international tribunal like the International Criminal Court (ICC) that has jurisdiction over the crimes. Both countries can support the ICC's investigations in Sudan and cooperate with the court in arresting and surrendering suspects.

[32] *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, pp 467-477.

5. INTERNATIONAL CRIMINAL RESPONSIBILITY FOR WAR CRIMES COMMITTED IN SUDAN

International criminal responsibility encompasses the legal accountability of individuals for serious offenses under international law, including war crimes, crimes against humanity, and genocide. In Sudan, a range of war crimes has been documented, particularly during the Darfur conflict (2003 to present) and the ongoing civil war (2023 to present). The global community has increasingly focused on the issue of accountability for these atrocities. This chapter delves into the mechanisms available for addressing these crimes, the role of international law, and the challenges encountered in prosecuting those responsible for such violations[33].

5.1. Legal framework for accountability

The legal framework for accountability for war crimes is anchored in international humanitarian law (IHL), especially the Geneva Conventions and their Additional Protocols. These laws provide essential protections for civilians and combatants while delineating the responsibilities of states and individuals. Key mechanisms include the International Criminal Court (ICC), international tribunals, and national jurisdictions, all aimed at ensuring justice for victims and holding perpetrators accountable. Additionally, principles of universal jurisdiction and international cooperation further enhance efforts to combat impunity for war crimes.

5.1.1 International humanitarian law

War crimes are classified under international humanitarian law (IHL), primarily outlined in the Geneva Conventions and their Additional Protocols, which aim to safeguard both civilians and combatants while specifying the duties of states and individuals. The framework for accountability is anchored in the International Criminal Court (ICC), which deals with war crimes occurring in non-international armed conflicts, along with international tribunals established for Rwanda and the former Yugoslavia. National jurisdictions typically handle the prosecution of offenders. The principle of universal jurisdiction allows states to pursue investigations and prosecutions of certain egregious offenses, regardless of any traditional jurisdictional ties such as territory or nationality. African states recognize this principle, but in recent years, there has been a backlash against it. Many perceive that various European courts have unfairly targeted African officials viewed as adversaries. This context sets the stage for a discussion on the universal jurisdiction debate, particularly regarding the roles of the International Criminal Court, the African Union, and its member states, with a specific focus on Sudan.

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

The East African Intergovernmental Authority on Development (IGAD), a regional bloc representing the Greater Horn of Africa, which includes Sudan, has made efforts to address the ongoing crisis in the country. Spearheaded by Djibouti and Kenya, IGAD has sought to facilitate a direct dialogue between the conflicting parties. However, these efforts have yet to realize a breakthrough. Approximately two months into the conflict, IGAD adopted a roadmap aimed at resolving the situation during its 14th Ordinary Session on June 12, 2023, held in Djibouti. This roadmap designated Djibouti, Ethiopia initially excluded and causing some diplomatic tension—Kenya, and South Sudan as members of the IGAD High-Level Delegation for the peace process, with Kenya's President Ruto chairing the Quartet.The possibility of other East African countries exercising jurisdiction over war crimes in Sudan or assisting in law enforcement is a complex issue with several facets.

International law recognizes that certain crimes, such as war crimes, are so serious that the duty to prosecute them transcends all borders, giving rise to "universal jurisdiction". This principle provides an avenue for victims of war crimes to seek justice, even if they have fled to another country as refugees. If Sudanese victims of war crimes find themselves in countries like Kenya, Egypt, Ethiopia, Chad, South Sudan, or Uganda, they can potentially report cases to the authorities of those countries. However, the practical implementation of universal jurisdiction varies across jurisdictions, and there are challenges in terms of political will, capacity, and cooperation among nations. Kenya, Egypt, Ethiopia, Chad, South Sudan, and Uganda have varying degrees of engagement with universal jurisdiction. Their legal systems may differ in terms of their willingness and capacity to pursue such cases.

