

Analysis of the Evidence for Common Accusations against the RSF

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A year after the overthrow of a brutal dictatorship, and with the peace agreements to end a series of decades-long civil wars still not entirely finalised, pushing a continuous stream of accusations that don't have evidence against one of the strongest military units in the country is unwise from a security perspective. It also risks alienating a section of society from a truth and reconciliation process that could otherwise hold people to account fairly and proportionately. And it damages the principle of the presumption of innocence.

This report looks at the evidence raised against Mohammed Hamdan Dagalo (Hemeti) and the military unit he commands, the Rapid Support Forces (RSF), on five common charges. It seeks neither to prosecute nor defend either of them from a legal perspective, but rather to consider the quality and veracity of the allegations made against them in various public fora.

It performs the analysis in the context of fair process. The considerations of fair process provide a useful framework when considering the many accusations, and especially in deciding which to investigate further in the truth and reconciliation process. Considerations like evidential burden, proof threshold, attribution, and motive apply to all accusations. Others are more nuanced.

Broad and incoherent narratives of accusation put people on trial for everything, shifting the burden of proof off the accuser and onto the accused who now has to prove innocence in a wide range of trials. Presumption of innocence is a central tenet to fair process.

The report begins by reviewing the normal requirements of making accusations in a legal context. When the media wish to report on facts, then lighter standards of proof and evidence are required. But the accusations against Hemeti and the RSF go beyond describing facts. They allege criminal behavior and often come with demands for criminal sanctions. To that end, criminal thresholds and processes are the proper ones to apply to the accusations of the media and think tanks.

The report then looks at the evidence provided in support of the three principle accusations commonly made against Hemeti: atrocities in Darfur; involvement in Libya's civil war; and

responsibility for the violence seen in Khartoum on June 3rd, 2019. Two further claims are made concerning the RSF's participation in Yemen's civil war and ownership of gold mines in Sudan.

Findings

Events in Darfur raise many questions for Hemeti. However, specific crimes of Hemeti's doing have not to date been evidenced and only general accusations have been made. Evidential bias and prejudice are driven by a simplistic narrative of 'Arabs versus Africans' in the common understanding, compounded by the different usage of certain terms, such as 'Janjaweed', by witnesses. This has confused many of the reports about Darfur. Until specific charges are made against Hemeti, he cannot raise a defense to them.

The RSF almost certainly contains individuals who have committed crimes in Darfur. The question is whether these crimes are heritable at an institutional level, and if so, how. In answering this, it is critical to understand that the RSF was founded in 2013 specifically to cross-mobilize the out-of-control elements of other militias, meaning people with criminal backgrounds were purposely brought into the new organization.

The claims about Libya are evidentially very weak. A single article in an online newspaper, based on an uncorroborated report from a local radio station, led the UN to declare Hemeti's personal involvement in Libya's civil war. A month later, the UN Panel of Experts acknowledged that the stories had begun with media sources, and that there was no actual evidence.

The RSF committed crimes on June 3rd. Hemeti acknowledged that individuals from the RSF committed crimes against protesters. He has command responsibility for the actions of the RSF as an entity, but not for the *ultra vires* actions of individuals. This raises two questions. Firstly, is the RSF institutionally liable for any of the crimes of June 3rd? Secondly, is there evidence that Hemeti ordered the illegal use of force? On the latter question there is circumstantial evidence in both directions but no specific evidence. Institutional liability for the RSF will depend on identifying which specific crimes were committed by the RSF, and then proving either organizational intent or negligence in failing to control rogue individuals. This requires further investigation.

The RSF requires further investigation, especially in connection with June 3rd, before a decision can be made about its future in Sudan.

No specific illegality or crime by Hemeti or the RSF is clearly raised in any of the accusations concerning Yemen and gold ownership. There is no charge to answer on the evidence presently available.

There are no grounds for the international community not to accept Hemeti and the RSF as valid members of the Sudanese government, based on the accusations against them at this time. There is nothing proven at a reasonable evidential level, and there is no reason for them not to be part of the state. That might change but stands for now.

A Review of Fair Process

It is usually difficult to find an outcome that everybody will agree is fair, as different schools of thought on fairness each demand different outcomes.¹ This is not to say, however, that truth and reconciliation processes can never be fair. If all parties can agree to the mechanism of the process before it begins, then while they each might consider some outcomes to be unfair, they can all agree that there was a fair process. Hopefully, this means that they will support and adhere to the outcomes as a whole, regardless of their feelings about any given one.

Making credible accusations in a legal context requires, in the interest of fair process, certain attributes to be evidenced. A truth and reconciliation process (or the media) is not necessarily to be held to the same standards as a court of law, but it will often be informed by the mechanisms of legal fair process. These are considered in this section, before the report moves to the specific accusations against the RSF.

Burdens and Thresholds of Proof

Most accusations are required to show both a criminal act and a degree of criminal intent regarding that act. The burden of proving these two things sits with the accuser, and the threshold for criminal law is 'beyond reasonable doubt'. In other words, someone making an accusation must prove, beyond reasonable doubt, that a potentially illegal act was committed and that the perpetrator had the frame of mind that the law requires for that act to have been a crime.

Evidence from the last few decades in Sudan is slight. Bashir's regime was secretive and cut off from most global interaction, meaning we have little insight into the purposes of the government or its actors. Even the evidence for the events themselves mostly comes from eyewitness accounts, at best, or hearsay, more commonly.

