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Q&A: Sudan's Pardon of Militia Leader Musa Hilal – and Future Accountability?

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On 11 March 2021, in accordance with a pardon by Sudan's Sovereign Council, Musa Hilal was released from military detention, in a move that was described by those within political circles as supporting transitional justice processes. In dropping all charges against Hilal, the military court cited the fact that the "blood guardians" reached a comprehensive settlement regarding Hilal's case, including a decision regarding the payment of blood money ("dia"), and the criminal proceedings against Hilal were closed.

This questions-and-answers document addresses key issues surrounding the pardon of Musa Hilal, including challenges to seeking accountability for past serious crimes Hilal and others are alleged to have committed in Sudan.

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1. Who is Musa Hilal?

Musa Hilal has been [described](#) by Human Rights Watch as "internationally synonymous with the *Janjaweed*," the government-backed militias who conducted serious international crimes in Darfur. Human Rights Watch has also described Hilal and his men as playing an "integral role in the two-year campaign of ethnic cleansing by the Sudanese army and *Janjaweed* militias," and noted that countless victims, witnesses to attacks, and members of the Sudanese armed forces have named Hilal as the top commander of the *Janjaweed*.

In July 2004, the US Department of State identified Hilal as one of six militia leaders alleged to be responsible for serious crimes in Darfur, and the UN Security Council [imposed](#) travel bans and asset freezes on Hilal (and three others) in April 2006. Controversially, in 2008, Hilal was [appointed](#) "special advisor" to now-former president Omar al-Bashir. He remained affiliated with al-Bashir's government until 2014, when Hilal withdrew from the National Congress Party and established the Revolutionary Awakening Council.

2. Why was Musa Hilal under military detention?

Hilal was arrested in 2017 following the promulgation of Presidential Decree No. 419/2017 by former president Omar al-Bashir. Hilal was arrested along with several hundred individuals from

the Border Guard Forces, a paramilitary group comprised of former *janjaweed* forces that was incorporated into the Sudanese Armed Forces (SAF) in the early 2000s.

Nominally intended to compel citizens to hand over illegal weapons, ammunition and unlicensed vehicles to Sudan's security forces, Decree No. 419/2017 was widely [regarded](#) as a politically motivated effort to rein in the power of Hilal (and the other tribal militias) which presented a threat to al-Bashir. Its enforcement was led by Mohamed Hamdan Dagalo ("Hemedti"), the leader of the Rapid Support Forces (RSF)—and the current vice chair of the Transitional Sovereign Council.

Since his [arrest after clashes](#) between the Border Guard Forces and the RSF, largely over Hilal's refusal to turn over weapons held by his militia, Hilal has not been held in official state detention facilities or been brought before a regular court, but rather has been detained in military headquarters in Khartoum. Hilal and his co-accused were charged with crimes under the Sudanese Criminal Act 1991 (including for premeditated murder) and under the Armed Forces Act and Anti-Terrorism Law 2001. Hilal was not charged with any crimes against civilians committed in Darfur.

Advocates in the past have [called](#) for an end to Hilal's detention, noting that the Sudanese government's use of "state of emergency" powers to arrest and detain individuals raises significant fair trial and due process concerns. For example, it is known that authorities kept Hilal in an unknown location for a period of time, which could constitute an enforced disappearance, and have previously denied Hilal access to his lawyers at least once. Given these concerns, Hilal's release from detention may be regarded, in a limited sense, as a positive step.

3. On what basis was the pardon for Musa Hilal issued?

It is noteworthy that the pardon issued by the Sovereign Council was inconsistent with Sudanese law. Article 211 of the Criminal Procedure Law 1991 states that any pardons, except for those regarding *hudud* (Shari'a law) offences, are to be issued by the "Head of State" after consultation with the Minister of Justice. This includes military court proceedings.

However, in this instance, the pardon issued was [reportedly](#) "resolved at the initiative of the Deputy Head of the Rapid Support Forces, Lieutenant General Abdul Rahim Dagalo," with the "blessing and patronage of" his brother, Hemedti, the vice chair of the Sovereign Council. Al-Burhan, the head of the Sovereign Council, and the director of the Sudanese armed forces also reportedly approved the pardon. It is not clear whether the Minister of Justice was consulted.

