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Extermination by Design

The Case for Crimes against Humanity in Sudan's Nuba Mountains

By Akshaya Kumar

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Introduction

For three years, the government of Sudan has refused to grant humanitarian agencies entry into rebel-controlled areas of its war-torn South Kordofan state.ⁱ Despite numerous requests for permission to serve needy populations in these areas,ⁱⁱ Sudan's government continues to deny hundreds of thousands of vulnerable civilians life-saving assistance.ⁱⁱⁱ At the same time, the government has exacerbated the humanitarian crisis by accelerating its own aerial bombardment campaign and ground attacks in these areas.^{iv}

Taken together, the desperate situation of the people in rebel-controlled areas, the Sudanese government's aid blockade, and indiscriminate attacks on civilians, along with statements recently attributed to senior commanders in the government forces,^v lay the foundation for a case of crimes against humanity by extermination.

Humanitarian disaster in the Nuba Mountains

To better understand the toll of the government-imposed humanitarian blockade, in August 2014, a team of anonymous researchers conducted a detailed assessment of the living conditions of the people in the parts of South Kordofan controlled by the rebels.^{vi} Their research found that households are cultivating 10 percent less land this year than in the previous year.^{vii} The cumulative effect of three years of unrelenting war is that, alarmingly, cultivation has now dropped to one-fifth of pre-war levels.^{viii} As a consequence, 70 percent of displaced households are consistently experiencing moderate or severe hunger.^{ix}

Other indicators are equally alarming.

- Fifty-three percent of those surveyed in South Kordofan stated that the children in their home were not attending school regularly.^x
- Fifty four percent claim that their primary source dries up at some point during the year.^{xi}

- Forty seven percent have to walk more than five kilometers to reach a health facility.^{xii}
- Sixty six percent of households stated that their child had malaria in the preceding four weeks.^{xiii}
- Perhaps most striking, 70 percent of households stated that their primary barrier to food security was the insecurity caused by the violence.^{xiv}

Since war broke out in 2011, many from South Kordofan have fled to neighboring South Sudan's Unity state to escape the violence and receive assistance. There are already some 244,000 refugees living there.^{xv} However, since civil war is now raging in that part of South Sudan, this valuable escape route has been cut off. South Kordofan's most vulnerable populations have with fewer places in which to seek sanctuary.

The crime against humanity of extermination

International law criminalizes the "intentional infliction of conditions of life, [including] the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population" as an act of extermination.^{xvi} Writing in the ICRC Review, legal expert Christa Rottensteiner explains that in circumstances where the denial of humanitarian assistance is such that it can be considered to be "calculated to bring about the destruction of part of a population", the elements for extermination as a crime against humanity seem to be fulfilled.^{xvii} For a legal charge of extermination to stand up to scrutiny, it is important to identify the calculations underpinning the Sudanese government's decision to obstruct aid while continuing aerial and ground attacks.

In the past, activists made arguments about intention and calculation based on the patterns of the Sudan government's conduct. However, the recent leak of minutes from a high level Sudan military strategy meeting offers an unprecedented look inside those calculations. At the meeting, Lt. General Imadadiin Adaw, who serves as Chief of Joint Operations for the army, was quoted as recommending that it "should attack them before the harvest and bombard their food stores and block them completely."^{xviii} At the same meeting, Lt. General Siddiig Aamir, Director of Military Intelligence and Security, took the same approach, urging that the army "must not allow them to harvest these crops."^{xix} Lt. General Aamir added, "We must starve them."^{xx} These statements show the intent to limit the food stores available to those living in rebel-held areas.

On face value, both men's ambiguous use of the pronoun "them" makes it challenging to connect their words to attacks "directed against any civilian population" rather than a "legitimate" military target.^{xxi} Nonetheless, in assessing whether attacks are directed against civilians, courts have consistently found that the mere presence of some combatants does not alter the fundamentally civilian character of a group.^{xxii} Further, since their stated strategy focuses on preventing humanitarian access and stopping the harvest of food in rebel-held areas, the endorsement by these generals of indiscriminate military attacks tactics meets the threshold of recklessness.^{xxiii} In international criminal tribunals, a conviction for the crime against humanity of extermination has only required showing of recklessness – the conscious disregard of the natural and foreseeable consequences of one's actions – rather than a clear intent to exterminate a population^{xxiv}

Consequently, even though their use of the pronoun “them” is vague, the reckless disregard that senior government officials exhibit towards the impact that their plans will have on civilians living in the area is significant. When taken together their words and actions meet the legal threshold for extermination, a crime against humanity.