Attribution

An important question for any accusation regarding the RSF is not only whether there is evidence to support the contention that the act happened, but also that it was perpetrated by the RSF. Absent a physical presence in Sudan for many of the media outlets, NGOs and others making claims about Sudan's recent history, evidential quality is often weak.

¹ A demonstrative thought exercise is provided by the Nobel laureate Amartya Sen (Sen, 2009 pp. 12-15)

Eyewitness accounts of the events from the early 2000s are harrowing but are now seventeen years old and will be less reliable for it. It is unfair for events not to be redressed; yet it is also unfair to condemn and jail people based on distant recollections. Unilaterally lowering the evidential threshold does not solve this painful dichotomy.

Specificity

The evidential threshold applies also to specificity, and here the impact of the punishments sought will affect the specificity of the accusation required. It might be acceptable to decide to disband a military unit if it were proven to have been 'associated with illegal violence in 2015', for example, but depriving a human being of liberty would require a much more specific crime with a victim, timeframe, location, and so on.

One specificity relates to the chain of command. The receipt of orders does not make an illegal act lawful (although it may be a mitigating circumstance, especially in the context of the implications of defying an order in Bashir-era Sudan). On the other hand, a decision will be needed at some point as to who in a chain of command is responsible for what.

Orders emanating down from Bashir through the chain of command to individual soldiers who implement them pose difficulties in attribution. Where there is clear evidence of malfeasance by certain individuals this is less problematic. In some cases, however, evidence will be slim and simply attributing criminality to the entire chain of command may not be a constructive, or fair, way to resolve this.

Motive

Another of these specificities is motive. Given the criminal intent component of a crime, it is normal for an accuser to evidence a motive of the accused as part of the evidence. In cases where this cannot be done, more evidence tying the accused to the crime itself – the criminal act – may be required. The frequently cited 'Arab versus African' narrative is not of itself a sufficient motive in most cases, even if there are a minority of racist members in any given grouping. Put simply, the fact that Hemeti is of Arabic descent is not evidence that he was involved in the death of any given African person.

Motive has another aspect, and that is the motive of the accusers themselves. Evidence of a motive to gain from having the accused condemned may suggest that the accuser's evidence is less credible. Sensational stories are more impactful, and newspapers and NGOs may have

motivations related to funding or publicity.² More difficult are the many testimonies of other Sudanese themselves. NISS agents, for example, have both first-hand knowledge of some of what the RSF may have done, but also have a bias in that the RSF's success today is coming largely at the expense of Bashir-era institutions.

It will be important that a culture of 'all accusations made by Sudanese are valid' is not allowed to grow in the international coverage of the truth and reconciliation process. Specifically, the RSF have in the past fought with NISS and the PDF, while the SAF – which was politicized with extremist Islamism in the senior ranks by Bashir – has had ideological issues with the multi-faith RSF. Such testimony will require careful scrutiny.

Scope and Coherence

A final comment on the allegations made regarding the RSF concern their scope. There is a procedural unfairness in accusing the RSF of everything, and then seeing what happens to be proven in a series of endless, expensive, and divisive trials. Some of the accusations made against Sudan generally and the RSF and Hemeti specifically may fall into this category. For example, in 2017 the US lifted sanctions on Sudan, but US Sudan-watchers said they should not have.³ The US has refused to lift the State Sponsor of Terrorism designation, but the UN has asked it to do so.⁴

The terrorism designation is especially confusing, as there is now a new government leading the state since the last allegation of terrorist support from Sudan. The explicit reasoning of the US is Sudan's delinquency in paying reparations rather than any ongoing intelligence regarding terrorist sponsorship today. On the grounds of being labelled a State Sponsor of Terror by the US, one might think an investigation into state support for terrorism is warranted; however, such an investigation would only find evidence of debt payment delinquency. This is a strong example of the risks surrounding even looking into every accusation being made in Sudan right now – where time and money are not in abundance.

Between 2016 and 2019 the EU ran a program that included providing funding and training to Sudanese units, including the RSF, to stop migration into Europe by patrolling the border with Libya. This was during the Bashir era, and the Enough Project pointed out early on the fact that this support could end up helping the RSF and others.⁵ The EU nevertheless continued until

² Individual journalists and workers at NGOs may not share these motivations, and should, as per any accusation, be treated each on their own merits.

³ (Reeves, 2017)

⁴ (al Jazeera, 2020), 'UN chief calls for Sudan removal from US 'terrorism' list'

⁵ (Baldo, April 2017)

2019, only stopping the program when the revolution against Bashir was in full swing, on grounds that supported units might be involved in repression.⁶ This implies that the EU did not feel there was a large risk of repression by Bashir's regime in the years 2016-19; if that is so, any EU evidence or accusations against the RSF during that period would have to be regarded as self-contradictory.

Applying Fair Process to Accusations

The considerations of fair process provide a useful framework when considering the many accusations made against the RSF, and especially in deciding which to investigate further in the truth and reconciliation process. Considerations like evidential burden, proof threshold, attribution, and motive apply to all accusations. Others are more nuanced. Broad and incoherent narratives of accusation put people on trial for everything, shifting the burden of proof off the accuser and onto the accused who now has to prove innocence in a wide range of trials. Presumption of innocence is a central tenet to fair process.

⁶ (DW, 2019)

Charge 1: The Accusation of Atrocities in Darfur

Hemeti and other members of the RSF are frequently accused of having been involved in the Darfur genocide from 2003 onwards, before the RSF was formed in 2013.⁷ This accusation usually takes the form that they were Janjaweed members who committed crimes in that capacity, and then became RSF members in or after 2013, and so have brought their criminality with them. There have also been atrocities in Darfur since 2013, of which the RSF is accused institutionally.