Given the political sensitivity of the case at hand, and the nature of the serious human rights and humanitarian law violations committed by Hilal and his forces in Darfur, the irregularity of the March 2021 pardon should be carefully scrutinised, with further explanation from the transitional government.

4. Were victims consulted or included in proceedings before a pardon was issued?

The military court in its decision dropped the charges against Hilal in part based on a tribal justice mechanism, including through the negotiation of written concessions from the "blood guardians" agreeing to drop their right to retribution in exchange for blood money. It was [reported](#) that the "leaders of the civil and community administrations," as represented by the head of the Rizeigat tribe (from which both Hemedti and Hilal hail) and other tribal leaders participated in the reconciliation settlement. There is no indication that victims themselves were included in any

discussions regarding such a settlement, even though Hilal was charged with crimes which cannot be brought before a court and resolved without the consent of the injured person(s) or his guardian(s).

Despite the possible advantages of a restorative justice model which includes tribal customs and traditions, and the positive role such tribal mechanisms may play in the context of transitional justice in Darfur or in the rest of Sudan, the blood money system has not historically advanced either general deterrence or accountability objectives.

In theory, compensation for losses suffered at the hands of a perpetrator, and the relinquishing of a “right to retribution” is meant to stop the cycle of violence. In practice, the proliferation of weapons in Darfur (and throughout the country), the deep pockets of militia leaders as a result of gold revenues, and a failure to focus on individual responsibility and guarantees of non-repetition, has resulted in the payment of hundreds of “blood money” sentences to little effect. That facilitators of reconciliation conferences receive a percentage of any blood money payments does not help, because the interests of the facilitators are often in direct conflict with the interest of the victims should a victim refuse the blood money sentence.

For these reasons, it is difficult to accept the pardon of Musa Hilal on the grounds that the use of tribal justice mechanisms constitutes a “transitional justice” approach, as claimed by some members of the transitional government.

5. Can Musa Hilal still be prosecuted for crimes committed in Darfur?

Future prospects for accountability for any crimes committed by Hilal and his forces are now uncertain. It is important to recognize that the pardon issued on 11 March is in relation only to the 2017 charges Hilal faced, including counts of murder and crimes against the state under the Sudanese Criminal Act 1991, Armed Forces Act 2006, and Anti-Terrorism Law 2001. In principle, therefore, Hilal could face criminal proceedings in a regular Sudanese court, or some other criminal tribunal.

However, existing immunities provisions in Sudanese law, as well as a recent amnesty announced in November 2020, threaten to foreclose all possibilities for accountability. (See below.)

Criminal accountability for serious violations committed in Darfur and throughout Sudan is essential to the success of any transitional justice process in Sudan. Any amnesty or immunity for perpetrators of gross abuses, including Musa Hilal, will shake victims’ faith in the criminal justice system in Sudan. Restoring confidence in justice as a value in Sudan, and preventing immunity, will require a radical change in dealing with files such as those discussed in this article. The government should not experiment with tactics previously tried in Sudan, such as denial, delay, misleading, or underestimation of the public.

6. Does the Nov. 2020 amnesty issued by Sudan’s Sovereign Council apply to Hilal?

The pardon issued on 11 March covers only a narrow set of charges against Hilal. More urgently, Hilal should face prosecution for the *janjaweed* activities in Darfur that left an estimated 300,000 people dead, and more than 2.5 million people displaced. However, the case of Musa Hilal provides a practical test of the “[general amnesty](#)” issued in November 2020 by Lieutenant General Abdel Fattah al-Burhan, the chair of the Sovereign Council.

The amnesty covers those who previously carried weapons or participated in military operations in Sudan, as well as any political leaders and members of armed movements at risk of prosecution specifically for their membership in such groups. The resolution excluded from the amnesty those who have been (i) indicted by the International Criminal Court; (ii) are accused of committing serious international crimes or grave human rights violations that fall within the mandate of the Special Criminal Court for Darfur; and/or (iii) face civil law or *qisas* (a category of crimes under Shari'a law) sentences.

Despite these exclusions, Musa Hilal may benefit from the amnesty, though international human rights organisations have held him responsible for gross human rights violations (for example, the United Nations has imposed sanctions on Hilal since 2007, including an asset freeze and a travel ban because of his participation in crimes against civilians in Darfur).

