

Armed Conflict-induced Displacement and Human Trafficking in the Sahel: Organised crime, vulnerabilities, and the accountability of non-state armed groups

Daniel Ogunniyi

Abstract

Although organised criminal networks and non-state armed groups (NSAGs) have historically exploited conflict situations to commit various crimes, the extent of human trafficking by these entities in the Sahel has barely been interrogated in academic literature. In principle, while states have an obligation to criminalise trafficking in persons, problems arise where the state has lost parts of its territory to NSAGs or is facing ongoing conflicts with such groups. Boko Haram, for instance, controlled a large swath of territory in Northeast Nigeria from 2009 to 2015, with evidence of human trafficking. Therefore, this paper examines two specific aspects of human trafficking in the Sahel conflicts: trafficking by organised criminals and trafficking by NSAGs, especially terrorist organisations. It argues that while domestic laws may be useful in combating trafficking linked to organised criminal networks, the traditional state-centric approach to human rights protection makes human trafficking governance more complicated where NSAGs are involved, especially where they exercise territorial control. The paper unpacks these complexities and highlights the deficits in existing international law treaties. It argues that customary international law could provide a solution to the anti-trafficking governance challenge in the Sahel and makes a case for the adoption of an anti-trafficking Deed of Commitment within the Geneva Call mechanism.

Keywords: human trafficking, Sahel, armed conflict, displacement, slavery, terrorism, non-state armed groups

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Introduction

For many years, the Sahel¹ has grappled with several multifaceted and complex humanitarian challenges.² Different forms of armed conflicts have reconfigured the region's demographic and social landscape, inducing population displacements and vulnerability to human trafficking. Trafficking in persons generally manifests itself at both ends of the conflict–displacement spectrum. While many children are forcibly recruited into armed groups to wage war, displaced victims of such wars are often exploited in forced marriage, forced labour, the sex industry, etc.³ Activities of violent extremist groups, such as Boko Haram, Islamic State, and Al-Qaeda-affiliated entities, have led to unprecedented migration flows and trafficking throughout the region. A recent estimate by the UN Refugee Agency reveals that around 2.5 million people have been displaced by decades of armed conflict in the Sahel countries of Burkina Faso, Mali, and Niger alone.⁴ Internal displacements within these countries increased tenfold from 217,000 in 2013 to 2.1 million in 2021, inducing a significant refugee crisis.⁵ Countries bordering the Lake Chad region, such as Cameroon, Chad, and Nigeria have equally witnessed largescale humanitarian crises due to violent campaigns by terrorist groups and other non-state entities.

Generally, human trafficking can be both instrumental and incidental to armed conflict, the former when used as a method of warfare and the latter when the displaced populations become vulnerable to trafficking.⁶ Both forms manifest themselves extensively in the Sahel, with organised trafficking syndicates and non-state armed groups (NSAGs) playing both incidental and instrumental roles.

¹ The Sahel is the vast semi-arid region in Africa situated between the Sahara Desert to the north and the tropical savannas to the south. Countries in the Sahel include Burkina Faso, Cameroon, Chad, Guinea, Mali, Mauritania, Niger, Nigeria, Senegal, and The Gambia. Five of these countries are part of the Group of Five for the Sahel (G5 Sahel), established in 2014 as a regional intergovernmental body: Burkina Faso, Chad, Mali, Mauritania, and Niger.

² UNODC, 'Sahel', retrieved 10 April 2023, <https://www.unodc.org/westandcentralafrica/en/sahel.html>.

³ A Malakooti, *The Intersection of Irregular Migration and Trafficking in West Africa and the Sahel. Understanding the Patterns of Vulnerability*, Global Initiative Against Transnational Organized Crime, 2020.

⁴ B Cheshirkov, 'Decade of Sahel Conflict Leaves 2.5 Million People Displaced', UNHCR, 14 January 2022, <https://www.unhcr.org/news/briefing/2022/1/61e137ac4/decade-sahel-conflict-leaves-25-million-people-displaced.html>.

⁵ *Ibid.*

⁶ F A Onomrerhinor and J Aimienrovbiye, 'Armed Conflict and Human Trafficking in Women and Children in Africa: What Role for the Rule of Law?', *International Journal of Comparative Law and Legal Philosophy*, vol. 1, no. 1, 2019, pp. 90–97.

The climate of hostility often provides a fertile ground for human trafficking to fester, as many pre-existing vulnerabilities affecting the civilian population are usually exacerbated as protections break down.⁷ As the rule of law becomes eroded, impunity is often normalised, thereby creating an environment conducive for human trafficking.⁸

