

Victim-Centred Accountability in Sudan: Access to Justice, Strategic Litigation and the Limits of Regional Protection Mechanisms During Armed Conflict

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Prepared for the African Bar Association 2026 Annual Conference, Sal, Cabo Verde

Abstract

*The ongoing armed conflict in Sudan has exposed profound weaknesses in African and international accountability mechanisms during periods of militarised political instability. Since the outbreak of hostilities between the Sudanese Armed Forces and the Rapid Support Forces in 2023, widespread atrocities against civilians, mass displacement, attacks on healthcare infrastructure, and the collapse of judicial institutions have intensified an already fragile humanitarian crisis. This paper critically examines the limitations of existing domestic, regional and international legal frameworks in responding to atrocity crimes committed during the conflict. It argues that conventional accountability models remain inadequate where state institutions lack legitimacy, armed actors profit from continued violence, and regional mechanisms operate without sufficient political will or enforcement capacity. Drawing comparative insights from *The Gambia v Myanmar*, *South Africa v Israel* and the 2025 dismissal of *Sudan v United Arab Emirates*, the paper evaluates the promise and the limits of strategic litigation, and contends that durable security and development in Africa require accountability frameworks that prioritise victims, strengthen independent justice institutions, and confront the political economy sustaining armed conflict.*

I. Introduction

The war that erupted on 15 April 2023 between the Sudanese Armed Forces (SAF) and the paramilitary Rapid Support Forces (RSF) has produced what United Nations investigators describe as a war of atrocities. Its features include the deliberate targeting of civilians, sexual violence deployed as a weapon, the systematic destruction of hospitals, markets, water systems and displacement camps, and the reduction of the world's largest displacement and hunger emergency to a matter of statistics.¹ The Independent International Fact-Finding Mission for the Sudan has found that both parties bear responsibility for large-scale attacks on civilians, and that the RSF's conduct during the siege and capture of El Fasher may amount to crimes against humanity, including murder, extermination, enslavement, sexual slavery and

¹ Independent International Fact-Finding Mission for the Sudan, *Sudan: A War of Atrocities* (Report) UN Doc A/HRC/60/22 (22 September 2025) ('FFM, War of Atrocities').

persecution. At the level of fact, Sudan is not a difficult case. The difficulty lies primarily at the level of remedy.

That difficulty is the subject of this paper. Paradoxically, 2025 was a year of unprecedented legal activity concerning Sudan, yet none of its landmark developments protected a single civilian in Darfur. In October 2025 the International Criminal Court (ICC) secured its first conviction arising from the 2005 Security Council referral of Darfur, finding the former Janjaweed commander Ali Muhammad Ali Abd-Al-Rahman guilty of twenty-seven counts of war crimes and crimes against humanity.² In May 2025 the International Court of Justice (ICJ) dismissed Sudan's own attempt to litigate genocide against the United Arab Emirates, holding that it manifestly lacked jurisdiction.³ Throughout, the Fact-Finding Mission continued to document atrocities it had no power to halt. Each of these landmarks illuminates a distinct failure of the accountability architecture on which victims are told to rely.

This paper advances a single argument. The conventional models of accountability, namely domestic prosecution, regional human-rights protection, international criminal justice and inter-state litigation, each fail Sudan at the point of greatest need, and they do so for structural rather than incidental reasons rooted in state consent, custody, selectivity and the absence of enforcement. It follows that accountability cannot be entrusted to any single mechanism operating in isolation. The paper therefore proposes a victim-centred framework that reconceives accountability as a layered strategy, comprising evidence preservation, internationalised mechanisms, universal jurisdiction, targeted sanctions directed at the war's political economy, and interim reparative measures, designed to function without the consent or good faith of the states most implicated in the violence. The analysis is doctrinal and comparative, and it concentrates on the pathways with the greatest present traction rather than cataloguing every conceivable forum.

II. The Anatomy of Impunity: Conflict and the Collapse of Domestic Justice

The present conflict is less a rupture with Sudan's past than its continuation by familiar hands. The RSF traces its lineage directly to the Janjaweed militias that the Sudanese government mobilised against non-Arab communities in Darfur two decades ago, the same

² *Prosecutor v Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')* (Judgment) ICC-02/05-01/20 (Trial Chamber I, 6 October 2025).