A question is raised as to whether an institution must be disbanded or excluded from government due to the crimes of its members before they joined that institution. If that were the case for the RSF, then it would logically follow that all those in Sudan against whom crimes are proven should not be allowed to be a part of any public institution again. This would effectively exclude large numbers from any form of reintegration into society or demobilization, and pose a significant threat to security and the reconciliation process itself.

Ius ad Bellum, Ius in Bello

Ius ad bellum, Latin for ‘the moral right to go to war’, is the moral reasoning connected to entering into fighting in the first place. The UN Charter itself refers in Article 51 to ‘the inherent right of individual or collective self-defence if an armed attack occurs’ (in the context of international security).⁸

The immediate point of fact regarding all discussions about involvement in Darfur is that fighting in a civil war is not per se illegal. Fighting on the government side in a civil war against armed insurgents – whatever the virtue of the insurgents’ cause – is also not of itself illegal. Nobody in Darfur was safe and the mere fact of involvement in hostilities is not a crime.

Attention therefore turns to *ius in bello*, the proper conduct expected from people once they have entered into a war. The evidential burden shifts from merely proving individuals were present in Darfur to proving they committed specific crimes.

It is worth noting that in 2013, the year of the RSF’s formation, there were around 200,000 militiamen in Darfur (many claiming to be RSF) and 30,000 SAF personnel. To that extent, a seven-fold rate of RSF incidents would be expected in comparison with SAF ones merely as a

⁷ (Global Witness, 2019), (Lynch, 2019), (Tubiana, 2019), (Trew, 2019) are among numerous recent examples

⁸ (Charter of the United Nations, 1945)

function of numbers. A higher *number* of incidents attributable to militias and the RSF is not evidence of worse conduct; a higher *rate* might be.

Attribution of Acts to the RSF

The RSF was a multi-ethnic grouping upon formation and has remained so ever since. The Small Arms Survey report of 2017 lists Mahariya, Mahamid, Awlad Zeid, Eregat and Awlad Rashid Arab membership, as well as Bergid and Tama African membership right from the start.⁹ To this end it was not the Janjaweed, nor was it a renaming of the Janjaweed, which was a word-not an institution- almost exclusively used to describe Arabs. It would be completely wrong to accuse a Bergid or Tama African of membership of the Janjaweed, while also accusing the Janjaweed of being an anti-African Arab militia.

Two articles by Flint clearly lay out the nuances behind the different militias, and the shifting relations between individual African and Arab tribes.¹⁰ Arab Janjaweed committing atrocities and then joining the RSF is simplistic and inaccurate as a narrative. 'Janjaweed' is a collective and informal term for often tribeless fighters, fighting for their own interests and profit, from the 1990s onwards. 'Rapid Support Forces' is the formal name of an arm of the Sudanese government founded in 2013. It is incorrect as a matter of parlance and of law to attribute the actions of the former to the latter.

One of the reasons for the formation of the RSF was to dilute the power of the Border Guards, who had by 2013 become unwieldy and had committed numerous crimes in Darfur. Large numbers of Border Guards were cross-mobilized into the RSF in the years after its formation in order to weaken the Border Guards; they were sufficiently weakened by 2017 for Musa Hilal to be arrested by the Sudanese state. Condemning the RSF for the actions of the Border Guards, when the RSF was founded partially to neutralize the Border Guards, is to criminalize the many RSF soldiers who had nothing to do with the Border Guards and were never members.

Another danger of this approach is that numerous people have claimed to be RSF when they were in fact not so. An-nur Ahmad and Gamartallah Mohammed Musa are both examples of militia leaders who have done so, the former having formerly been a Border Guard but never RSF.¹¹ From the perspective of specificity, the exact crimes perpetrated by present members of the RSF when members of previous militias would need to be proven in order for there to be heritable liability at the institutional level.

⁹ (Tubiana, 2017 p. 7)

¹⁰ (Flint, 2009) and (Flint, 2010)

¹¹ (Tubiana, 2017 pp. 6-7)

Attribution of Acts to Hemeti

Not all acts of Hemeti's tribe, nor all acts of the RSF, are attributable to Hemeti from a legal or factual perspective. Between 2005 and 2007 a range of agreements, treaties and non-aggression pacts were signed between the majority-African JEM and SLA-AW rebel groups and Hemeti's Mahariya tribe, and Hemeti was not a party to many of these, let alone in control of them.

The signing of so many different agreements between different Mahariya leaders shows the lack of unified command and control that is implied and required by the accusation that all Mahariya acts in Darfur were attributable to Hemeti. This is further evidenced by the fact that the brother of Hemeti's Mahariya tribal paramount Nazir, Mustafa ad-Dud, was briefly arrested in 2017 for refusing to support the RSF.¹²

Furthermore, the fact that an act was of benefit to Hemeti is not per se evidence that Hemeti was responsible for the act. In May 2014, Sadiq al-Mahdi (former President and then-leader of the Umma Party) was arrested for criticizing Hemeti. However, there has been no suggestion that Hemeti was involved in organizing the arrest, which was done by the central government in Khartoum.

Motive

In 2016, a militia raided the house of a Darfurian state governor, killing two NISS agents there. That year, the UN Panel of Experts reported that 15% of all fighting in Darfur was from militia attacks against the government.¹³ The RSF was founded in order to bring some of these militias under control, and as such was given people from numerous different militias (in order to weaken those militias). This, in turn, meant it was demographically pan-Sudanese from the start.