Based on a doctrinal methodology, this paper assesses the challenge of human trafficking in the Sahel, focusing mainly on trafficking linked to activities of NSAGs and organised criminal networks. Although the idea of an NSAG is not defined in international law,⁹ the International Criminal Tribunals for the Former Yugoslavia (ICTY) noted in the Haradinaj case that NSAGs are typically characterised by a clear chain of command, the ability to gain access to weapons and military equipment, and sometimes the control over a territory, among others.¹⁰ The International Committee of the Red Cross (ICRC) has also defined ‘organised armed groups’ as the armed wing of non-state parties to a non-international armed conflict.¹¹ These entities may include dissident armed forces that have broken away from state armed forces or ‘other organized armed groups which recruit their members primarily from the civilian population but have developed a sufficient degree of military organisation to conduct hostilities on behalf of a party to the conflict.’¹² While the lack of a common definition has led to the use of many different terminologies,¹³ some common elements are still identifiable. NSAGs are usually characterised, *inter alia*, by i) their illegality under domestic law; ii) their distinct identity separate from state armed forces; and iii) the use of armed violence.¹⁴ This paper particularly focuses on the activities of terrorist groups, given that trafficking in persons linked to these entities in the Sahel has historically been largescale and widespread. The assessment of terrorist activities within the context of NSAGs is important, as international humanitarian law (IHL), for instance, makes reference to ‘armed groups’ as opposed to terrorist

⁷ UN Human Rights Council, ‘Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children’, A/HRC/32/41, 3 May 2016, para. 25.

⁸ K Kangaspunta *et al.*, *Global Report on Trafficking in Persons 2018, Booklet 2: Trafficking in Persons in the Context of Armed Conflict*, UNODC, Vienna, 2018, p. 5

⁹ E Heffes and B E Frenkel, ‘The International Responsibility of Non-State Armed Groups: In Search of the Applicable Rules’, *Goettingen Journal of International Law*, vol. 8, no. 1, 2017, pp. 39–72, <https://doi.org/10.3249/1868-1581-8-1-heffesfrenkel>.

¹⁰ For a fuller definition of organised armed groups, see the International Criminal Tribunals for the Former Yugoslavia case of *Haradinaj et al.* (3 April 2008, para. 60).

¹¹ The International Committee of the Red Cross, ‘Armed groups’, retrieved 3 October 2023, https://casebook.icrc.org/a_to_z/glossary/armed-groups.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Heffes and Frenkel, p. 45.

groups.¹⁵ The idea of ‘armed groups’ under IHL could, more generally, provide a legal framework for regulating the conduct of terrorist organisations, which are the dominant NSAGs in the Sahel.

The notion of armed conflict in this paper aligns with what the ICTY defined as ‘protracted violence between governmental authorities and organised armed groups or between such groups within a State.’¹⁶ This paper begins by briefly identifying the general typologies of human trafficking linked to armed conflicts, followed by an assessment of trafficking by organised criminal networks in the Sahel, especially the trafficking of individuals living in Internally Displaced Persons (IDP) camps. It then discusses human trafficking inherent in activities of NSAGs. It also analyses the accountability mechanisms for regulating the conducts of NSAGs as regards human trafficking. The last substantive section suggests that customary international law could provide a framework for imposing anti-trafficking obligations on NSAGs and makes a case for the adoption of an anti-trafficking Deed of Commitment within the Geneva Call mechanism.

Armed Conflict and Human Trafficking Typologies

As indicated above, trafficking manifests itself at both ends of the conflict–displacement spectrum. Many children are forcibly recruited into armed groups to wage wars, while displaced victims of such wars are often exploited in forced marriage as well as sexual and other forms of exploitations. Scholars have identified different typologies of slavery during armed conflicts. For instance, Jespersen identified ‘sex trafficking into conflict, trafficking from refugee/IDP camps, kidnapping to sell, kidnapping for forced labour/combat, kidnapping for sexual slavery, forced underage marriage’.¹⁷ Others have disaggregated human trafficking within and into conflict-affected areas from human trafficking away from conflict-affected areas.¹⁸ Whatever the typology, what appears constant is the enduring links between armed conflict and slavery/human trafficking. The categorisation into trafficking by organised criminal groups and those inherent in the activities of NSAGs in this paper does not neatly follow the above typologies. The different typologies and forms nevertheless manifest themselves in the Sahel. The current approach provides a framework for examining trafficking perpetrated by different kinds of actors.

¹⁵ Additional Protocol II of 1977 to the Geneva Convention; *Haradinaj et al.* case n 9.

¹⁶ *Prosecution v. Tadic* (Decision on Jurisdiction) IT-94-1-AR72 (2 October 1995).

¹⁷ S Jespersen, ‘Conflict and Migration: From Consensual Movement to Exploitation’, *International Journal of Security & Development*, vol. 8, no. 1, pp. 1-13, pp. 3–4, <https://doi.org/10.5334/sta.631>.