³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in Sudan (Sudan v United Arab Emirates)* (Request for the Indication of Provisional Measures: Order) (5 May 2025) ('Sudan v UAE').

forces whose 2003 to 2004 campaign against the Fur, Zaghawa and Masalit populations⁴ furnished the factual basis for the Ali Kushayb conviction.⁵ The continuity is not merely rhetorical. Impunity for the first Darfur atrocities, secured through two decades of non-enforcement, removed any deterrent and allowed those actors to consolidate into a national paramilitary force capable of waging the second. In the Sudanese case, accountability delayed has meant atrocity repeated.

Since April 2023 the pattern has intensified. The Fact-Finding Mission, established by the Human Rights Council in October 2023, has reported ethnically targeted killings, mass sexual violence, and the destruction of the infrastructure necessary for survival.⁶ The eighteen-month siege of El Fasher culminated in the city's fall to the RSF in October 2025, accompanied by reports of summary executions and sexual violence along the routes of escape, which UN experts characterised as foreseeable and preventable.⁷ More than twelve million people have been displaced and famine conditions have taken hold. In January 2025 the United States determined that the RSF and allied militias had committed genocide,⁸ a determination that carries political weight but no automatic legal consequence.

Against this background, the premise on which the international system ordinarily rests, that the territorial state will investigate and prosecute, is not merely weak but inverted. Sudan's courts do not function as independent institutions during active hostilities; the judiciary lacks security, resources and reach; perpetrators control the very territory in which crimes are committed; and victims are displaced beyond the state's protective capacity. The doctrine of complementarity that structures international criminal law assumes a state willing but perhaps unable, or able but perhaps unwilling, to prosecute.⁹ Sudan presents the harder configuration, in which the state is itself a party to the atrocities and its principal organs are among the alleged perpetrators. Where that is so, the burden of accountability necessarily shifts outward, to

⁴ The three largest non-Arab, indigenous African ethnic groups in the Darfur region of western Sudan and eastern Chad.

⁵ *Ali Kushayb* (n 2).

⁶ HRC Res 54/2 (11 October 2023) UN Doc A/HRC/RES/54/2 (establishing the Fact-Finding Mission); mandate extended by HRC Res 57/2 (October 2024) and HRC Res 60/3 (October 2025).

⁷ OHCHR, 'Sudan: Concerned about the plight of civilians in El Fasher, UN Experts urge immediate protection measures and an end to impunity' (Press Release, 30 October 2025).

⁸ US Department of State, 'Genocide Determination in Sudan' (Press Statement, 7 January 2025).

⁹ Article 17 of the Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 (Rome Statute).

regional and international mechanisms, and it is there that the structural limits examined below begin to bite.

III. The Limits of the African Regional Protection System

Sudan is a party to the African Charter on Human and Peoples' Rights,¹⁰ and the Charter's substantive guarantees, including the right to life, to dignity, to freedom from cruel and degrading treatment, and to a remedy, are plainly engaged by the conduct documented in Darfur. The difficulty is not normative but institutional. The African system's enforcement architecture is not built to deliver binding relief against an unwilling state in the midst of armed conflict.

A. The Commission and the Court

The African Commission on Human and Peoples' Rights is a quasi-judicial body whose findings take the form of recommendations rather than binding judgments. Its procedures are slow, its remedial capacity limited, and its recommendations depend for their implementation, on the cooperation of the very states they indict, cooperation that Sudan has historically withheld. The African Court on Human and Peoples' Rights, created by the 1998 Protocol to render binding decisions,¹¹ might in principle offer more. Its reach is nonetheless curtailed by the architecture of consent. Of the fifty-five African Union Member States, only thirty-four have ratified the Court Protocol, and Sudan is not among them.¹² A state that has not ratified the Protocol cannot be brought before the Court at all. Even among ratifying states, only eight have made the further declaration under Article 34(6) that permits individuals and non-governmental organisations to seise the Court directly; absent such a declaration, victims must route their complaints through the Commission. For Sudan both doors are closed: there is no ratification to open the first, and no declaration to open the second.

Two further limitations compound the problem. First, the African Court possesses no criminal jurisdiction; it adjudicates state responsibility for human-rights violations, not individual criminal guilt. The proposed African Court of Justice and Human Rights, which the 2014 Malabo Protocol would endow with an international criminal chamber, is not in force,

¹⁰ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 ('African Charter').

¹¹ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (adopted 9 June 1998, entered into force 25 January 2004) ('African Court Protocol').