The ICC has been investigating the Darfur situation in Sudan since 2005, focusing on allegations of genocide, war crimes, and crimes against humanity that occurred from July 1, 2002, onward. Despite Sudan not being a party to the Rome Statute, which established the ICC, the United Nations Security Council referred the Darfur situation to the ICC's Prosecutor in 2005. The ICC has issued arrest warrants for several Sudanese officials, including former President Omar al-Bashir. In October 2025, the court achieved its first conviction related to Darfur, finding Ali Muhammad Ali Abd-Al-Rahman, known as Ali Kushayb, guilty of 27 counts of crimes against humanity and war crimes. Crimes under the court’s mandate are genocide, war crimes, and crimes against humanity, other serious crimes under international law, and South Sudan’s “relevant laws… including gender-based crimes and sexual violence”.

While the possibility exists for East African countries to exercise jurisdiction over war crimes in Sudan or assist in law enforcement, the practical implementation faces numerous challenges, including varying degrees of engagement with universal jurisdiction, political will, capacity, and cooperation among nations

States must investigate and prosecute war crimes involving their nationals or territory, supported by international cooperation efforts aimed at punishing war criminals. Victim

rights are emphasized through the 1985 Declaration of Basic Principles of Justice for to protection of victims of crime.

During armed conflicts, all parties must prevent unnecessary suffering and ensure the humane treatment of individuals in their control while upholding the distinction between combatants and civilians. Targeting civilians is strictly prohibited, and both government forces and non-state armed groups are required to take precautions to minimize civilian harm. The principle of distinction is fundamental to international humanitarian law (IHL), allowing attacks only against military objectives and not civilian populations. Violations of these principles are classified as war crimes, and civilians are protected from attack unless they directly participate in hostilities[34]. Common Article 3 of the Geneva Conventions mandates humane treatment for all persons not actively engaged in combat, prohibiting violence, torture, and degrading treatment[35]. This obligation extends to both state and non-state actors. Additionally, customary IHL reinforces protections against sexual violence, enforced disappearances, and collective punishments. Parties to a conflict must also facilitate the unimpeded passage of humanitarian relief for civilians in need, ensuring the safety of relief workers.

5.1.2 Rome Statute of the International Criminal Court (ICC)

The International Criminal Court (ICC), established by the Rome Statute in 2002, serves as the primary international body for prosecuting war crimes, crimes against humanity, and genocide. Article 1 of the Statute designates the ICC as a permanent institution with jurisdiction over serious international crimes, while Article 5 specifies its focus on genocide, crimes against humanity, war crimes, and the crime of aggression. Although Sudan signed the Rome Statute in 2000, it has not ratified it, making it a non-State Party. However, the ICC has jurisdiction over the situation in Darfur due to a UN Security Council referral on March 31, 2005, allowing the court to investigate war crimes committed since July 1, 2002[36].

One notable case is that of Ali Muhammad Abd-Al-Rahman (Kewshyb), who voluntarily surrendered to the ICC on June 9, 2020. He faces 31 counts of war crimes and crimes against humanity linked to events in Darfur between August 2003 and April 2004. Following a confirmation of charges hearing in May 2021, his trial began on April 5, 2022, with the prosecution having presented its evidence by June 2023[37]. The defense has also called witnesses, and closing statements are scheduled for December 2024. Despite

[34] *Abdel Karim Abdellawi*, presented by Hani Megally, The Experience of Transitional Justice in Morocco, First Edition, Cairo Institute for Human Rights Studies, Cairo, 2013, p. 46.
[35] Geneva Convention (1949), Article 3.
[36] *ICRC, Customary International Humanitarian Law,* rule 93, citing 1949 Geneva Conventions.
[37] An authoritative study of customary international humanitarian law is the two-volume ICRC *Customary International Humanitarian Law* (2005).

Sudan's non-party status to the Rome Statute, the UNSC's referral has enabled the ICC to hold individuals accountable for war crimes in the region[38].

5.2 The case of Omar al-Bashir

Omar al-Bashir, the former President of Sudan, has been indicted by the ICC on several charges, including genocide, war crimes, and crimes against humanity related to the Darfur conflict. The first arrest warrant for al-Bashir was issued on March 4, 2009[39], followed by a second on July 12, 2010, but he remains at large. Until he is arrested and transferred to the ICC in The Hague, the case will remain in the pre-trial stage, as the court cannot proceed with trials in the absence of the accused. Al-Bashir is one of the ICC's longest-standing fugitives, facing serious allegations linked to the killing, maiming, and torture of hundreds of thousands in Darfur.

