

XXXV
TECMUN



**International Criminal
Court**

“Unless someone like you cares a whole awful lot, nothing is going to get better, It's not.”

-Dr Seuss, The Lorax.

Dear judges and delegates,

Welcome to another edition to the best thing that happened in my life, another edition of a model that marks paths in the life of many ones that are or were part of it, another edition of the forum where you can raise your voice and advocate for a better world, welcome to TECMUN. Thank you judge, thank you delegate for being here in the International Criminal Court the most unique committee that this model has. Prepare yourself to take on this new challenge. During three days in these four walls, you are going to be the agent of change that is going to make a difference. They are so many atrocities occurring nowadays. Crimes against humanity, genocides, war crimes and aggression happening in Sudan, Peru, Colombia, South Africa, Mexico, and all around the world, reflect what we as human beings are doing wrong. Now is the time change, to take the reins, step out of our comfort zone and do something to fix our mess up world.

“There comes a time when we hear a certain call when the world must come together as one [...]” Few people listen to this call, and fewer are the ones that answer to it. As individuals with privileges, it's our duty to attend this call, to stand for rights things and fight for it, to make a better place for both weak and strong. Maybe sometimes we feel minuscule compared to the magnitude of the atrocities or simply unable to solve them. Sometimes we feel that our voice will not be heard or that our actions aren't going to transcend and we are not going to make a change. Throughout my short life, I discover that we are the only ones that limit our potential, maybe for others we are like superheroes at the time we think we aren't enough. It's only when someone believes in us and gave us support, at that moment we recover our confidence, we open our eyes and have faith in ourselves. We start to make a change because we know we are enough and capable of it. In these four walls for these three days I want to be that someone for you, you are immense to me judge and delegate. You just have to believe in yourself to begin the change

President Montserrat Olivas Ramos
President of the International Criminal Court
XXXV TECMUN

Background of the International Criminal Court

The International Criminal Court (hereinafter referred to as ICC) is a permanent international judicial body to try individuals for genocide, crimes against humanity and war crimes. Created to substitute the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, the ICC was formed under an international treaty, the Rome Statute, established in 1998, voted and adopted by 120 states. The ICC may conduct all crimes presented to it, committed after the 1st of July, 2002. The Court may intervene fairly and impartially, bringing justice to victims. The ICC contributes to the advancement of the rule of law and stable, peaceful societies.

Jurisdiction and faculties

Under the principle of complementarity in the Rome Statute, the ICC is not a substitute for National Courts and may only intervene when a State is unable to proceed with the investigation. The Court can only judge cases that have occurred within the territory of States Parties of the Rome Statute or individuals with nationality of the member countries. The ICC is able to try cases involving states that have not ratified the treaty when requested by the Security Council and when non-party states agree. The purpose of the Court is to issue a fair verdict taking into account the evidences and witnesses presented by the offices, based on what the Rome Statute establishes. The verdict specifies the statue of the accused, the charges and sentence. ICC judges may impose imprisonment up to 30 years, which can be fulfilled in the Hague or other country. Death penalty is not approved by the Court. Judges may order reparations to victims, including restitution, compensation and rehabilitation; ICC counts with a Trust Fund for the Victims. The sentence is subject to the decision of the judges.

Case A

The prosecution of Alberto Fujimori for crimes against humanity related to corruption and human rights abuse

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Outline

In 1985, Alan García was elected president of Peru. During his ruling, there was an economic crisis due to hyperinflation, fiscal deficit, direct government intervention in all economic areas, overprotection of the internal market, and lack of competitiveness. In 1990, Colina Group was formed with the objective of seeking the end of the extremist groups emerging in the country. Nevertheless, Colina Group committed violations against Human Rights due to the measures taken against their targets without proofs of these ones being terrorists, punishing activities that may be considered against the Peruvian government. Alberto Fujimori became president of Peru in 1990, and participated in a bloody conflict against the *Sendero Luminoso* rebel group, that later would be the *Partido Comunista del Perú-Sendero Luminoso (PCP-SL)*. Alberto Fujimori is considered the *autor mediato*¹ within the framework of an organized *apparatus* of power and is believed to be the leader of Colina Group. It's allegedly known that the relationship between Vladimiro Montesinos, the high commander of the Armed State, and Fujimori facilitated the implementation of a systematic policy of Human Rights' violations that included at least 50 other documented cases perpetrated by the Colina Group. The incidents that took place in Barrios Altos and La Cantuta, perpetrated by this group, are considered as crimes against humanity. Fujimori also established a health program, with the objective of forced sterilizations in marginalized communities that ended in a genocide to Peruvian ethnic groups. Fujimori is also accused of the kidnapping of the businessman Samuel Dyer and the journalist Gustavo Gorriti.