Imputing any sort of racial motive to RSF members to commit crimes against Darfurians of any ethnicity or allegiance is thus made difficult. Without concrete proof of individuals having performed crimes, accusations will be required to provide evidence, beyond reasonable doubt, as to why the offending party would have desired to perform the act.

¹² (Tubiana, 2017 p. 7) reports this as Mustafa's brother, Mohammedein, the Nazir

¹³ (Panel of Experts on Sudan, 2016 p. 13)

There has also been a large amount of inter-tribal fighting in Darfur.¹⁴ In late December 2019, more than fifty people were killed in al-Geneina after racial tensions flared up near a displaced person's camp. This took place eight months after Bashir had been overthrown and is a reminder that not all violence in Darfur is attributable to government agencies, nor indeed was it all stirred up by government strategies to divide and conquer.

Coherence

Accusations against the RSF and Hemeti personally have to date not provided a coherent narrative as to what the right course of action would have been in Darfur. The model on which militias behaved was that when the government stopped paying their wages, they would go pillaging on their own.¹⁵

If a militia leader such as Hemeti (before 2013) had broken from the state for fear of the state perpetrating crimes, the soldiers of the militia would have gone one to commit crimes themselves. On grounds of command responsibility, the leader could then have been liable; this is the language and reasoning used by the UN.¹⁶ But staying under the state banner and receiving wages – and so keeping the militia from committing its own crimes – makes the leader liable for state crimes.

Absent any course of behavior that would keep a militia leader on the right side of the law from the international community's perspective, the accusations have the effect of criminalizing certain people regardless of their course of action. At this point, one may ask if such a line of accusations has merit in terms of justice. It would be difficult to gain buy-in for a truth and reconciliation process if some participants were to be told that they are guilty regardless of their choices, or lack of them.

Conclusion

On the balance of probabilities, did the RSF commit any crimes in Darfur after 2013, and did its members commit any crimes before joining the RSF? These questions are important for the truth and reconciliation process as it looks at how to move forwards and distribute compensation. These are civil matters that may be satisfied by the balance-of-probabilities evidence threshold, should the truth and reconciliation process wish to look at it in that way.

¹⁴ (Flint, 2010) provides an outline of inter-Arab fighting, but there have also been fights among African tribes, and of course between African and Arab tribes.

¹⁵ (Tubiana, 2017 p. 12)

¹⁶ (Panel of Experts on Libya, 2019 p. 10) at section 26 states 'The Panel finds that the Sudan, and General Mohamed Hamdan Dagalo, as he has command responsibility, are both in non-compliance with paragraph 9 of resolution 1973 (2011).'

Further evidence may be adduced that takes the level of proof to beyond reasonable doubt, in certain instances. Only in these cases can criminal accusations be leveled at individuals or institutions, and only if the evidence addresses all of the requirements of proving criminality. In these cases, the truth and reconciliation process may decide to waiver, or not, certain prosecutions in the interests of general reconciliation, and to avoid criminalizing the entire state.

General and unevicenced statements about the RSF being the heirs of the Janjaweed, about Hemeti inevitably being a criminal for having risen to power, or about the RSF having to be disbanded are not helpful to the process of reconciliation. They perpetrate the cycle of out-grouping, demonization, and persecution without evidence. Such approaches have already destroyed the lives of so many in Sudan.

The evidential thresholds that are applied to the members of the RSF will also be applied to all the other inhabitants of Darfur over the last twenty years. If that threshold is set low just to catch one person or group, the rule of law starts to break down and logical traps begin to consume the process.

The FFC, civilian counterparty to the military component of the Sudanese government, includes within its number the armed rebel groups of Darfur. If any of them have committed crimes, on the same evidential thresholds as the RSF is held to, then the FFC would need to be considered for disbanding also on grounds of fair process. The same applies to the entire government, which is made up of both RSF and FFC.

Charge 2: The Accusation of Involvement in the War in Libya

In 2011 the UN, through Resolution 1970 (2011) and then 1973 (2011), placed an arms embargo on Libya that also covered the provision of mercenary services to Libyan warring parties. The RSF as an institution and Hemeti as its leader have been accused of breaking the embargo by providing RSF soldiers to support General Haftar in Libya. The evidential trail behind these accusations has been extraordinarily weak. That is not to comment on whether the RSF was in fact involved in Libya; merely to state that the quality of evidence adduced has proven nothing at this time.

Hearsay

\$6m is a figure that recurs in relation to Hemeti and the RSF with such regularity that it begins to appear as though it is just a proxy for 'a large amount of money whose exact size is not known'. If the amount is not known, questions are raised about the quality of the evidence that allowed accusers to know there was any money changing hands at all.

2013

- \$6m is the figure that Hemeti is alleged to have received from Bashir for establishing the RSF.
- Other stories state that Hemeti received \$6m from the soldiers who joined the RSF, as each of the six thousand initial joiners paid Hemeti \$1,000 themselves.¹⁷

2016

- Musa Hilal was then alleged to have received \$6m from the Libyan Shaban Hadiya for providing 5,000 soldiers to fight in Libya.¹⁸

2019

- The Financial Times reported that Hemeti paid \$6m to Dickens and Madson to obtain help in US lobbying and get financial support from Libyan leader General Haftar.¹⁹
- The Globe and Mail cited the same contract with Dickens and Madson but now claiming that the \$6m payment was for help in getting paid by Libya for military support that had already been provided.²⁰

There are further inconsistencies in the conflicting narratives above. Given that providing mercenaries to Libya is a breach of international arms embargoes, further evidence is required

¹⁷ (Ismail, 2019) outlined the mechanism for the two contrasting views.