The ICC has issued arrest warrants for Omar al-Bashir based on reasonable grounds to believe he has committed genocide against the Fur, Massalit, and Zaghawa ethnic groups, alongside charges of war crimes and crimes against humanity. These groups were perceived as supportive of armed factions opposing the government. Al-Bashir faces five counts of war crimes, two counts of crimes against humanity, and three counts of genocide related to the situation in Darfur[40]. The allegations against al-Bashir pertain to severe human rights abuses perpetrated by his security forces, including the Sudanese army, the Janjaweed militia, the police, and the National Intelligence and Security Service (NISS). The ICC contends that al-Bashir played a crucial role in organizing these groups, which were allegedly responsible for numerous unlawful attacks on civilians, primarily from the Fur, Masalit, and Zaghawa communities[41]. These actions included the murder of thousands, widespread rape, torture, looting of towns and villages, and the forced displacement of hundreds of thousands.

5.3 The case of Ahmad Harun

Several Sudanese officials and militia leaders have been indicted by the ICC, yet many remain at large, hindering justice efforts. In the case of I.C.C v. Ahmad Harun, he faces 20 counts of crimes against humanity including murder, persecution, forcible transfer of populations, and rape—as well as 22 counts of war crimes, such as murder and attacks against civilians. An arrest warrant was issued on April 27, 2007, but Harun is still at large.

---

[38] United Nations, "Report of the International Commission of Inquiry on Darfur to the United Nations Secretary General," at http://www.un.org/News/dh/sudan/com, access 10.05.2025.
[39] https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/AlBashirEng.pdf, Case Information Sheet, Situation in Darfur, Sudan, The Prosecutor *V. OMAR HASSAN AHMAD AL* BASHIR, *ICC*, 02/05-01/2009, access 10.05.2025.
[40] *Michelle Bachelet*, Human Rights Violations, United Nations High Commissioner for Human Rights, United Nations News - A Global Perspective Humanitarian Stories, November 5, 2021.
[41] Ibid.

Ahmad Harun served as the Minister of State for the Interior from 2003 to 2005 and was responsible for managing the "Darfur Security Desk," coordinating government bodies involved in counter-insurgency efforts, including the police and armed forces. He is alleged to have knowledge of the crimes committed by the Janjaweed militia and to have encouraged such acts through public speeches. The conflict in Darfur involved the Sudanese government, including the Sudanese Armed Forces and the Janjaweed militia, fighting against organized rebel groups like the Sudan Liberation Movement/Army and the Justice and Equality Movement. During this period, systematic attacks were carried out against towns such as Kodoom and Mukjar, targeting civilians from the Fur, Zaghawa, and Masalit communities, resulting in numerous human rights violations[42].

5.4 Arrest Warrant for Ali Muhammad Ali Abd-Al-Rahman (Kushayb)

On April 27, 2007, the ICC's Pre-Trial Chamber I issued an arrest warrant for Ahmad Harun in the case of *The Prosecutor v. Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman*. However, on June 15, 2020, the case against Abd-Al-Rahman was separated because he was transferred to the ICC, while Harun remains at large. Until Harun is arrested and brought to the court, his case will remain in the pre-trial stage, as the ICC cannot conduct trials in the absence of the accused[43].

5.5 Challenges to international criminal responsibility

The International Criminal Court (ICC) faces significant challenges that may undermine its legitimacy, including a limited record of prosecutions, discord among judges, and strained relations with major powers like Russia and the United States. One major obstacle is Sudan's non-signatory status to the Rome Statute, complicating the enforcement of arrest warrants as the Sudanese government consistently refuses to cooperate, citing sovereignty. This reluctance reflects a broader issue where state sovereignty significantly hinders the effectiveness of tribunals like the ICC.

Sovereignty creates tension between states and external entities like the ICC, as many nations are hesitant to allow investigations or prosecutions of crimes committed within their borders. This reluctance complicates the prosecution of serious international crimes, including genocide and war crimes, as governments often feel such matters should remain within their domestic legal frameworks. Further complicating the situation is the issue of immunities granted to state officials, which can protect individuals from prosecution for serious crimes. Although the ICC has ruled that such immunity does not apply to international crimes, enforcing accountability remains challenging without state

[42] https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/haruneng.pdf , access 15.05.2025, page 4.