Background

Peru's history has been punctuated by a wide number of military coups and changes in the Constitution. The Spanish conquest gave rise to economic, political and social divisions that characterize the Peruvian and Latin American societies nowadays. In 1980, Peru had a transition to democracy after the overthrow of the twelve-year military rule. The country seemed involved in a prolonged economic crisis due to the fact that the government was struggling to fight against the radical Maoist guerrilla insurgency known as the *Sendero Luminoso*. In 1985, Alan García, who had an interrupted mandate ruling between 1985-1990 and 2006-2011, had a bad administration of resources due to the excessive spending on social programs, which led to hyperinflation with an annual rate above 7,600 % and a debt crisis. Garcia's government inherited immense poverty and social unrest. The inflation got to 400 %.

¹ The one who commits the crime using another as an "instrument"

Furthermore, the poverty index of Peru shows that from 1985 to 1990 increased drastically from 16.9 % to 44.1 %. To sum up, the country was facing the worst economic crisis Peru has ever went through.

The lack of administration inside the country led to the rise in violence and acts of terrorist groups such as Tupac Amaru Revolutionary Movement (*Movimiento Revolucionario Túpac Amaru*) and Maoist rebels, which destabilized the country even more. García, in order to solve the problem, introduced military force to the country which caused numerous massacres against the population, the perpetrators were believed to be involved with *Sendero Luminoso*. Even though both extremist groups share Marxist-Leninist, Guevarist and socialist ideologies, there has been an endless fight between them, which has led the country to an enormous amount of violence and insecurity. In 1990, the Peruvian population looking for stability to the country, found hope in the independent candidate Alberto Fujimori.

Fujimori's government

In 1989, the Republic of Peru was involved in a crisis due to terrorism and hyperinflation. As a result, Alberto Fujimori, member of the right-wing political party *Cambio 90*, began his bid for the presidency. Fujimori was elected president in 1990, with a 56.5 % of the votes, beginning the era known as *Fujimorismo*. In August, Fujimori instituted austerity measures that included excessive risings in gasoline prices. The policy, popularly known as Fujishock, wiped out inflation, but generated hardship among people with low economic resources. In 1980, the International Monetary Fund created the Washington Consensus, a plan for South American economies, that consists in ten measures to manage the governmental funds in a better way. The implementation of both strategies reach a common goal: the economy was restored.

In 1992, Fujimori started a self-administered *coup d'etat*², a planned and organized attack to the government command by the president in order to declare a state of emergency, dissolving Congress, and calling for the creation of a new Constitution. His government prosecuted an anti-insurgency campaign by conducting secretive military trials of suspected terrorists. After the elections of 1993, Fujimori political allies won a majority of legislative seats, allowing the president to rule nearly unopposed. His new entity made a new Constitution that ignored civil rights, gave almost all the political power to the executive, and created harsh regulations for terrorism. He privatized State-owned mines and utility companies.

² A sudden decisive exercise of force in politics, in this case one that was provoked by the government.

In the mid-1990s, Fujimori won the election for a second term. The head of the country's secret police, and closest advisor to the president, Vladimiro Montesinos, infiltrated opposing political parties, bribed electoral officers, muzzled the media, redirected funds, and carried out Human Rights violations. A wide range of Peruvians accused Fujimori for committing these crimes, but he denied the charges. In 1999 Fujimori ran for a third term, its allegedly know that his victory was achieved with electoral fraud. According an investigation made by *El Comercio de Lima*, a popular newspaper from Peru, Fujimori's third presidency was possible because the existence of a "factory" forgery of signatures for the election. Fujimori faced condemnation from the Organization of American States (OAS), the United States government, and Peruvians. His government crumbled after a video of Montesinos bribing a congressman was released.

After all the atrocities and mishandling of power, the Peruvian population made a request to the Supreme Court of Peru to open an investigation to Fujimori. Fujimori retired to Japan in 2001, while Peruvian officials researched all the charges against him, including his involvement in the assassination of more than two dozen citizens by a paramilitary group. In 2006, Fujimori finally returned to Peru, and faced charges of corruption, kidnapping and murder. After he spent several years in prison for his crimes, he was granted a medical pardon by Pablo Kuczynski, the president of Peru between 2016 and 2018, in December 2017. The release was criticized by Human Rights groups due to the fact that most of the convictions were handed down by the Inter-American Court of Human Rights, a body the Peruvian president did not have the authority to override. In February 2018, a Peruvian court ordered Fujimori to stand trial for taking the lives of six farmers back in 1992, an offense that was not covered by the pardon. In October, the nation's Supreme Court overturned his medical pardon and he was sent back to prison with a conviction of 25 years in January 2019.