¹⁸ (Tubiana, 2017 p. 11)

¹⁹ (Financial Times, 2019)

²⁰ (York, et al., 2019)

to explain why Hemeti would have signed a contract that, as a lobbying contract that also included US lobbying, would be publicly filed.

Furthermore, Hemeti has been criticized for having control of Sudan's gold mines. He was described as a 'billionaire' in the Independent, and indeed donated \$1.02bn to the central bank in Sudan after Bashir's overthrow.²¹ His need to obtain money, to the point where he is paying for help to do so, from breaching UN embargoes requires further explanation before the accusation makes sense.

Finally, there is a confusion of timelines. Given that the contract with Dickens and Madson was allegedly signed in May, for a deployment of soldiers to Libya in July (according to the Globe and Mail article), Hemeti would have been able to withhold the deployment of his soldiers from Libya until he was paid. Paying \$6m in May to help get paid in July does not make sense in the context of a service to be provided in July.

Changing Sources and Stories

On December 9th, 2019, the UN Panel of Experts on Libya released a report stating 'The Panel estimates that 1,000 Sudanese troops from the Rapid Support Forces (RSF) were deployed to Libya on 25 July 2019 by General Mohamed Hamdan Dagalo (also known as Hemeti)'.²²

As evidence for this, it cited in its footnotes a 'confidential source' and an article in the al Araby newspaper's online edition. This, in turn, cited an article in Radio Dabanga, an Amsterdam-based Sudanese radio and news station.²³ Radio Dabanga, in the original article, cited 'reliable sources' without providing any further information.²⁴

Thus, a single article in Radio Dabanga with anonymous 'reliable sources' was picked up by a regional newspaper and that article was in turn cited by the UN as evidence for breach of an international arms embargo - a serious charge. Flaws in the evidence-gathering process are exacerbated by the fact that the UN did not even cite the original Radio Dabanga article as its source, but instead only went as far in its investigations as the al Araby one.

The result of the UN report was a flurry of international media coverage about Hemeti's involvement in Libya. Based on this paucity of evidence, the Panel went further than just adducing evidence: it then made a finding that Hemeti was personally responsible on grounds

²¹ (Trew, 2019)

²² (Panel of Experts on Libya, 2019 p. 10)

²³ (al Araby, 2019)

²⁴ (Radio Dabanga, 2019)

of command responsibility: 'The Panel finds that the Sudan, and General Mohamed Hamdan Dagalo, as he has command responsibility, are both in non-compliance with paragraph 9 of resolution 1973 (2011).'²⁵

This is a grave crime to be accusing a foreign head of state, or any human being, of making. If the UN would not make a finding of personal responsibility for arms embargo breaches against other heads of state, such as the US President or UK Prime Minister, based on the evidence of a solitary and un-sourced Radio Dabanga article, then the question is raised as to why it felt competent to do so with a Sudanese head of state. This falls well below standards of fair process.

The accusations of Hemeti's involvement in Libya conclude as startlingly as they began. The Panel of Experts on Sudan in January 2020 released their own report, stating that 'The Panel has no credible evidence of the presence of Rapid Support Forces in Libya, and the Panel's sources remain unaware of any such presence.'²⁶ Indeed, the panel blames 'Libyan and other media outlets' for the stories of Hemeti's involvement in Libya, with no reference to the Panel of Experts on Libya's report of December 2019.

Needless to say, there was no international media flurry retracting the stories about Hemeti's involvement in Libya from a month earlier. This is one of the most extreme cases of trial by media, and it highlights the dangers of deviating from fair process, and of well-intentioned but ill-informed outsiders trying to influence events in Sudan.

Conclusion

The confusion in the evidence and accusations regarding Libya may have stemmed from the porous nature of Sudan and Libya's border. For a number of years, individuals have passed in both directions escaping from or seeking money from wars. Some came from Libya and then joined the RSF, making it appear as though they were RSF soldiers returning from deployments in Libya.²⁷

As the UN Panel of Experts on Sudan stated, trying to explain some of the confusion regarding RSF involvement stemming from the Panel of Experts on Libya's report, 'It is worth noting that many Arabs from Darfur and Chad who fight in Libya as individual mercenaries for the Libyan

²⁵ (Panel of Experts on Libya, 2019 p. 10)

²⁶ (Panel of Experts on Sudan, 2020 p. 17)

²⁷ (Tubiana, 2017 p. 11)

National Army and other groups, including in Jufrah, hail from the same tribes as the majority of Rapid Support Forces personnel.²⁸

At present, there has been no credible evidence of payments or of support regarding RSF activities in Libya. The RSF as an institution has not had a formal or even coherent allegation levelled at it to which it can respond, and nor has its leader, Hemeti. Strict legal process and broader truth and reconciliation processes share in common a need for some quotient of meaningful evidence to be provided behind any accusation, and with regard to Libya, none has been offered.

²⁸ (Panel of Experts on Sudan, 2020 p. 17)

Charge 3: The Accusation of Crimes on June 3rd, 2019

On June 3rd, 2019, protesters seeking an immediate end to military rule and a fully civilian government were attacked. Fatality numbers are disputed but range from 87 to 124. The events are detailed in the timeline in Part One of this report.