First, Hilal is not currently indicted by the International Criminal Court, and therefore does not fall within the first exclusion provided for in the amnesty resolution.

Second, it is possible that Hilal will fall outside of the second exclusion, related to violations of international human rights and humanitarian law which fall under the jurisdiction of a Special Criminal Court for Darfur. The amnesty resolution excludes those who are “facing accusation or criminal legal proceedings for the crime of genocide, crimes against humanity, war crimes and grave violations of international human rights law or international humanitarian law since the year 2002 . . . which fall under the jurisdiction of the Special Criminal Court on Darfur.”

Article 33 of the Criminal Procedure Act 1991 states that a person does not “face accusation” until after a “criminal case has been opened, based on the knowledge of the criminal police or the public prosecutor, or based on the report or complaint submitted to either of them.” As far as is publicly known, Hilal does not face any such accusation—there are no criminal cases pending against Musa Hilal in any police station or from any prosecutor’s office in Darfur, and no Special Criminal Court for Darfur has been established during the transitional period. (And, for that matter, Hilal was never charged with crimes before the first iteration of a Special National Criminal Court for Darfur, which was [established in 2005](#) and ultimately failed to successfully prosecute any international crimes.) From this reading of the amnesty resolution, it may therefore be possible that Hilal falls outside of the second exclusion, despite overwhelming evidence of his leadership role in crimes committed in Darfur.

The third and final exclusion from the amnesty concerns those who face notices and rulings related to the “private law” and *qisas* sentences (“retaliation in kind” sentences under Shari'a law), until after the private law has taken its course. Hilal is not likely to fall within this exclusion, as he does not face a restricted report in this manner, despite dozens of reports issued by various organisations implicating Hilal in crimes with a private right and *hudud* provisions. Among these is the [report](#) of the International Commission of Inquiry in Darfur (2009) and, on a national level, the findings of the Sudanese National Investigation Committee, headed by Maulana Dafa Allah Haji Yusuf. The Investigation Committee concluded that government forces committed crimes against humanity, including murder, and war crimes, including premeditated murder, in each state of Darfur.

Regrettably, the Committee did not initiate any judicial proceedings regarding these crimes in Darfur. In other words, these crimes were not recorded as reports, largely due to intransigence,

reluctance, and the refusal of the police and the prosecution to do so, and because of the intimidation of victims and witnesses. Consequently, the reports of these committees are no more than ink on paper. As a result, Hilal may again fall outside of the amnesty resolution's exclusions.

Any extension of an amnesty to Musa Hilal under the November 2020 resolution would be in clear violation of international law. Though amnesties can play a role in peace settlements, amnesties that altogether preclude accountability measures for gross violations of human rights and humanitarian law are incompatible with States' human rights obligations. States are required to effectively investigate and prosecute serious violations of human rights and international humanitarian law, including torture. For this reason, while a limited amnesty in Sudan could advance some important goals, such as facilitating leaders of armed movements to participate in peace negotiations, an amnesty for Musa Hilal or other perpetrators of human rights abuses in Sudan would be violative of international law.

7. Is Musa Hilal immune from prosecution under Sudan's Armed Forces Act?

It must also be emphasised that Musa Hilal should not be permitted to escape criminal accountability on the basis of existing immunities provisions under Sudanese law. Currently, under Sudanese law, police officers, security forces members and collaborators, and members of the armed forces are granted substantive and procedural immunities—which are incompatible with the right to an effective remedy because they effectively bar victims of torture and other human rights violations from claiming compensation or other forms of reparation.

Under Article 34 of the Armed Forces Act 2006, soldiers and officers who conduct any act "in good faith" in the course of their duties are afforded broad immunity, except in cases where such immunities are waived. As discussed earlier, the Border Guard Forces (formerly part of the *janjaweed* under Hilal) were incorporated into the Sudan Armed Forces (SAF) and granted military status. Article 34 protections therefore likely apply to Hilal, unless a waiver of these immunities is granted.

As is true of the amnesty resolution outlined above, the extension of any immunity from prosecution to Musa Hilal will contravene international law. Sudanese authorities should take urgent action to investigate and prosecute Musa Hilal and others responsible for the most serious violations in Darfur.