Forced sterilization during Fujimori's ruling

In 1995, Fujimori launched the *Programa Nacional de Salud Reproductiva y Planificación Familiar* (National Program for Reproductive Health and Planned Parenthood), a public health strategy to reduce birth rates in marginalized regions of Peru. Thousands of indigenous women and men were subject to the so-called program of *Anticoncepción Quirúrgica Voluntaria* (Voluntary Surgical Contraception). According to a report of the United Nations Children's Fund (UNICEF), the birth rate decreased before the implementation of the program. In 1990, the average was 3.7 children per fertile woman, and, in 2000, it decreased to 2.7. In 2016, the *Registro de Víctimas de Esterilizaciones Forzadas* (Reviesfo) entered into functions. The

objective was that the victims of forced sterilization were able to denounce the abuse, and attend cases of abuse committed between 1995 and 2001.

The victims, in their majority, were women, but men were not excluded. It is estimated that around 270 thousand women suffered from fallopian tube ligation, and 30 thousand men from the vasectomy. At the moment, the registry has determined that 18 women died after having a clandestine operation, and more than 2,176 already sued the Peruvian State for the physical and psychological traumas they suffered. The number of victims is constantly growing. It is allegedly known that there were several threats to people who resisted to the implementation of the program. Victims were threatened that they would not receive the civil registration paper of their other sons and daughters if they refused to undergo the procedure. Women were subjected to clandestine operations. The program was implemented by government doctors who went to marginalized communities, and in some cases, to different cities of Peru.

Colina Group and crimes committed by the group

The Colina Group (*Comando de Liberación Nacional*) was a Peruvian paramilitary group that operated between 1980 and 1990. It was officially created from the Cipango Plan, in August, 1991, under the direction of the captain of the Peruvian Army, Santiago Martín Rivas. The purpose of this detachment was to track and capture terrorists in secret, very similar to what the Special Intelligence Group (GEIN) of the National Police did. This was initially formed by 32 men and 6 women officers and non-commissioned officers. At first, the existence of the group wasn't confirmed, the group was recognized as a danger for the Peruvian population after finding some documents and confessions of agents of the group. It is allegedly known that the leader of the Colina Group was the Peruvian former president, Alberto Fujimori.

According to a report of the Inter-American Court of Human Rights, presented in 2006, there are reasonable grounds to believe that Colina Group has perpetrated crimes against humanity under the command of its allegedly chief, Fujimori. During their interventions, they killed several people, and many of their members were sentenced in jail. Some of the crimes committed by this group were the murder of two Japanese engineers working on a false flag operational project in Huaral, Peru. Colina Group also caused the *Barrios Altos* massacre on November 3, 1991, when they killed 16 people, including an 8-year-old boy. On May 2, 1992, Colina Group was accused of the disappearance of ten peasants from the *Valle del Santa* in Chimbote, Peru. On July 18, 1992, the Group entered the campus of the Enrique Guzmán and Valle University (*La Cantuta*), selected nine students who were suspected of previous crimes

and killed them. Similarly, on December 18 of the same year, the Secretary General of the General Confederation of Workers of Peru (GCWP), Pedro Huilca Tecse, was murdered at the door of his house in Lima, Peru. Another murder carried out by this group was the one of the journalist Pedro Yauri, on June 24, 1992, who was famous for speaking in his radio show of corruption allegations against Fujimori's government. Finally, on April 18, 1997, Mariella Barreto, member of the National Intelligence Service, was murdered by the Colina Group. She was tortured and dismembered as a revenge from the government for having denounced the existence of the "*Bermuda*," "*El Plan Naval*" and "*El Pino*" plans that attempted against César Hildebrandt (Peruvian journalist) and Heriberto Benítez (lawyer and Congressman of Peru) .