¹² African Court on Human and Peoples' Rights, 'Basic Information' (of 55 AU Member States, 34 have ratified the Protocol and only 8 have made the Article 34(6) declaration permitting direct access by individuals and NGOs). Sudan is not among the ratifying States.

and in any event contains an immunity clause shielding serving Heads of State and senior officials, precisely the actors most likely to bear command responsibility for atrocity crimes.¹³ Second, the regional system's political organs, though rhetorically committed to a doctrine of non-indifference, remain sovereignty-protective in practice.

B. The African Union's Political Track

The African Union's Constitutive Act asserts a right to intervene in a Member State in respect of grave circumstances, namely war crimes, genocide and crimes against humanity.¹⁴ That provision has rarely been operationalised, and Sudan illustrates why. The Union's response to the conflict has been channelled through mediation and communiques rather than coercive protection; its suspension of Sudan following the 2021 coup reduced rather than enhanced its leverage over the belligerents; and its consensus-driven decision-making tends to privilege the prerogatives of member states over the protection of their populations. The parallel processes convened under regional and international auspices, among them the Jeddah track¹⁵ and the mediation efforts associated with IGAD,¹⁶ have repeatedly foundered on the warring parties' preference for military advantage over civilian lives. The net result is that the African regional system, as a whole, is presently capable of documentation and diplomacy but not of remedy. It can describe the harm and appeal for its cessation; it cannot compel a party to answer for it.

IV. International Criminal Accountability: The Promise and the Pathology

Because Sudan is not a party to the Rome Statute, the ICC's jurisdiction over Darfur rests entirely on the Security Council's referral of the situation in Resolution 1593 (2005).¹⁷ That referral is at once the source of the Court's authority and the origin of its dependence: a jurisdiction conferred by the Council can be starved of cooperation by the same body's

¹³ Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (adopted 27 June 2014, not yet in force) ('Malabo Protocol') art 46A bis.

¹⁴ Constitutive Act of the African Union (adopted 11 July 2000, entered into force 26 May 2001) 2158 UNTS 3, art 4(h).

¹⁵ A diplomatic mediation initiative launched in May 2023 by Saudi Arabia and the United States to secure a ceasefire and resolve the war in Sudan.

¹⁶ The Intergovernmental Authority on Development (IGAD) is an eight-country East African regional bloc that serves as a primary institutional mediator for conflicts in the horn of Africa.

¹⁷ UNSC Res 1593 (31 March 2005) UN Doc S/RES/1593 (referring the situation in Darfur since 1 July 2002 to the ICC Prosecutor).

inaction, and by the non-cooperation of the referred state.¹⁸ For a while the Darfur file was emblematic of the Court's structural constraints, a bold mandate stalled by politics.

The Ali Kushayb judgment of October 2025 broke that impasse, and its significance should not be understated. It is the first conviction to emerge from the referral, and it authoritatively established, across 355 pages of findings, the coordinated character of the 2003 to 2004 assaults on non-Arab communities and the accused's role within them.¹⁹ Yet the judgment is as instructive in its limits as in its achievement. It arrived more than twenty years after the crimes and two decades after the referral. It was secured only because the accused surrendered voluntarily in 2020, for the Court has no police force of its own. It addresses a single mid-level commander, while the warrants against those bearing the greatest responsibility, including the former President Omar al-Bashir, against whom charges of genocide stand, remain unexecuted, al-Bashir himself reportedly in Sudanese custody but untransferred.²⁰ The Prosecution's pursuit of a severe sentence does not alter the underlying arithmetic of enforcement.²¹

Three structural pathologies are visible here. The first is the custody problem: an institution that cannot arrest depends on the willingness of states to surrender their own officials, a willingness rarely forthcoming. The second is selectivity and great-power fragility: the Court now operates under sanctions imposed by the United States in 2025, a reminder that international criminal justice remains vulnerable to the coercive displeasure of powerful states.²² The third is temporal: individualised criminal accountability, even where it succeeds, is retrospective and slow, and is therefore ill-suited to protecting civilians during an ongoing campaign. The Court punishes yesterday's atrocities long after they have been superseded by today's.

It is precisely because judicial mechanisms cannot reach the present conflict that the Fact-Finding Mission has assumed a function that is, in substance, evidentiary custodianship. By investigating, establishing patterns and identifying those responsible, the Mission preserves the

¹⁸ The Security Council referral to the Prosecutor of the ICC is pursuant to Article 13(b) of the Rome Statute.