[43] *ICRC*, *Customary International Humanitarian Law,* rule 8, citing Protocol I, art. 52(2).

cooperation. Many sitting heads of state claim immunity, complicating efforts to bring them to justice[44].

The ongoing political instability in Sudan further hinders accountability efforts. As the country faces internal conflicts, establishing a stable legal framework for prosecution is a significant challenge. Additionally, external actors complicate peace efforts by supporting opposing factions, prolonging conflicts and escalating violence, often justifying their involvement under humanitarian or national security pretenses[45].

5.6 Regional and international responses

The African Union (AU) has faced criticism for its approach to the ICC, with some member states opposing the court's involvement in African cases. This opposition has weakened regional support for accountability and led to perceptions of the ICC as selectively targeting African leaders while ignoring crimes by powerful nations. In response, the AU has advocated for African regional courts as alternatives to the ICC, proposing the Malabo Protocol to create an African criminal court with jurisdiction over international crimes. This court would also protect sitting heads of state from prosecution during their tenure.

The AU has encouraged member states to resist cooperating with ICC arrest warrants, particularly for sitting leaders. For instance, South Africa declined to arrest Omar al-Bashir during an AU summit in 2015, citing presidential immunity. This stance reflects the AU's argument that prosecuting sitting heads undermines national sovereignty and stability. The AU has also proposed collective withdrawal from the ICC, arguing that the court disproportionately targets African nations. This position stems from concerns that ICC interventions disrupt peace efforts in regions like Darfur. In 2017, the AU encouraged member states to withdraw, leading to Burundi's exit from the ICC, though other countries considered withdrawal but later reversed their decisions. The AU thus plays a dual role: supporting accountability for war crimes while challenging ICC practices perceived as unjust to Africa[46].

6. CONCLUSION

Sudan's existing legal frameworks are inadequate to address war crimes and sexual violence effectively. Legislative reforms must close loopholes and strengthen laws against war crimes, ensuring accountability for perpetrators. The persistence of sexual violence in conflict zones highlights the government's failure to protect vulnerable populations. A concerted effort is required to investigate and prosecute offenders, particularly those

[44] Prosecutor v. Omar Hassan Ahmad Al-Bashir, ICC-02/05-01/09, Warrant of Arrest for violating Art. 25(3)(a) of the Rome Statute, 1, 98 (July 14, 2008), https://www.icccpi.int/CourtRecords/CR2019_02856.PDF, access 15.05.2025.

[45] ICRC, *Customary International Humanitarian Law,* rule 93, citing 1949 Geneva Conventions, common article 3; Protocol I, art. 75(2); Protocol II, art. 4(2).

[46] *Dapo Akande*, South African Withdrawal from the International Criminal Court – Does the ICC Statute Lead to Violations of Other International Obligations? EJIL TALK BLOG OF THE EURO. J. INT'L L. (Oct. 22, 2016),

within security forces. Ongoing political instability in Sudan hinders the establishment of a cohesive legal and judicial framework. The fragmentation of power among various factions complicates efforts to enforce laws and promote national cohesion. The study has also noted that gaps in enforcement mechanisms under international law allow war criminals to evade justice.

Strengthening international cooperation and accountability, particularly through the ICC, is essential for deterring future atrocities. Moreover, regional and local enforcement agencies, including the Sudanese Human Rights Commission, lack the independence and capacity to address human rights violations effectively. Enhancing their capabilities is crucial for the implementation of anti-discrimination laws and conflict resolution. It is therefore, necessary to revise existing laws to criminalize war crimes explicitly and enhance penalties for sexual violence. Legislative reforms should include community policing laws and transitional justice frameworks to ensure accountability. It is also important to strengthen protection for victims of sexual violence. This may be done by establishing victim-sensitive protocols within law enforcement to encourage reporting. This may include the deployment of trained female investigators to handle cases of sexual violence, particularly in conflict-affected regions. Lastly, Sudan should enhance international cooperation, ratify and domesticate the principles of the Rome Statute to strengthen accountability for war crimes; and collaborate with international bodies to ensure effective prosecution and support for victims.