Violence began when an area at the end of the months-long sit-in, Colombia, developed into a criminal and drug-taking area. The Joint Task Force gave notice to the protesters of its plan to move into that area only and clear it out on grounds of general criminality. The protest leaders duly asked protesters not to visit the area.²⁹ However, on the morning of June 3rd, the clear-out by a number of government agencies including the RSF escalated and civilian fatalities – alongside rapes and beatings – occurred.

The RSF has explicitly stated that it was a part of the operation, so that is not disputed. Further, the Sudan Tribune has reported that Hemeti acknowledged some RSF members were involved in violence, and arrested some.³⁰ To that end, individual criminal acts by members of the RSF, *ultra vires* (outside of the scope of their employment and orders, thus rendering them individual actors), are not disputed.

The questions are whether there is evidence that Hemeti planned and ordered the illegal violence and whether the RSF is institutionally liable for having intentionally committed crimes against the protesters. These are questions of attribution.

It should be noted that ordering and implementing the clearing of Colombia, the criminal area of the protests, was not of itself illegal. As reported before June 3rd, Colombia was problematic with criminals and drug dealers, and the protest movement itself had recognized this.³¹ Proof of both intent and organized execution in any orders given by Hemeti and the RSF's actions, with respect to the illegal actions on the day – the violence and killings – are required.

Attribution to Hemeti

The first question is whether there was anything in the nature of the orders themselves that was criminal. The evidence shows Hemeti did not plan a surprise attack to inflict civilian casualties. The Transitional Military Council had warned the protest leaders in advance that it intended to clear Colombia, and they acknowledged this warning by in turn asking protesters

²⁹ (Amin, 2019)

³⁰ (Sudan Tribune, 2019), August 6th. This article in the Sudan Tribune is disputed by Hemeti.

³¹ (Amin, 2019)

to leave.³² A BBC video of July 12th, 2019, which has provided the source of much of the accusations regarding Hemeti's involvement, also states that Hemeti had announced his plans as early as May 20th.³³

The BBC video acknowledges that the two anonymous purported RSF officers cannot be verified even as belonging to the RSF, let alone their statements corroborated. One of the two states that Hemeti gave 'instructions' on May 20th, and then the deputy commander of the RSF, Abdel Rahim Hamdan Dagalo, followed up later with clarifying instructions to 'clear it'.³⁴

Hemeti is a Lieutenant General and commander of the entire RSF. The way the orders process in the military works is that senior officers give orders to officers one or two ranks below them, and they in turn prepare their own orders and then give those orders to those below them, and so on down the chain of command. Between Hemeti and the Captain accusing Hemeti of giving the orders directly to him there would have been several intervening ranks. It would be a deviation from normal practice for a Lieutenant General to be directly giving any form of detailed orders to a Captain, beyond general words of intent or encouragement. It would be even more unusual for a senior officer to assemble his junior officers in order to announce to them his desire for illegality on their part.

Therefore, the testimony of the alleged officers in the video does not, *prima facie*, evidence anything concerning the actual orders given, and the detail within them. Insofar as the words 'clear it' from Abdel Rahim may be adduced as evidence, they explain nothing as to the methodology demanded by the order. Given ten days before June 3rd, they are more likely to have been exhortative as to outcome. There is certainly no implicit call to illegality or violence in those words.

A practical consideration raises further questions about the credibility of the anonymous and unverified interviewees. Given that no RSF officer has handed himself in to the state for crimes on June 3rd, the logical flow of events – if their story is to be treated as credible – must be as follows: Hemeti gave the order for force to be used in a specifically illegal way directly to these junior officers; they then carried out illegal acts per those orders; they then met with the BBC and confessed on international news to their roles in mass killings; and since then have not handed themselves in to any judicial authority.

The other source of evidence provided by the BBC video that ties Hemeti to the illegal use of force, as opposed to the legal clearing of the Colombia area, is a clip of a man who uses a racial

³² (Amin, 2019)

³³ (BBC News, 2019), 'Sudan's livestream massacre' at 15m 05s into the video

³⁴ (BBC News, 2019), 'Sudan's livestream massacre' at 15m 12s and 15m 30s

slur to describe Hemeti as a ‘donkey thief’.³⁵ This is a common slur for Janjaweed, and is a pejorative put-down that has been used by Arabs and Africans alike since the 1990s. The evidential credibility of a single person who made no claim to have met Hemeti during the orders process for June 3rd but who does use pejorative terminology is weak.

The BBC offers no other evidence that Hemeti ordered illegal acts, beyond two anonymous junior officers with an evidentially and logically incoherent narrative, and one person who was not present but felt he knew who it was and then used pejorative language to describe him.

There is also no motive provided with respect to why Hemeti, described by the BBC in the same video as ‘the second in command on the military council’ and considered by many to be ‘the real centre of power’³⁶, would have used his own forces to commit pre-planned illegal acts, when he would have had control over at least some other government security units.

To that end, there is no evidence currently available showing Hemeti directly and deliberately ordered illegal violence on June 3rd.

Attribution to the RSF

The question regarding attribution to the RSF moves on from the question of whether Hemeti ordered illegal acts to be performed, and on to whether they were performed by the wider RSF body in an organised way. Absent evidence of direct orders, Hemeti might not be personally liable, but the RSF would as an organisation need to account for criminal behaviour if proven. For such liability, evidence must show that it was the RSF that committed illegal acts, and not other groups or people.