¹⁹ *Ali Kushayb* (n 2).

²⁰ *Prosecutor v Omar Hassan Ahmad Al Bashir* (Second Warrant of Arrest) ICC-02/05-01/09 (Pre-Trial Chamber I, 12 July 2010) (adding three counts of genocide to the warrant of 4 March 2009). Warrants also remain outstanding against Ahmad Harun and Abdel Raheem Muhammad Hussein.

²¹ *Ali Kushayb* (n 2). The Prosecution sought a life sentence; sentencing proceedings followed the conviction in late 2025.

²² Executive Order 14203, 'Imposing Sanctions on the International Criminal Court' (6 February 2025).

raw material of future prosecutions against the day when a competent forum can act.²³ That role, keeping the evidentiary record alive across the gap between crime and prosecution, points toward the reconstructive proposals developed in Part VI. Before turning to them, it is necessary to examine the mechanism that has generated the greatest recent hope, and the sharpest recent disappointment, namely strategic litigation before the World Court.

V. Strategic Litigation Before the ICJ: *Erga Omnes Partes* and Its Limits

The doctrinal foundation for inter-state litigation over atrocity crimes lies in the recognition that certain obligations are owed not bilaterally but to the international community as a whole. In its celebrated dictum in *Barcelona Traction*, the ICJ distinguished obligations *erga omnes*, including the outlawing of genocide, in whose observance all states have a legal interest.²⁴ Applied to the Genocide Convention, whose object the Court had already identified as the shared interest of all parties in accomplishing its humanitarian ends,²⁵ this yields the principle of obligations *erga omnes partes*: every state party has a common interest in compliance, and the Court has confirmed that the Convention's obligations bind *erga omnes*.²⁶ The practical consequence is transformative for standing. A state need not be specially affected, nor the victims its own nationals, to invoke another party's responsibility.

A. The Model: *The Gambia v Myanmar*

The Gambia v Myanmar operationalised this principle. A small West African state with no territorial or national connection to the persecution of the Rohingya invoked the Genocide Convention against Myanmar. At the provisional-measures stage in January 2020 the Court found The Gambia to possess *prima facie* standing on the basis of the Convention's *erga omnes partes* character and ordered protective measures.²⁷ In its 2022 judgment on preliminary objections the Court confirmed that standing, rejecting Myanmar's argument that only an injured state could sue and holding that the entitlement to invoke responsibility does not depend

²³ Independent International Fact-Finding Mission for the Sudan, Report UN Doc A/HRC/57/23 (7 November 2024).

²⁴ *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)* (Second Phase) [1970] ICJ Rep 3, [33]-[34].

²⁵ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* (Advisory Opinion) [1951] ICJ Rep 15, 23.

²⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Judgment) [2007] ICJ Rep 43; on attribution and complicity see [391]-[424].

²⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)* (Provisional Measures: Order) [2020] ICJ Rep 3.

on the nationality of the victims or on special injury.²⁸ For the purposes of this paper the case is a template. It demonstrates that the enforcement of atrocity-prevention norms can be widened beyond the politics of power, and that an African state can act as guardian of the community interest.

B. The Model Extended: South Africa v Israel

South Africa v Israel applied the same architecture on a far larger stage. Filed in December 2023, the case produced provisional measures in January 2024 requiring Israel to prevent acts within the scope of the Convention and to enable humanitarian assistance, reinforced by further orders in March and May 2024.²⁹ The subsequent procedural history is as instructive as the orders themselves. South Africa's Memorial ran to more than 750 pages; Israel's Counter-Memorial followed only in 2026 after repeated extensions; and the Court has fixed a Reply and Rejoinder that extend the written phase for years to come.³⁰ The case thus displays both the reach of strategic litigation, namely its capacity to place a powerful state's conduct under binding provisional obligations and sustained judicial scrutiny, and its limits, namely that provisional measures are protective rather than dispositive, that compliance is not self-executing, and that a merits judgment lies years away.