Notwithstanding the Sudanese government’s blanket prohibition on aid work in rebel-held areas, some humanitarian agencies have, at great risk, continued to work in those parts of the country. At the Mother of Mercy hospital in Gidel and a Médecins Sans Frontières clinic in Farandalla doctors care for patients under the constant specter of aerial bombardment,^{xxv} citizen journalists with Nuba Reports capture raw video footage documenting government attacks on civilians,^{xxvi} and local groups such as the Nuba Relief Rehabilitation and Development Organization help with education and sanitation.^{xxvii} In the past six months, all of these organizations have been subjected to aerial attacks under circumstances in which it was clear that their installations and buildings were the targets of the attack. These attacks are violations of the laws of war, which prohibit bombing humanitarian installations.^{xxviii} Further, since these attacks specifically targeted aid workers in a zone where humanitarian activity has been banned, they also fit within the broader crime against humanity of extermination. By banning all aid workers and then bombing those who dare to operate in spite of the ban, Sudan’s government is imposing “conditions of life” calculated to bring about the destruction of the Nuba Mountains civilian population.

When considered together, the Sudan government’s targeted attacks on humanitarian installations, its refusal to allow any aid workers into rebel-held areas, its aerial bombing of civilian settlements, its efforts to prevent harvesting of crops, and some of its other war tactics in the region all add up to extermination by design.

Endnotes

ⁱ UN OCHA reports “UN agencies have not had access to SPLM-N areas for the past three years and are unable to verify the scale of the civilian displacement and the scope of humanitarian needs”. See UN Office for the Coordination of Humanitarian Affairs, “South Kordofan and Blue Nile Population Movements Fact Sheet” (May 2014), available at <http://reliefweb.int/sites/reliefweb.int/files/resources/South%20Kordofan%20and%20Blue%20Nile%20Population%20Movements%20Fact%20Sheet%20-%2019%20May%202014.pdf>; See also Akshaya Kumar, “Aid As a Weapon of War” (Washington DC: Enough, October, 2013), available at <http://www.enoughproject.org/files/AIDasWEAPON-brief.pdf>

ⁱⁱ What’s In Blue, “Sudan-South Sudan Informal Interactive Dialogue,” September 16, 2014, available at <http://www.whatsinblue.org/2014/09/sudan-south-sudan-informal-interactive-dialogue.php> Irina Mosel and Ashley Jackson, “Talking to the other side: Humanitarian negotiations in Southern Kordofan and Blue Nile, Sudan, Humanitarian Policy Group Working Paper” (London: Overseas Development Institute, July, 2013), available at <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8591.pdf>; Ashley Jackson, “Humanitarian Negotiations with armed non-state actors: key lessons from Afghanistan, Sudan and Somalia” (London: Overseas Development Institute, March, 2014), available at <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8847.pdf>

ⁱⁱⁱ OCHA reports that SPLM-N estimates at least 800,000 people are internally displaced or severely affected by conflict in non-government held areas. See UN Office for the Coordination of Humanitarian Affairs, “Sudan Humanitarian Snapshot” (September 30 2014), available at http://reliefweb.int/sites/reliefweb.int/files/resources/Sudan_Humanitarian_Snapshot_30Sep14_0.pdf

^{iv} Sudan Consortium, “Human Rights Update: August 2014” (August 2014), available at http://www.sudanconsortium.org/darfur_consortium_actions/reports/2014/SudanConsortiumUpdateAugust_202014_FINAL.pdf; Nuba Reports, “Bombings Exceed 2000 As Peace Talks Begin,” November 14, 2014, available at <http://nubareports.org/bombings-exceed-2000-as-peace-talks-begin/>

^v Minutes from an August 2014 meeting of Sudan’s were leaked by Eric Reeves in September 2014. See Eric Reeves, ““What the Khartoum Regime Really Thinks”: Complete text of leaked minutes of critical August 2014 meeting of senior military and security officials,” Sudan Research, Analysis, and Advocacy by Eric Reeves, September 29, 2014, available at “ <http://sudanreeves.org/2014/09/29/what-the-khartoum-regime-really-thinks-complete-text-of-leaked-minutes-of-critical-august-2014-meeting-of-senior-military-and-security-officials/> See discussion of the document’s authenticity in Africa Confidential, “Khartoum in fact and fiction,” October 10, 2014, available at http://www.africa-confidential.com/article-preview/id/5807/Khartoum_in_fact_and_fiction

^{vi} See previous reports from 2012 and 2013: Enough Project, “Rapid Food Security and Nutrition Assessment” (October 2012), available at <http://www.enoughproject.org/files/SK%20Rapid%20Assessment%20Report.pdf>; Enough Project, “Life in the Nuba Mountains” (October 2013), available at <http://www.enoughproject.org/files/NubaMtns-report.pdf>

^{vii} Needs Assessment Report, Enough Forum *NEED TO ADD LINK TO CURRENT REPORT*

^{viii} Ibid.

