

The fall of El Fasher shows the limits of international law

The fate of El Fasher in Sudan exposes the widening chasm between international humanitarian law's prohibition on starvation as a method of warfare and the mechanisms available to enforce it, writes Bhavya Johari.

On 26 October 2025, the Rapid Support Forces (RSF) **captured El Fasher**, the capital of Sudan's North Darfur, after an 18-month siege. The RSF, a paramilitary group fighting the Sudanese Armed Forces (SAF) since April 2023, had systematically starved the city's population in the preceding months. Within days of the city falling, UN **investigators documented** house-to-house executions, the massacre of nearly 500 people at Al-Saudi Maternity Hospital, and ethnically targeted attacks against the Zaghawa, Fur, Masalit, and Tunjur communities.

The UN's September 2025 **Fact-Finding Mission found** that both the RSF and SAF had used starvation as a method of warfare, conduct that may amount to the crime against humanity. The UN reported that the RSF had targeted markets, agricultural land, and civilian infrastructure. The prohibition is unambiguous: **Article 54 of Additional Protocol I** explicitly forbids destroying objects indispensable to civilian survival, and the **2019 Rome Statute amendment** concretised this prohibition within the auspices of war crimes under Article 8(2)(e)(ix) as well.

Yet El Fasher demonstrates that legal prohibitions without enforcement remain aspirational. The RSF's siege strategy extended tactics employed with impunity throughout the conflict.

Markets were shelled, humanitarian convoys attacked, and **over 84 Sudanese humanitarian workers were killed** between April 2023 and April 2025. The international response reinforced rather than challenged this calculus. In November 2024, **Russia vetoed** a draft Security Council resolution that merely sought to guarantee humanitarian access. **Arms continued flowing to the RSF** despite documented violations of the Darfur embargo. The lesson was clear: weaponizing hunger carried no meaningful cost.

The Kushayb conviction

On 6 October 2025, three weeks before El Fasher fell, the ICC **convicted Ali Kushayb** on 27 counts of war crimes and crimes against humanity for commanding Janjaweed militias during the 2003-2004 Darfur conflict. It was the ICC's first Darfur conviction and the **first for gender-based persecution** in the Court's history.

The timing was bitterly ironic. As judges pronounced guilt for atrocities committed two decades ago, the RSF, which emerged from the very Janjaweed militias Kushayb commanded, was preparing its final assault on El Fasher.

The ICC Prosecutor has been **preparing new arrest warrant applications** for crimes committed since April 2023. However, the Court's jurisdiction remains constrained by the **2005 Security Council referral**, covering only Darfur. The current conflict has engulfed the entire country, with

atrocities documented in Khartoum, Kordofan, and Gezira falling outside the ICC mandate. The UN Fact-Finding Mission **called for expanded jurisdiction**, but with Russia having vetoed previous Sudan resolutions, such expansion remains politically unlikely.

The genocide gap

The divergence between political and judicial characterisations complicates accountability. In January 2025, then Secretary of State Antony Blinken **determined the RSF had committed genocide**, finding forces had systematically murdered men and boys, even infants, on an ethnic basis and targeted women for sexual violence. The determination further imposed sanctions against RSF leader Mohamed Hamdan Dagalo (Hemedti) and seven affiliated companies based in the United Arab Emirates (UAE).

UN fact-finding investigators, whose September 2025 report **stopped short of the genocide label**, explained that the evidence looks at more or less the same kind of violations as genocide, but emphasised that extermination as a crime against humanity captured the same conduct. The distinction matters less to victims than to legal institutions; yet it illustrates how different legal thresholds and mandates can yield dissonant conclusions about the same underlying facts.

This gap between a political genocide determination and more cautious UN legal characterisations has practical consequences. Genocide determinations carry diplomatic weight but create no automatic, binding obligations. As a result, the Biden administration's designation translated into targeted sanctions rather than a broader civilian-protection strategy or sustained pressure on external sponsors of the RSF. External actors continued to fuel the conflict; despite **documented arms transfers to the RSF**, the UAE largely absorbed reputational costs while denying involvement, illustrating how atrocity labels alone do not constrain states that enable the violence.

Reconstructing accountability

The aftermath of El Fasher demands a fundamental reassessment of how international law addresses starvation crimes. Three interventions are necessary.

First, the temporal gap between criminalisation and prosecution must narrow. The Kushayb conviction, delivered 20 years after the crimes, demonstrates international justice can function, but the delay gutted its deterrent effect. Warrant applications for crimes committed after 2023 must proceed with unprecedented urgency. Perpetrators currently commanding forces in Darfur must understand accountability will not wait a generation.

Second, ICC jurisdiction must extend beyond Darfur. If the Security Council cannot expand the referral, alternatives exist: Sudan could accept ICC jurisdiction nationwide, individual states could pursue **universal jurisdiction prosecutions**, and regional mechanisms, such as those through the African Union, could complement ICC efforts.

Third, the international community must confront foreign enablers. The **UAE's documented role** in arming the RSF and the broader network of gold smuggling and weapons trafficking sustaining the conflict must face coordinated pressure. Financial institutions facilitating RSF commerce should face **secondary sanctions**; companies procuring weapons should face criminal prosecution.

The civilians of El Fasher, those who survived the siege, those who died fleeing, and those whose fates remain unknown, deserve more than legal frameworks that prohibit their suffering in theory while failing to prevent it in practice. The Kushayb conviction proves international justice is possible. Whether it remains meaningful depends on closing the gap between law on paper and law in action before Sudan's tragedy becomes permanent.

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