C. The Cautionary Tale: Sudan v United Arab Emirates

Sudan itself attempted to deploy this model, and its failure is the most important recent lesson for any litigation strategy concerning the conflict. In March 2025 Sudan instituted proceedings against the United Arab Emirates, alleging that the UAE's logistical, financial and military support for the RSF amounted to complicity in genocide against the Masalit in West Darfur, and it sought provisional measures requiring the UAE to cease that support. On 5 May 2025 the Court held, by fourteen votes to two, that it manifestly lacked jurisdiction, because the UAE had entered a reservation to Article IX of the Genocide Convention, the very provision conferring the Court's jurisdiction over disputes under the Convention, and, by nine votes to

²⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)* (Preliminary Objections: Judgment) (22 July 2022).

²⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Provisional Measures: Order) (26 January 2024).

³⁰ *ibid*; further Orders of 28 March 2024 and 24 May 2024. South Africa's Memorial was filed on 28 October 2024; Israel's Counter-Memorial in 2026 after extensions; the Court fixed a Reply and Rejoinder running into 2027 to 2029.

seven, it removed the case from the General List.³¹ The dissents notwithstanding, the outcome stands.³²

The doctrinal lesson is precise, and it cuts against easy optimism. *Erga omnes partes* solves the problem of standing; it does nothing to solve the problem of jurisdictional consent. A reservation to Article IX is a wall that community-interest standing cannot climb. The Gambia and South Africa could proceed because their respondents had not reserved; Sudan could not proceed because its respondent had. It follows that any strategic-litigation strategy for Sudan must begin not with the strength of the substantive case but with the Article IX reservation status of the prospective respondent, the decisive variable the UAE case exposed. Litigation against external enablers who have reserved is foreclosed at the threshold. Litigation directed at respondents who have not reserved remains available, subject to the further and formidable obstacle of attribution, since holding a state responsible for the conduct of a non-state armed group such as the RSF requires proof of control or complicity to the demanding standard the Court articulated in *Bosnia v Serbia*.³³

Strategic litigation is therefore real but partial. It can preserve norms, generate provisional obligations, and mobilise political pressure; it can position an African applicant as a defender of the global interest. It cannot, on its own and in real time, protect civilians, and it is bounded at every turn by consent, attribution, delay and the absence of enforcement. Recognising those limits is not a counsel of despair but the precondition for designing a framework that does not depend on any single mechanism succeeding.

VI. Toward a Victim-Centred Accountability Framework

If the preceding analysis is correct, the error common to each conventional model is that it is perpetrator-centred, retrospective and consent-dependent. It waits for a competent forum to acquire jurisdiction over a named individual or a consenting state, and in the interval the victim is left without protection or remedy. A victim-centred approach inverts these priorities. It treats accountability not as a single terminal event, a conviction or a judgment, but as a

³¹ *Sudan v UAE* (n 3). The Court found, by 14 votes to 2, that it manifestly lacked jurisdiction owing to the UAE's reservation to Article IX, and, by 9 votes to 7, removed the case from the General List.

³² For critical commentary see 'Judicial Restraint and Jurisdictional Clarity: Decoding the ICJ's Decision in *Sudan v United Arab Emirates*' (EJIL:Talk!, May 2025); 'The End of Treaty Reservations as We Know Them? Not Yet' (Opinio Juris, June 2025).

³³ *Bosnia v Serbia* (n 22).

layered and sequenced strategy whose components can operate even where the principal judicial routes are blocked. Five components merit particular emphasis.

First, evidence preservation through an internationalised mechanism. The Fact-Finding Mission already performs an evidentiary custodianship function, but its mandate is periodic and its outputs are not calibrated to the admissibility standards of criminal courts. A dedicated mechanism modelled on the International, Impartial and Independent Mechanism established for Syria, tasked with collecting, consolidating, preserving and analysing evidence to the standard required for prosecution and with preparing case files for any competent jurisdiction, would directly counter the temporal pathology identified in Part IV.³⁴ It ensures that the passage of time strengthens rather than defeats the eventual prosecution, and it does so without requiring the consent of the Sudanese state.

Second, hybrid and internationalised adjudication. Once conditions permit, a hybrid tribunal combining international and Sudanese personnel under African Union and United Nations auspices, on the model of the Special Court for Sierra Leone, the Extraordinary Chambers in Cambodia, or the Special Criminal Court in the Central African Republic, could marry international legitimacy and capacity with proximity to the affected population. Such a body keeps ownership of justice closer to victims than a distant Court in The Hague, and it can be designed to address the command responsibility that individualised ICC prosecutions have struggled to reach.