Kidnappings during Fujimori's command

In 1992, the journalist Gustavo Gorriti, director of *IDL - Reporteros*, was abducted by Alberto Fujimori's security squad. He was a Peruvian journalist based in Lima, since 1981 Gorriti covered some reports of the group *Sendero Luminoso*. Gorriti was kidnapped, on On April 5, 1992, by ten armed intelligence agents in the middle of the night and was held for two days, according to his testimony at Fujimori's trial. Gorriti was released given that the international community pressed the Peruvian government because of the kidnapping. Likewise, he was taken to the offices of the Peruvian army's intelligence agency for interrogation. Rodrigo Villarán, lawyer and executive director of the Peruvian Press Council, states that human rights were violated according to the testimony of the victim and some officers from the place where he was secluded. Moreover, Gustavo Gorriti claimed to be targeted due to the fact that he had published stories linking Montesinos to corruption and drug trafficking. Even so, during the trial, Fujimori denied ordering the kidnapping of Gorriti.

Samuel Dyer, a businessman that settled in Peru, was kidnapped on July 27, 1992, on the orders of the president, Alberto Fujimori, and communicated by his advisor, Vladimiro Montesinos. This event happened at the Jorge Chavez International Airport in Lima. Dyer was deprived of his liberty on the pretence that he had an arrest notice in the country. He was transferred to the basement of the Army Intelligence Service (AIS), where he was held during the investigation for his alleged collaboration with the terrorist group *Sendero Luminoso*. He was stripped of his freedom and communication, as well as exposed to cruel and degrading treatment without having evidence to justify the accusations against him. On August 3, the specialized police against terrorism, DINCOTE, confirmed that there were no links between the *Sendero Luminoso* and Samuel Dyer. However, the AIS kept him kidnapped until August 5. Dyer tried to denounce his situation to the press, but he was later discredited by president

Fujimori, who saying that he was involved with drug trafficking and illicit activities. In 1994, he stood trial and was absolved of all charges against him.

International Criminal Court on the Case

Although President Fujimori was sentenced to 25 years in jail for the crimes allegedly committed and the number of victims that his actions and orders left, under the consideration that it was an unfair sentence, the ICC can take action and carry out a fair trial as Peru is a State Party of the Court since 2001. Using the complementarity agreement, the jurisdiction of the Rome Statute can be used to carry out the process of investigation and prosecution of crimes against humanity and genocide committed between 1990 and 2001. Alberto Fujimori, Peruvian politician and former president of the country, is believed to be the leader of the Colina Group, accused of crimes against humanity. The abuses include the killing of 25 people by a military death squad (Colina Group), which also participated in different massacres; and the creation of laws to protect the members of this group. Alberto Fujimori is believed on committing Human Rights violations: the multiple murders of La Cantuta and Barrios Altos, the kidnappings of Samuel Dyer and journalist Gustavo Gorriti, and the genocide of over 18 Peruvians with the implementation of *Anticoncepción Quirúrgica Voluntaria* .

As the President of Peru, Alberto Fujimori is considered to be the *autor mediato*, as he used his power to order to Vladimiro Montesinos the implementation of different programs, measures and operations in the Peruvian territory, making Fujimori the number one responsible of the crimes committed by Montesinos. Fujimori is believed to be also responsible of the crimes committed by the Colina Group, as he is allegedly known to be the leader of the group and that he ordered and commanded some of its operations. Charges of genocide are also included on the trial because of the implementation of a program that caused a mass killing among some ethnic groups. In 2019 Fujimori return form a private clinic to the prison where he served 11 of the 25 years of the sentence. The humanitarian pardon gave by the president Pedro Pablo Kuczynski in 2017 to Fujimori was taken away by a Peruvian judge in 2019. After all the alleged violations committed in Peru during Fujimori's ruling is the duty of the ICC to open an investigation to this situation.

Crimes submitted

Alberto Fujimori is accused of:

Crimes against humanity:

- Murder (article 7 (1) (a))
- Aggravated kidnapping (article 7 (1) (e))

- Torture or inhuman treatment (article 8 (2) (a) (ii))
- Corruption (article 7(1)(k))
- Embezzlement (article 7(1)(k))
- Extermination (article 6 (b))
- Wilful killing (article 8 (2) (a) (i))

Genocide:

- Genocide by killing (article 6-a)
- Genocide by causing serious bodily or mental harm (article 6-b)

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Case B

The prosecution against Omar Hassan Ahmad Al Bashir for war crimes, crimes against humanity and genocide in Sudan

