**Who will support Sudan?**

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In the few months since fighting broke out between the Sudanese army and the Rapid Support Forces (RSF) on April 15, thousands of civilians have been killed in callous attacks directly targeting them, in Khartoum, Darfur and beyond. Many more have perished from lack of access to food, water and medical care. Millions have been displaced.

Comparatively weak on the ground, the army has resorted to bombing civilian districts to attack the RSF. In the capital of West Darfur, el-Geneina, the RSF has assassinated the governor and the humanitarian aid commissioner, and killed many doctors, journalists and humanitarians. Members of the paramilitary group looted houses, banks and hospitals. They also appeared on widely shared videos chanting in the streets of el-Geneina, “No more Massalit”, referring to a group that considers West Darfur its homeland.

Undoubtedly, serious crimes, indeed international crimes, are being committed in Sudan. The UN Secretary-General Antonio Guterres has said that “the scale and speed of Sudan’s descent into death and destruction is unprecedented”. Sudanese are therefore asking, where is the International Criminal Court (ICC) amid all this carnage and suffering?

When I was doing research in Sudan in 2008, Darfuris had high expectations of the ICC. After the ICC Prosecutor Luis Moreno Ocampo requested an arrest warrant for Sudanese President Omar al-Bashir, several newborns in camps for the displaced in Darfur were named ‘Ocambo’ after him. The prosecutor fuelled Sudanese expectations to find justice at the ICC with strong statements such as, “Arrest today, and you have peace and justice tomorrow.” Darfuri children were even witnessed capturing a hedgehog, naming it ‘Bashir’, tying it to a string and pretending that they were taking it to the court in The Hague.

But these expectations were quickly quashed: without its own police force, the ICC could not enforce its arrest warrant for al-Bashir. So rather than ending his reign, the ICC arrest warrant helped strengthen the Sudanese president’s grip on power. In response to the ICC’s move, among other things, he created a new security force for his own protection: the Rapid Support Forces, drawn from the infamous Janjaweed militias that he had used to suppress rebellion in Darfur. These were the militias that had been internationally accused of committing war crimes, crimes against humanity, if not genocide, in Darfur. This is the force now fighting the Sudanese army, and inflicting immense suffering on the people of Sudan.

In the end, not the ICC but the people of Sudan brought al-Bashir down.

Through months of brave, peaceful protests, Sudanese men and women of all ages, weathering violent responses from al-Bashir’s security apparatus, generated the political momentum that led to the toppling of his regime in 2019. The president was thrown into the same prison in which he had locked up opponents. Other leading Sudanese figures on the ICC’s wanted list were also imprisoned.

The army, RSF and civilian representatives formed an uncomfortable coalition government. While the civilian component of the coalition government was willing to talk about cooperation with the ICC, including the transfer of al-Bashir and other suspects to The Hague, the army and the RSF were more reticent, fearful that the testimony of ICC suspects might incriminate others in the army and the RSF. It is no coincidence that the army and the RSF ousted the civilians from the government with another coup in October 2021, just as they started taking steps towards deepening their cooperation with the ICC.

Today, the army and the RSF are once again fighting to control Sudan and committing grave international crimes in the process – the brazen brutality of their actions is on display for anyone to see in countless videos shared on social media.

In the face of so much evidence of international crimes, and such blatant impunity, the silence of the International Criminal Court during the last three months has been deafening and astounding. The court’s social media accounts and website are filled with news about Prosecutor Karim Ahmad Khan’s work in Venezuela, the Democratic Republic of the Congo, and, first and foremost, Ukraine. However, not a single statement on Sudan has been published there since the outbreak of the latest war. The first will probably appear after the prosecutor fulfils his obligation to report on Darfur on a six-monthly basis to the Security Council, later today.

It is mystifying that this court which in several situations – including in the latest Kenyan elections – has quickly issued deterrent statements to the effect of “we are watching you”, has maintained such a studied silence on Sudan.

In situations where it has no jurisdiction, such as Syria, the court’s silence is understandable. But jurisdiction is no obstacle in Sudan’s case. After all, a strong thread connects the situation in Darfur that the UN Security Council referred to the court in 2005 to the current violence. The issues are closely connected, the actors are the same (including the men currently at the top – General Abdel Fattah al-Burhan and General Mohamad Hamdan “Hemedti” Dagalo, even if they have changed alliances) and at least for the crimes in Darfur, the scene of the crimes is the same.

Sudanese have been forced to speculate as to why the court has opted to remain silent about the new episode of turmoil in their country.

One prevalent theory is that the ICC is trying not to antagonise the army and the RSF, because it believes that one of these forces may still decide to hand over al-Bashir and other Sudanese suspects to the court in return for being spared. Recent intelligence suggests that the military medical corps are holding al-Bashir in Khartoum’s twin city, Omdurman – which has endured relentless attacks from the RSF – and they are believed to hope that capturing al-Bashir would whitewash their crimes and spare them from prosecution. Prosecutor Khan may be hoping that either the army or the RSF may eventually find it beneficial to deliver al-Bashir to the court, and therefore does not want to incriminate either.

Prosecutor Ocampo had employed a similar strategy in 2007 when he refrained from requesting an arrest warrant against al-Bashir in the hope that the president would “sacrifice” the two high-ranking officials for whom the prosecutor had already requested warrants. Only when that strategy failed did he also go for al-Bashir.

This “silence in exchange for potential cooperation” strategy is unlikely to work for Prosecutor Khan, either. Such a strategy not only prevents the court from taking timely action against those committing obvious international crimes, but creates the impression that it would not hesitate to placate complicit actors in order to execute its existing arrest warrants. This would surely entrench rather than counter the impunity of those who disregard national and international laws.

Another potential explanation for the ICC’s current silence on Sudan is that the court has redirected its resources away from Sudan to other places, particularly Ukraine. If true, this simply accentuates the double standards that the Sudanese are experiencing in European refugee policies – special arrangements for Ukrainians affected by war; none for Sudanese affected by war – and makes a fiction of the impartiality of “global justice”.

Sudanese have long concluded that, contrary to some of Prosecutor Ocampo’s slogans in the court’s early days, the ICC on its own cannot bring peace to Sudan. Sudan’s conflicts require complex multidimensional solutions in which justice is just one component. And Sudanese also know that this court would not even be able to try individuals responsible for their suffering unless they are physically delivered to the ICC by those in power.

Nevertheless, the ICC can still deliver justice to the Sudanese, by upholding values and demonstrating that it is actively investigating ongoing international crimes there, even when they are committed by persons whose cooperation the court needs to gain custody of other suspects.

The ICC must investigate not only the ongoing crimes in Darfur, but also those beyond Darfur and Sudan.

Excerpted: ‘Why is the International Criminal Court so silent on Sudan?’ Courtesy: Aljazeera.com