Third, universal jurisdiction in third states. National prosecutions abroad offer a decentralised route that is structurally immune to Security Council paralysis and to the non-cooperation of the territorial state. The conviction of a former Syrian official by the Higher Regional Court of Koblenz in Germany demonstrates that domestic courts exercising universal jurisdiction can deliver concrete accountability for atrocity crimes committed elsewhere.³⁵ Encouraging states with the requisite legislation to open structural investigations into crimes committed in Sudan, investigations that depend once again on preserved evidence, multiplies the fora in which perpetrators may eventually be held to answer, and constrains their freedom of movement in the interim.

³⁴ GA Res 71/248 (21 December 2016) UN Doc A/RES/71/248 (establishing the International, Impartial and Independent Mechanism for the most serious crimes under international law committed in Syria since March 2011).

³⁵ Judgment of the Higher Regional Court of Koblenz in the *Al-Khatib* trial (13 January 2022), convicting a former Syrian intelligence official (Anwar Raslan) of crimes against humanity under the principle of universal jurisdiction.

Fourth, targeted sanctions directed at the political economy of the war. Durable accountability must confront not only those who pull triggers but the revenue and supply networks that make the war profitable and sustainable, among them the gold trade, external military and financial backing, and the arms flows that continue notwithstanding the Darfur embargo.³⁶ Sanctions narrowly targeted at commanders and financiers, and at the commercial networks through which the belligerents fund themselves, attack the incentives sustaining the violence directly, in a way that retrospective criminal justice cannot. The facts underlying *Sudan v United Arab Emirates*, whatever the jurisdictional outcome, underscore how central external enablers are to the war's continuation, and therefore how central they must be to any strategy that takes civilian protection seriously.

Fifth, interim reparative and protective measures. A victim-centred framework does not defer all relief to a final judgment that may never come. It supports survivors in the present, through documentation, reparation registries and interim assistance, and it treats provisional measures and other soft mechanisms as instruments for generating present pressure rather than as mere preludes to a distant merits phase. Reparation, on this view, is a process that begins now, not a remedy reserved for a post-conflict future that the belligerents have every incentive to postpone.

These components are complementary rather than alternative, and their sequencing matters. Evidence preservation underwrites both universal-jurisdiction prosecutions and any future hybrid tribunal, while sanctions and interim measures operate in the present to reduce the harm that later accountability will have to address. Framed in this way, accountability is not a post-conflict luxury to be indulged once peace has been secured. It is an investment in security and development. Impunity is itself a driver of instability, as the through-line from the Janjaweed to the RSF attests, and a continent whose integration and prosperity agenda depends on stability cannot treat the two as severable. Confronting impunity is part of building a resilient Africa, not a distraction from it.

VII. Conclusion

Sustainable peace in Sudan will not be delivered by ceasefire diplomacy alone. The events of 2025 lay bare, with unusual clarity, why each conventional accountability track fails at the

³⁶ UNSC Res 1591 (29 March 2005) UN Doc S/RES/1591 (targeted measures reinforcing the Darfur arms embargo first imposed by UNSC Res 1556 (30 July 2004)). On continued external supply notwithstanding the embargo, see FFM, War of Atrocities (n 1).

point of need. Domestic justice is inverted where the state is a party to the atrocities. The African regional system can document and deplore but cannot compel, and its judicial arm cannot reach a state that has never ratified the relevant Protocol. International criminal justice, vindicated at last in the Ali Kushayb conviction, remains hostage to the custody problem, to selectivity, to great-power coercion, and to a tempo that punishes the past while the present burns. Strategic litigation, for all the promise of *erga omnes partes* standing displayed in *The Gambia v Myanmar* and *South Africa v Israel*, was halted at the jurisdictional threshold in *Sudan v United Arab Emirates* by nothing more than a treaty reservation.

The response cannot be to abandon these mechanisms but to stop relying on any one of them in isolation. A victim-centred framework that preserves evidence to prosecutorial standard, builds internationalised and hybrid fora, mobilises universal jurisdiction, targets the political economy of the war, and delivers reparative relief in the present, offers the more realistic path, precisely because it decouples accountability from the consent and custody of the states most implicated in the violence. For African legal institutions in particular, Sudan is a test of whether a resilient Africa can construct accountability frameworks that protect victims and confront the economics of war, or whether documentation without remedy will remain the continent's settled answer to atrocity. The plea of Sudan's victims is not for sympathy but for justice made effective, and it is by that standard that the frameworks examined in this paper should ultimately be judged.