Hemeti has stated that other units and individuals in Sudan sometimes pretend to be from the RSF and then commit crimes or ‘confess’ to things in order to weaken the RSF’s image.³⁷ There are those with the motive to do so. Groups with waning influence and funding, such as the now disbanded NISS (the intelligence service of Bashir), or the SAF (the regular army, which was Islamised under Bashir), indeed have issues with the RSF and so a motive to discredit it.

International Crisis Group acknowledged that ‘some members of the former regime are seeking to reverse the gains made by the protestors and to regain control in Khartoum.’³⁸ NISS agents being demobilised in January 2020 mutinied and had a brief armed rampage across

³⁵ (BBC News, 2019), ‘Sudan’s livestream massacre’ at 13m 15s

³⁶ (BBC News, 2019), ‘Sudan’s livestream massacre’

³⁷ (BBC News, 2019), ‘Sudan’s livestream massacre’ at 13m 55s

³⁸ (Malley, 2019)

Khartoum and other cities before the RSF disarmed them. In another recent example, in February 2020, a number of South Sudanese were arrested in Sudan trying to acquire RSF uniforms in order to foment trouble under that guise.³⁹

Armed parts of Bashir's government have been out of control dating back to at least 2004, when UN Special Envoy Jan Pronk reported that 'the government does not control its own forces fully'.⁴⁰

The RSF and NISS each had their own, very different, track records of behaviour during the protests that led to Bashir's overthrow and arrest. NISS have been repeatedly accused of behaving violently and illegally against the protesters, while the RSF took the side of the protesters throughout the protests, including when Hemeti personally arrested Bashir.

Human Rights Watch states 'Human Rights Watch does not know of any reports that indicate the RSF participated in the NISS crackdowns against protesters prior to April 11.'⁴¹ It acknowledges that there were accounts of individuals from the RSF 'intervening to stop ongoing abuses' on June 3rd.

Meanwhile, the story of NISS's behaviour is different. 'National security, police officers, and unidentified security personnel in plain clothes used lethal violence to disperse the April 6 sit-in.'⁴² Further detail is given by Human Rights Watch, including NISS using live rounds against protesters, and the detention and abuse of civilians right from the start of the protests in 2018. It is of note that when NISS agents mutinied in January 2020, they engaged in the same kind of behaviour, looting and attacking shops in the few hours their mutiny lasted.⁴³

The BBC video of July 12th, 2020, at two instances shows men in police uniforms beating protesters.⁴⁴ There have been no claims of RSF dressing up as police, so between the HRW report and the BBC footage there is corroborated video evidence that at least some other government actors were abusing protesters on June 3rd. Whether they were doing that as individuals or on orders from their own units is not known.

³⁹ (Sudan Tribune, 2020), February 2nd

⁴⁰ (Pronk, 2004), para. 6

⁴¹ (Human Rights Watch, 2019)

⁴² (Human Rights Watch, 2019)

⁴³ (al Jazeera, 2020), 'Sudan government forces quell armed protest by security agents'. The original article published on January 14th, 2020, included a witness statement from the al Jazeera reporter describing the NISS looting.

⁴⁴ (BBC News, 2019), 'Sudan's livestream massacre' between 8m 28s and 8m 40s

Hemeti himself has publicly stated he wished the operation had never taken place, given what transpired.⁴⁵ That fact is not conclusive but adds weight against the RSF having been ordered to act illegally.

There is therefore no evidence that has been made public showing organised and institutional illegality by the RSF on June 3rd. Other agencies have been caught on film conducting crimes that day, and there is a pattern of such behaviour from NISS at least. Some RSF individuals certainly committed crimes, and at the same time some were recorded as saving protesters. None of this is evidence that the RSF did not behave criminally that day; but none of it is proof that it did.

Conclusion

Most parties agree that Hemeti and the RSF supported the protesters during the protests and protected them from NISS on occasion. Hemeti was in the group that ordered the arrest of Bashir, and ordered no violence when protests continued after that. He gave public notice that one part of the protest site would be cleared to remove drug dealing and ordered the clear-out operation on June 3rd. Since then, he has not been accused of any violence in Sudan and has been an active and peaceful member of the government. This is an agreed narrative.

The difference in narratives sits solely on June 3rd. His accusers say that, egregiously to his behaviour in the rest of the narrative before and since, he that day ordered mass killings. He says he did not order mass killings, but that other groups committed them (as has been caught on camera), and he concedes that some of his RSF did commit other crimes that day, but against orders.

Members of the RSF are acknowledged as having committed crimes and those crimes require resolution in themselves. Beyond that, the behaviour of members of the RSF, even if *ultra vires*, raises questions about the unit's ability to control its members. This requires investigation and redress.

The evidence against Hemeti specifically is circumstantial, and absent further evidence the presumption of innocence stands. Hemeti has no proof he did not order violence, as his orders to military units were not, of course, recorded. Accusers also, therefore, do not have proof. Most orders at the time were coming directly from the Joint Task Force anyway. The evidence available at present would fail a balance-of-probabilities test, let alone a beyond-reasonable-

⁴⁵ (Sudan Tribune, 2019), August 6th

doubt one. He was, however, commander of the RSF on the day some of its members committed atrocities, and this in itself warrants a formal investigation into his conduct.

Other Accusations

Charge 4: Yemen

The RSF is accused of having had soldiers in Yemen for a number of years as part of the Saudi coalition there. This is not of itself illegal, but the fact is often raised by critics of the RSF.⁴⁶ The claims are not always coherent in determining who is responsible for the RSF deployment in Yemen.