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Outline

A Sudanese *coup d'état*³ took place in 1988. Omar Hassan Ahmad al-Bashir raised as the President of Sudan, in 1993. Al Bashir's government is recognized for being inflexible towards democracy since 1999. The main conflict in Darfur is the power struggle that exists between the Government of Sudan with at least two organized armed groups of rebels, that took up arms against the central authorities in around 2002. In February, 2003, rebel groups attacked a strategic town located in Darfur, claiming years of political, economic and social marginalization. In response, the Government of Sudan launched a counter-insurgency campaign, arming 'Arab' *Janjaweed* militias alongside its armed forces to fight the rebellion. An armed conflict took place allegedly between the government of Sudan, including combatants from the Sudan People's Armed Forces (the Sudanese Armed Forces) and the Popular Defence Force (PDF) along with the *Janjaweed* militia, against organized rebel groups. It is alleged that the Sudanese Armed Forces and the *Janjaweed* militia, acting together as part of the counter-insurgency campaign, carried out several attacks, of a systematic or widespread nature, in the towns of Kodoom, Bindisi, Mukjar, Arawala and surrounding areas in 2003 and 2004. Violence and broken ceasefires continued throughout 2004 and 2005 despite peace talks and the presence of an African Union (AU) protection force. On July 31, 2007, The United Nations Security Council (UNSC), considering the insurgency's threat, launched a joint UN-AU peacekeeping mission (UNAMID) to replace the AU mission. UNAMID troop deployment began until 2008.

Sudan is binded by different national and international treaties such as International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child. As a State party to these, Sudan is legally bound to respect, protect and fulfill the Human Rights of those within its jurisdiction. In order to investigate more about the crimes committed in Sudan, The International Commission of Inquiry on Darfur was established by late United Nations (UN) Secretary-General, Kofi Annan, pursuant the Security Council Resolution 1564.

Omar Al Bashir, as president of the nation, was aware of the military programs and operations that took place in the different regions of Sudan. In certain cases, he directly ordered

³ A sudden and decisive action in politics, especially one resulting in a change of government illegally or by force.

the execution of such programs against rebel groups, causing destruction and damage to third parties who were not involved with armed groups. Consequences such as murders of civilians, rapes and outrages upon the personal dignity of women and girls, persecution, forcible transfers, imprisonment or severe deprivation of liberty, and attacks intentionally directed. The affected cities were Kodoom, Bindisi, Mukjar, Arawala, Fur, Masalit, Anka, Zaghawa and surrounding area populations. These attacks caused the displacement of 200,000 Sudanese people towards Chad and 1.65 million internally displaced persons in other nearby countries. It is believed that there are various cases of genocide in the provinces of Fur, Masalit and Zaghawa.

Sudan's social, political, and economic background

Sudan is a country that holds a wide variety of ethnic groups and cultures. The population of Sudan is largely formed by Muslims that identify themselves as Arabs. The Arabs are not a cohesive group, as they live in tribes, and are highly differentiated in the way they live. In the urban areas of Sudan, the tribal system has faded, but it retains among nomads of the plains. Each tribe is assigned to a larger tribal grouping, the largest ones are the Jalayin and the Juhaynah. Besides the Arabs, there are multiple Muslim groups like the Nubians, the Beja, and the Fur. Most non-muslim people live in the south of Sudan, like the Hill Nubians and the Dinkas.

As an African colony, Sudan got its independence in 1956. The nation has witnessed several *coups d'état* and conflicts, most of them generated by the cultural differences between the north, dominated by the Arabs and Muslims, and the south, inhabited mostly by Christians and followers of indigenous religions. The northern population dominated politics. Two years after the Sudanese independence, in 1958, the first *coup d'état* took place, made by the Sudanese population in order to gain their independence from the northern regime. The commander in chief of the army dissolved the political parties, prohibited assemblies and temporarily suspended the publication of newspapers. These prohibitions brought rapid economic improvements to the country. The *coup d'état* also achieved the recognition of Egypt to Sudan as an independent country. In the south, the army introduced measures to facilitate the spread of Islam. Foreign Christian missionaries were expelled between 1962 and 1964.

In 1989, the Revolutionary Command Council (RCC) for National Salvation abolished the transnational constitution of 1985. After appointing Omar Al Bashir to the position of president in the new civilian administration, the RCC was disbanded in 1993. Al Bashir retained the position and promulgated a new constitution in 1998, which attempted to be the

basis of the country's laws. Southerners were upset because of the modifications on the penal code, the changes were unfair and only benefited the Northern part of Sudan. Along with the economic deterioration and a civil war with the objective of dividing the nation began. After years of political struggles, the constitution was replaced again in 2005 and it ended the country's civil war.