^{ix} Ibid.

^x Ibid.

^{xi} Ibid.

^{xii} Ibid.

^{xiii} Ibid.

^{xiv} Ibid.

^{xv} Reliefweb, “South Sudan Situation UNHCR Regional Update, 40 (10 – 14 November 2014),” The Reliefweb Blog, November 14, 2014, available at <http://reliefweb.int/report/south-sudan/south-sudan-situation-unhcr-regional-update-40-10-14-november-2014>

^{xvi} International Criminal Court, “Elements of Crimes” (2011), available at <http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf> See also Prosecutor v. Kayishema and Ruzindana, Judgement, Case No. ICTR-95-1-T, T. Ch. II, 21 May 1999, para. 146 available at <http://www.refworld.org/docid/48abd5760.html>

^{xvii} Christa Rottensteiner, “The denial of humanitarian assistance as a crime under international law,” International Review of the Red Cross, September 30, 1999, available at <https://www.icrc.org/eng/resources/documents/misc/57jq32.htm>

^{xviii} Eric Reeves, “English translation of 31 August high level security meeting, September 29, 2014,” Sudan Research, Analysis, and Advocacy by Eric Reeves, September 29, 2014, available at <http://sudanreeves.org/2014/09/29/arabic-original-and-hand-written-english-translation-of-31-august-2014-meeting-pages-3-6/>

^{xix} Ibid

^{xx} Ibid

^{xxi} International Criminal Law Service, “International Criminal Law and Practice Training Materials, Module 7, Crimes Against Humanity”, available at http://wcjp.unicri.it/deliverables/docs/Module_7_Crimes_against_humanity.pdf

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^{xxii} *Bagilishema*, (Trial Chamber), June 7, 2001, para. 80: “The requirement that the prohibited acts must be directed against a civilian ‘population’ does not mean that the entire population of a given State or territory must be victimised by these acts in order for the acts to constitute a crime against humanity.” “Instead the ‘population’ element is intended to imply crimes of a collective nature and thus excludes single or isolated acts which, although possibly constituting crimes under national penal legislation, do not rise to the level of crimes against humanity.” Available at https://www1.umn.edu/humanrts/instreet/ICTR/BAGILISHEMA_ICTR-95-1A/BAGILISHEMA_ICTR-95-1A-T.htm

^{xxiii} Brdanin, International Criminal Tribunal for the former Yugoslavia, September 2004, paragraphs 392-396, available at <http://www.icty.org/x/cases/brdanin/tjug/en/brd-tj040901e.pdf>

^{xxiv} Lukic & Lukic, International Criminal Tribunal for the Former Yugoslavia, Trial Chamber Judgment, para. 939 (“The mens rea of extermination is that the accused committed the act or omission with the intent to kill persons on a large scale or in knowledge that the deaths of a large number of people were a probable consequence of the act or omission.”) available at

http://www.icty.org/x/cases/milan_lukic_sredoje_lukic/tjug/en/090720_j.pdf

^{xxv} Doctors Without Borders/Médecins Sans Frontières, “MSF Hospital Bombed in Sudan,” Press release, June 17, 2014, available at <http://www.doctorswithoutborders.org/news-stories/press-release/msf-hospital-bombed-sudan>; Caritas Internationalis, “Church hospital bombed in Nuba Mountains in Sudan,” Caritas Blog, May 5, 2014, available at <http://www.caritas.org/2014/05/sudan-targets-church-hospital-nuba-mountains/>

^{xxvi} Ryan Boyette, interview with author, October 2014, See also Michele Keleman, “In a remote corner of Sudan, an American Takes His Stand,” *Parallels*, November 03, 2014, available at

<http://www.npr.org/blogs/parallels/2014/11/03/361138668/in-a-remote-corner-of-sudan-an-american-takes-his-stand>; Alex Perry, “An American in Sudan’s Nuba Mountains Tells of Sudanese Bombing,” *Time*, May 11, 2012, available at <http://world.time.com/2012/05/11/an-american-in-sudans-nuba-mountains-tells-of-sudanese-bombing/>

^{xxvii} Radio Tamazuj, “Major relief organization bombed in Sudan’s Nuba mountains,” May 26, 2014, available at <https://radiotamazuj.org/en/article/major-relief-organization-bombed-sudan%E2%80%99s-nuba-mountains>;

^{xxviii} Article 18 of the “Convention (IV) relative to the Protection of Civilian Persons in Time of War,” a U.S.-approved treaty, says, “Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack but shall at all times be respected and protected by the Parties to the conflict.”

Emma Daly, “Immunity from Attack,” *Crimes of War*, available at <http://www.crimesofwar.org/a-z-guide/immunity-from-attack/>