The New York Times attributes oversight to General al-Burhan, head of the Sudanese Armed Forces, and also to Hemeti.⁴⁷ Other articles simply blame Hemeti. It is worth recalling that until 2019, Omer al-Bashir was President of Sudan and so he made decisions about international deployments. Since his removal from power, the RSF has wound down its deployment in Yemen. Absent a specific charge of illegality, and with the RSF openly acknowledging its presence in Yemen as part of an international coalition, there is little more that can be said on the matter.

Charge 5: Improper Financial Interests and Gold Mining

Just after South Sudan gained independence and took with it the majority of Sudan's operating oil reserves, large quantities of gold were discovered in Jebel Amer in 2012. Since that time, there have been a number of publications from international observers as to who owns and profits from the gold. The UN Panel of Experts focused on it in 2016,⁴⁸ as did the Small Arms Survey in 2017,⁴⁹ and Global Witness in 2019,⁵⁰. The media now references ownership of gold mines frequently, but with little context.⁵¹

As with the involvement in Yemen, there are no specific accusations of illegality concerning the ownership of gold assets, and indeed Hemeti has openly acknowledged them. The UN 2016 report raised the possibility that the gold mines, when under their previous owner, might have been subject to illegal levies on prospectors⁵² but there is no suggestion the RSF has done anything illegal.

⁴⁶ For example, (Trew, 2019), (Global Witness, 2019), (Tubiana, 2019)

⁴⁷ (el-Baghdadi, 2019)

⁴⁸ (Panel of Experts on Sudan, 2016)

⁴⁹ (Tubiana, 2017)

⁵⁰ (Global Witness, 2019)

⁵¹ (Tubiana, 2019) and (Trew, 2019) provide examples

⁵² (Panel of Experts on Sudan, 2016 p. 4)

Although of themselves a legitimate and acknowledged revenue stream for the RSF, military ownership of high-value assets anywhere in the world raises questions, and so some context is provided below. The truth and reconciliation process may consider the assets of importance when it comes to the payment of reparations and compensation. It should, however, be noted that Hemeti was publicly reported to be handing over the gold mines to the state on December 16th, 2019.

Until 2017, Musa Hilal owned the majority of the Jebel Amer gold mines. As the UN wrote in 2016, 'The Panel is certain that an entity controlled by Sheikh Musa Hilal derives a substantial revenue stream from illicit levies on gold mining at Jebel Amir.'⁵³ In 2017, Musa Hilal was arrested by the state and Hemeti took ownership of the mines. From 2017 until December 2019, Hemeti openly owned the mines.

Global Witness, in a report about RSF finances, wrote that 'The RSF famously took control over the large Jebel Amer gold mining area in Darfur by force in November 2017.'⁵⁴ The report – the only accusation of violence by the RSF in acquiring the mines – cited a BBC article in a hyperlink on the word 'famously'. In accordance with the generally accepted narrative of events, this article states merely that 'In November 2017, his forces arrested Hilal, and the RSF took over Sudan's most lucrative gold mines.'⁵⁵

The BBC article does reference violence with respect to Beni Hussein tribal members, but not Musa Hilal's Mahamid tribe from whom Hemeti took over the gold mines. The reason that violence is not alleged, other than by a solitary sentence in Global Witness's report, probably lies in the way in which the gold mines were used by Bashir.

His regime paid militias through a system of parastatal companies that has been clearly detailed by the Enough Project.⁵⁶ Until 2017, Musa Hilal was the recipient of the mines as he could take their revenues in lieu of government payment (he was a leader of the Border Guards). Upon his arrest, and with the rise of the RSF in size and prominence, Bashir handed the mines to Hemeti. There was no need for violence.

Addressing the question of why a military unit should have such large gold interests, the answer is that this is how military units were funded in Sudan at this time. There is no evidence to show a unilateral act of corruption by the RSF or Hemeti; this was 'political money'⁵⁷ paid from a government that had no access to international banking due to US sanctions.

⁵³ (Panel of Experts on Sudan, 2016 p. 5)

⁵⁴ (Global Witness, 2019)

⁵⁵ (de Waal, 2019)

⁵⁶ (Baldo, November 2018 pp. 7-8)

⁵⁷ (Baldo, November 2018 p. 7)

Now the government has changed, and sanctions have been lifted, Hemeti has duly returned \$1bn to the central bank and handed the gold mines back to the state.^{58, 59} The people under his command can now be paid normally, through the state and bank accounts, and they are.

International commentary on the general finances of the RSF suffers from a lack of coherence. The Small Arms Survey has stated that ‘Allegations that natural resources such as gold and ivory are funding Sudanese militias appear to be largely unfounded. The available evidence suggests that core government paramilitary forces remain highly dependent on government funding.’⁶⁰

Global Witness, meanwhile, has claimed the exact opposite; ‘RSF finances appear not to be under control of either the Sudanese military or the civilian elements of the country’s government.’⁶¹ This is evidenced, according to Global Witness, simply by the fact that the RSF has a bank account under its own name.

There is no elaboration as to why having a bank account should constitute financial independence from the state, or indeed how the RSF is supposed to meet payroll without a bank account. Regardless, no actual crime is alleged in all of the discussion surrounding RSF finances or gold ownership, and so there is no case to answer at present.

⁵⁸ (The Enough Project, 2019)

⁵⁹ (Kent, 2019)

⁶⁰ (Tubiana, 2017 p. 2)

⁶¹ (Global Witness, 2019)