On the economic scope, Sudan is one of the least developed nations in the world. One-third of its inhabitants rely on farming and animal husbandry. Its role has declined, but agriculture still provides one third of Sudan's gross domestic product. Oil production began in the late 1990s, and petroleum fastly became the country's most important export. Sudanese agriculture divides in four main sectors: modern integrated farming, mechanized rain-fed crop production, traditional rain-fed farming and livestock raising. Much of the country's population is engaged in subsistence farming. Sudan is a leading producer of gum arabic, resulting in the deforestation of the northern woodlands. The Nile river is the main source of fish consumed locally.

In 2011, Sudan split into two: the Republic of the Sudan and South Sudan because of the cultural conflict caused by the expansion of Islam and the loss of diversity in the south region. In spite of the secession of the south, the Republic of the Sudan continues to be a culturally diverse place. After the division, most of the oil reserves fell within the borders of South Sudan. Electricity is scarce and limited in urban areas. Paraffin, gas and charcoal are the primary sources of energy in the country.

Omar Al Bashir's government

After the *coup d'état* of 1989, Omar Al Bashir came to power in the middle of a civil war between the North and the South of the country. Al Bashir overthrew the government of Sadiq al-Mahdi, which left miles of deaths and famine among the population. During his term, Al Bashir focused on soldiering while he left politics aside. In 2003, an armed conflict started in the western region of Darfur, where rebel groups rose in arms accusing the government of a bad administration that impacted in a social, political and economic way for 30 years. Al Bashir's government was characterized by corruption, marginalization of ethnic groups, money laundering and the exploitation of natural resources such as oil.

In 2004, the population urged him to end with the lack of security and wave of terrorism that threatened Sudan. Al Bashir ignored the facts because it's allegedly known that his government was colluded with criminal groups such as the *Janjaweed* militia. In December 2018, nationwide protests took place because of the augmentation in the prices of fuel and

bread These protests called for the end of Al Bashir's presidency, which did not happen. Instead, he took violent measures against the population and introduced the army to the capital. A State of Emergency was declared in February, 2019.

As president, Al Bashir, signed a peace agreement, known as the Comprehensive Peace Agreement, in 2005, with the purpose of ending the civil war, which had lasted more than 21 years. This agreement was backed by the United States of America and the European Union. Its content stated that the Islamic law applied to the south would be suspended for six years, as the army of both regions would merge into one single group, and that the profits obtained from the oil sales will be shared equally. In June, 2011, Omar Al Bashir signed an independence treaty that declared the South as a sovereign nation and finally put an end to the conflicts that had not been resolved between both regions. Omar Al Bashir was, as well, the first Arab leader to make multiple diplomatic visits to the Syrian Arab Republic since the Arab Spring broke out in March, 2011. This was an act that showed hope for recovering the relationship between Damascus and Sudan.

Nevertheless, Omar Al Bashir's government brought consequences for the country. Despite the fact the previous agreement establish that the resources were going to be divided when the South of Sudan became independent from the north, Sudan lost most of the oil reserves, which strongly affected the economy. In 2018, this caused an inflation of 70 % in basic products that raise the prices. People had to wait for hours in lines at the banks to access their own money. This also was reflected in hospitals, since they did not receive patients unless they pay in advance. In addition, in 2018, the Sudanese pound was devalued because the Central Bank of Sudan was left without funds.

The government destined the government fund for military purposes, such as the *Janjaweed* militia, instead of fixing its infrastructure and inflation. Security forces used brutal force against protestors. As a result, according to Sudan Human Rights Group (SHRG), approximately 50 people were killed in the protests made during the regime of Omar Al Bashir. Moreover, the government was repressive and corrupt, since The National Intelligence in the State Security (NISS) arrested, detained and tortured the dissidents. People also were arrested for brewing and, in certain cases, killed in the process.

Arab Janjaweed militias and the attacks of 2003 and 2004

Janjaweed is an organized militia originated in Chad and Libya, now based in the region of Darfur, Sudan. The constant wave of conflicts tormenting Sudan during that time gave the opportunity to the militias to grow and expand inside its territory. This faction of soldiers

established in the western part of Sudan, close to the border with Chad. The government did not oppose them, since they helped to deterrent the Sudanese Liberation Army, another armed group that threatened the State. It is allegedly known that *Janjaweed* militias received guns and ammunition from the local government. In 2003, a pair of extreme nationalist Sudanese groups, known as The Sudanese Liberation Army and The Justice and Equality Movement, raid a military base; *Janjaweed* was instructed by the government to counter attack. A massive conflict arose between these three groups, causing several casualties and many injured. The consequences of this conflict were sexual violations, kidnappings, deaths and mutilations. After ceasing the conflict in Al Bashir's base in Darfur, *Janjaweed* began to destroy villages and small towns of agricultors.

