

UNIVERSAL JURISDICTION: IS IT JUST A MERE CONCEPT TO SUDAN?

International law recognizes that certain crimes are so serious that the duty to prosecute them transcends all borders, giving rise to “Universal Jurisdiction” over grave crimes in violation of international law. It 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. These nations have varying degrees of engagement with universal jurisdiction, and their legal systems may differ in terms of their willingness and capacity to pursue such cases. It is essential for victims to consult local legal experts or organizations specializing in human rights to understand the options and support available in each specific country.



A recent picture of gross effects of the war in Elgenniena, West Darfur by RSF and armed militia (Social media)

Through international Human Rights Conventions, Treaties, and Agreements, efforts have been made to strengthen universal jurisdiction and ensure accountability for war crimes. However, the practical implementation of this principle varies across jurisdictions, and there are challenges in terms of political will, capacity, and cooperation among nations. Sudan, plagued by civil unrest and internal conflicts, its political future remains uncertain, and the country continues to face a complex humanitarian crisis with around 9 million Sudanese households receiving assistance and a displaced population estimated at 3.03 million (UNHCR, 2022). The jurisdiction to try cases primarily rests with the Sudanese authorities or international tribunals such as the International Criminal Court (ICC) or ad hoc tribunals established by the United Nations Security Council.

In a recent statement of the ICC Prosecutor, Karim A.A. Khan KC, to the United Nations Security Council on the situation in Darfur, pursuant to Resolution 1593 (2005) he expressed his deep concern for the people of Darfur, sending a clear message to every belligerent, every commander, every foot soldier who has a gun or believes that they have power to do what they want. "That targeting civilians, individuals, targeting their homes, targeting their businesses, intentionally, particularly targeting children and women, are crimes prohibited by the Rome Statute. Attacks against schools, against humanitarian supplies, against humanitarian facilities must cease because the harm that these types of activities are causing are so profound, they go beyond words".¹

Regarding the availability of accessing justice in foreign countries for Sudanese war victims in Africa, it would depend on several factors. Each country has its own legal system and may have different laws, procedures, and policies related to universal jurisdiction and the prosecution of international crimes. It is important to note that political, logistical, and practical challenges can impact the ability to access justice in foreign countries. The willingness and capacity of a country to exercise universal jurisdiction can vary, and cooperation between nations may be required for successful prosecutions.

In September 2021, neighboring countries like Uganda incorporated international law principles into its domestic legal framework, which includes provisions for the prosecution of war crimes. However, the jurisdiction of Uganda's courts is generally limited to crimes committed within its own territory and much is not different with her sister South Sudan.

The crimes that generally fall under the purview of universal jurisdiction

Genocide: Acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. The Darfur genocide is one of the most unforgettable which involved the systematic killing of ethnic Darfuri people. It has become known as the first genocide of the 21st century. The genocide, which was being carried out against the Fur, Masalit and Zaghawa ethnic groups, led the International Criminal Court (ICC) to indict several people for crimes against humanity, rape, forced transfer and torture. [Reports](#) indicate that more than one million children were killed, raped, wounded, displaced, traumatized, or endured the loss of parents and families"

War crimes: Serious violations of the laws and customs of armed conflict, including targeting civilians, torture, and inhumane treatment. Since 2003, civilians in Sudan have been subjected to extreme violence. Following attacks by armed opposition groups, Sudanese government forces responded by targeting not only the fighters, but also the civilian populations of certain ethnic groups that the government accuses of supporting the insurgents. In recent days, civilians have again been killed due to heavy weapons being used in densely-populated areas. It is shocking that 20 years after the Darfur conflict began, the Sudanese authorities are still failing to protect civilians

¹ The ICC, "Statement of ICC Prosecutor, Karim A. A. Khan KC, to the United Nations Security Council on the situation in Darfur, pursuant to Resolution 1593 (2005), 13 July 2023, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-united-nations-security-council-situation-darfur-0>

or to investigate and prosecute those allegedly responsible for crimes committed during the conflict. Civilians in Sudan are caught in unending cycles of indiscriminate armed attacks, as well as other serious crimes and abuses.²

Crimes against humanity: This includes widespread or systematic attacks against a civilian population, such as murder, enslavement, and enforced disappearances, killing dozens and injuring thousands of others, including women and children, were unlawfully detained and ill-treated; and some were forcibly disappeared. In mid-May 2023, hundreds of civilians were killed and injured by militia groups in the Darfur region.³ On 24-26 May 2021, Ali Mohammed Ali Abd-AI-Rahman went on trial at the International Criminal Court (ICC) on [charges](#) of war crimes and crimes against humanity allegedly committed between August 2003 and at least April 2004 in Darfur.

Torture: The intentional infliction of severe physical or mental pain or suffering by a public official or with their consent or acquiescence. Since the Revolution and after the 2021 coup, members of the Rapid Support Forces (RSF) and the Sudanese Armed Forces (SAF) have committed serious human rights violations through the continuous and excessive use of lethal force against civilians, in particular women, youth, activities, human rights defenders and internally displaced persons. After the coup of October 2021, Sudanese security forces including the RSF subjected anti-coup protesters to torture including [beating with lashes and horse pipes, firing gunshots near one's feet, forceful shaving of hair of detainees, rape and custodial deaths of detainees](#).

As we enter the fourth year since the start of the democratic transition, no meaningful steps have been taken to investigate these human rights violations and establish accountability.⁴

We call upon the Sudanese Authorities to:

- √ Co-operate with the ICC without delay to begin discussions on coordinating and transferring suspects to ICC custody, and providing the ICC with any cooperation it may need for its cases, including unhindered access to conduct investigative steps in Sudan;
- √ Discuss plans to investigate and prosecute past serious international crimes with international partners, and determine what international and regional assistance and expertise may be available to support such efforts.
- √ Embark on needed legal and institutional reform to foster accountability for the most serious past violations
- √ Sudanese authorities and neighboring countries to cooperate with the ICC in arresting and prosecuting : Omar al Bashir, Ahmed Haroun and Ali Kushayb accused persons in fueling war crimes in Sudan.

Sudan's International partners to:

² Amnesty International, Sudan: New conflict escalation exacerbates 20 years of suffering for civilians in Darfur, 24 April 2023, <https://www.amnesty.org/en/latest/news/2023/04/sudan-new-conflict-escalation-exacerbates-20-years-of-suffering-for-civilians-in-darfur/>

³ ACJPS, Sudan: At least 1000 people have been killed, several others injured and thousands displaced in Darfur region as the armed conflict between RSF and SAF continues, 21 June 2023, <https://www.acjps.org/sudan-at-least-1000-people-have-been-killed-several-others-injured-and-thousands-displaced-in-darfur-region-as-the-armed-conflict-between-rsf-and-saf-continues/>

⁴ OMCT, Statements, <https://www.omct.org/en/resources/statements/sudan-lack-of-accountability-since-the-beginning-of-the-transitions>

- √ Express the importance of cooperation with the ICC in its Darfur and Khartoum cases
- √ Countries hosting Sudanese refugees to provide rehabilitation and forensic services to the victims.
- √ Identify expertise and assistance that may be available to support such efforts.

Victims of war crimes should not lose hope, as there have been instances where universal jurisdiction has been successfully utilized to prosecute individuals responsible for heinous crimes committed during times of war. It is crucial for victims to seek legal advice and explore available avenues within the countries where they seek refuge to increase the likelihood of justice being served.