In 2003, a series of clashes between *Janjaweed* forces and rebel forces arose, bringing a wave of violence and destruction. Kodoom, Bindisi, Mukjar, Arawala and surrounding areas were completely destroyed by the militia and the civil rights of the dwellers of those settlements were altogether violated. Thousands were murdered and their homes were destroyed. People began fleeing from those villages, migration grew exponentially. At that time, media outlets did not have coverage of the whole situation because of the lack of opportunity to enter that region of Sudan. During these years, the mortality rate piked; it is estimated that around 5733 people were killed. In response, the villagers created defense groups to defend from the *Janjaweed*. The aggression committed by the *Janjaweed* militias is considered as war crimes. In 2004, peace agreements between the armed forces and the government were signed, nevertheless, the atrocities continued throughout 2004 and 2005.

Genocide to the Fur, Masalit and Zaghawa populations

Since February 2003, ethnic groups settled in Sudan have demanded the reparations of thirty years of marginalization and denounced the government's failure to protect the indigenous population from insecurity and armed conflicts. In response, the government of Sudan alongside the *Janjaweed* militia started an ethnic cleansing, which turned into a humanitarian crisis; approximately 200,000 people became refugees in Chad. Omar Al Bashir, head of the Sudanese government at the time, oversaw through its forces and participated in massacres. Numerous executions of civilians, including women and children, burnings of villages and the forcible displacement of wide swathes of land long inhabited by ethnic groups of the Fur, Masalit and Zaghawa, took place. Moreover, the *Janjaweed* militias attacked Muslim villages on Sudan's western border with Chad, destroyed mosques and murdered Muslim leaders and civilians.

This massacre is known as the first genocide of the 21st century, since it was a systematic and mass murder of Darfur's population during the current conflict in Western Sudan. The attack was addressed to several ethnic groups. Eric Reeves, Senior Fellow at Harvard University's François-Xavier Bagnoud Center for Health and Human Rights, points out that more than one million children have been killed, raped, wounded, displaced, traumatized, endured the loss of parents and families, and even murdered. Said genocide has left over 3 million victims and between 80,000 and 500,000 deaths.

In 2005, the report of the International Commission of Inquiry on Darfur became of immense importance. The report is the only official document that includes all the violations of Human Rights, it was presented to the UNSC in order to declare a humanitarian crisis in Sudan. In the inform, there is information about massive criminality that people suffered during the Darfur conflict. The content of the report catalog the crimes, number of victims, places and in some cases the perpetrators. The document is poorly reasoned due to the absence of evidence of attempted genocide in the province of Darfur.

Human rights violations

Human rights abuses by the government and armed groups occur daily in Sudan. All sides of the conflict continue to commit violations of the International Humanitarian Law. These transgressions range from attacks against civilians, to repression of human rights defenders. Violence against women remains a problem in Darfur and in camps for internally displaced persons. The government represses those who oppose and has made it impossible for its citizens to exercise their right to freedom of expression. Violations can be seen in the protests such as repression by the security forces by means of shots, tear gas and beatings on the protestants. In addition, many were jailed and, approximately 50 people, killed throughout this government.

The conflict in Darfur has resulted in the death of approximately 400,000 Darfuris. Torture, rape and destruction of property are other violations of the Universal Declaration of Human Rights committed by the government and the government-backed *Janjaweed* militia. The National Intelligence and Security Service (NISS) had also committed human rights violations, such as making arbitrary arrests and using a variety of ill-treatment against prisoners. The ICC has recognized Omar Al Bashir for being a co-perpetrator or indirect perpetrator of such crimes committed by the aforementioned groups, since he is considered to be aware of these acts. The government continues to restrict Humanitarian Aid Commission (HAC). In response to this, members of civil society continue to protest.

Protests during Al Bashir government

On January 30, 2011, protests were held in various cities because of the increase in food and oil prices. The most renowned is one conducted at the University of Khartoum, where the security forces beat and rubbed the students with tear gas. As a result, a student named Mohamed Abdelrahman was killed and many more students were arrested and injured. On December 19, 2018, the beginning of a long period of multiple continuous protests began with the support of organizations like the Sudanese Professionals Association (SPA), which helped organize and lead the protests, as well as encouraged people to ask for a salary increase.

People started taking the streets in Omdurman as consequence of the government's decision to triple the prices of bread, oil and its derivatives. Protestors also claimed that employees were not paid and they had to wait in long lines at the banks to receive their money. A day later, the demonstrations extended to Khartoum to request Omar Al Bashir to give up power. However, national security corps tried to disperse the protestors with violence that caused the death of approximately 38 people. On the fourth day of protest, the headquarters of the National Congress party were burned, although these protests began as peaceful marches. On December 24, after six continuous days of protests, the president promised reforms to solve the requests; people, however, were not satisfied. On January 9, as a result of the protests, Al Bashir affirmed to be ready to leave power as long as there were legal, free and fair elections. Protests did not stop and the president decided to declare the country in a state of emergency on February 22. Human Rights Watch demonstrated the use of violence to control protests and claims. On April 9, security officers once again tried to disperse the protestors with tear gas and fire.

Migration caused by the humanitarian crisis

Protests have not been the only effect of the conflict. Additionally, Sudan faces a wide scale population displacement and food insecurity. The population suffers on account of the limited access to basic services, specially in the agricultural sector. The conflict in South Sudan has forced South Sudanese refugees to cross the borders into Darfur, stretching the limited resources of the host communities. The warfare has ensued population displacement across the entire territory and in some regions, formal internally displaced persons (IDPs) camps are non-existent. Approximately 2.2 million IDPs, 695,000 refugees, 105,000 returnees and other migrants are in need of humanitarian aid, according to the data retrieved in 2018 by the International Organization for Migration (IOM).

The ongoing hostilities in Sudan have generated a high migratory outflow. Refugees have been fleeing Sudan since 2009. Most of the Sudanese refugees' final destination is

Australia and the United States. In an effort to control the migratory outflow, the European Union (EU) has made donations of over 100 million euros to Sudan aiming to stop the cause of the irregular migration. The EU has contributed to the implementation of healthcare and the generation of jobs within Sudan, however, these measures have not been enough to aid the population. The EU has sidestepped accusations of giving money to the United Nations.

International Criminal Court on the case

Pre-Trial Chamber I considered that there are reasonable grounds to believe that Omar Al Bashir is alleged to have ordered the implementation of the counter-insurgency strategy of the Government of Sudan against the Sudanese Liberation Movement/Army (SLM/A), the Justice and Equality Movement (JEM), and other rebel groups which opposed to the government. That also resulted in the commission of war crimes and crimes against humanity in Darfur, Sudan. Omar Al Bashir, as the *de jure and de facto*⁴ President of the State of Sudan and Commander-in-Chief of the Sudanese Armed Forces at all times relevant to the Prosecution Application, played a role that went beyond coordinating the implementation of the said counter-insurgency campaign; was in full control of all branches of the *apparatus*⁵ of the State of Sudan, including the Sudanese Armed Forces and their allied *Janjaweed* militia, the Sudanese Police Forces, the NISS and the HAC and used such control to secure the implementation of the said GoS counter-insurgency campaign.

Omar Al Bashir acted with specific intent to destroy in part the Fur, Masalit and Zaghawa ethnic groups. He allegedly promoted and provided impunity to his subordinates in order to secure their willingness to commit genocide by mobilizing the entire State *apparatus*, including the armed forces, the intelligence services, the diplomatic and public information bureaucracies and the justice system in order to subject 2 million of people to forced displacement. The situation was referred to the International Criminal Court on March 31, 2005 by the United Nations Security Council (Resolution 1593). The office of the Prosecutor believed there were reasonable grounds to open a further inquiry into war crimes, crimes against humanity and genocide that lie within the ICC's jurisdiction committed in Sudan from the year 2002. The first warrant for arrest for Omar Hassan Ahmad Al Bashir was issued on 4 March 2009, the second on 12 July 2010. The suspect is still at large.

Crimes submitted

⁴ The person who exercises power practically and legally

⁵ A set of equipment or tools or a machine that is used for a particular purpose

Omar Hassan Ahmad Al Bashir is accused of:

- Crimes against humanity:

- Murder (article 7(1)(a))
- Extermination (article 7(1)(b))
- Forcible transfer (article 7(1)(d))
- Torture (article 7(1)(f))
- Rape (article 7(1)(g))

- War crimes:

- Intentionally directing attacks against a civilian population as such or against individual civilians not taking part in hostilities (article 8(2)(e)(i));
- Pillaging (article 8(2)(e)(v))

- Genocide:

- Genocide by killing (article 6-a),
- Genocide by causing serious bodily or mental harm (article 6-b)
- Genocide by deliberately inflicting on each target group conditions of life calculated to bring about the group's physical destruction (article 6-c)

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