¹⁸ United Nations University, *Fighting Human Trafficking in Conflict: 10 Ideas for Action by the United Nations Security Council*, UNU, New York, 2016

Armed Conflict-induced Displacement and Human Trafficking by Organised Criminal Groups

Whenever there are population movements, displaced people often face increased risks of exploitation by criminal networks. Evidence shows that in the Sahel, as trafficking networks seek alternative routes to avoid detection, they often come in contact with civilians on the move, which increases the vulnerabilities of such migrants to exploitation.¹⁹ Aside from people on the move, there is strong evidence of the displacement–trafficking nexus in the Sahel, especially for individuals living in IDP camps, who are often affected by material poverty due to inadequately managed humanitarian interventions.²⁰ As a result of their poor economic conditions, women and girls in IDP camps often resort to transactional sex in exchange for money and material resources.²¹ In general, desperate individuals caught up in conflict and extreme poverty often have fewer alternatives and commonly accept sex work as a survival or coping strategy.²² As Sarah Spencer noted, ‘In times of conflict, when resources are scarce, women and girls often use the last resource available to secure protection and assistance for themselves and their families: their bodies.’²³ There are also accounts of parents giving away their children to be sexually exploited in exchange for food or money.²⁴

Indeed, human trafficking in the Sahel, which may be a result of the humanitarian situation in the region, fits the broader paradigm in which traffickers ‘capitalise on loss and destruction to exploit their victims, navigating the blurred line between consent and desperation as crisis-affected families and individuals fight for survival.’²⁵ There is a strong gender dimension, too, with evidence that women

¹⁹ A Fereday, *Niger. Routes Shift Amid Post-Covid Increase in Human Smuggling*, Global Initiative against Transnational Organized Crime, Geneva, 2022, p. 2.

²⁰ E T Njoku, J Akintayo, and I Mohammed, ‘Sex Trafficking and Sex-for-Food/Money: Terrorism and Conflict-Related Sexual Violence Against Men in the Lake Chad Region’, *Conflict, Security and Development*, vol. 22, no. 1, 2022, pp. 79–95, <https://doi.org/10.1080/14678802.2022.2034369>.

²¹ S Bamidele, ‘Are They Victims of COVID-19? The Livelihood and Quandaries of Sex Workers in the New Kuchingoro Camp for Internally Displaced People in Abuja, Nigeria’, *Anti-Trafficking Review*, issue 21, 2023, pp. 87–104, <https://doi.org/10.14197/atr.201223216>.

²² *Ibid.*

²³ S W Spencer, ‘Making Peace: Preventing and Responding to Sexual Exploitation by United Nations Peacekeepers’, *Journal of Public and International Affairs*, vol. 16, no. 1, 2005, pp. 167–181, p. 171.

²⁴ Njoku, Akintayo, and Mohammed, p. 80.

²⁵ UNICEF USA, ‘UNICEF Is Working to Prevent Human Trafficking in Humanitarian Emergencies’, *Forbes*, 9 January 2019, retrieved 11 April 2023, <https://www.forbes.com/sites/unicefusa/2019/01/09/unicef-is-working-to-prevent-human-trafficking-in-humanitarian-emergencies>.

play a key role in the trafficking process. Criminal networks often engage women living close to IDP camps to work with women within the camps, who identify suitable boys and girls to be trafficked out of the camp to serve as domestic workers within the country or in neighbouring countries.²⁶

Despite the risk of human trafficking in the Sahel by organised criminal groups, a survey conducted by the Danish Demining Group in Niger showed that only 2% of Niger's citizens living along the border with Mali and Burkina Faso mentioned cross-border trade, including human trafficking, among the top ten security threats they face.²⁷ The rapid increase in IDP camps in the Sahel and the lax security in the camps have contributed significantly to criminal activities and a thriving economy for trafficking networks.²⁸ There is therefore need for states in the Sahel to take stronger measures to respond to this challenge.

Human Trafficking by Non-State Armed Groups in the Sahel

The Sahel region has witnessed growing recruitments of child soldiers by extremist groups. A recent report by Amnesty International reveals that Jama'at Nusrat al-Islam wal-Muslimin (JNIM), a terrorist group based in Mali and active across much of the Sahel, has consistently targeted children aged between 15 and 17 for different activities ranging from active participation in hostilities to spying.²⁹ Children are also used as cooks, porters, and lookouts.³⁰ The Special Representative of the UN Secretary-General for Children and Armed Conflict has further demonstrated how the situation in the Sahel is replicated elsewhere in Africa and around the world, noting that in 2022 alone, more than 7,000 children were recruited by armed organisations, while over 4,000 were abducted.³¹ The Sahel and other countries in West and Central Africa have the highest number of children recruited by terrorist groups to participate in conflict. The region also ranks among the places where children are most frequently sexually exploited

²⁶ A Sampaio, *Conflict Economies and Urban Systems in the Lake Chad Region*, Global Initiative against Transnational Organized Crime, Geneva, 2022, p. 27.

²⁷ M Boås, *The Sahel Crisis and the Need for International Support*, The Nordic Africa Institute, Uppsala, 2019, p. 30.

²⁸ Sampaio, p. 26.

²⁹ Amnesty International, 'Niger: "I have nothing left except myself": The Worsening Impact on Children of Conflict in the Tillabéri Region of Niger', retrieved 7 April 2023, <https://www.amnesty.org/en/documents/afr43/4627/2021/en>.

³⁰ Jespersen, p. 7.

³¹ United Nations Human Rights Council, 'Statement by Ms. Virginia Gamba Special Representative of the Secretary-General for Children and Armed Conflict', 16 March 2023, https://hrcmeetings.ohchr.org/HRCSessions/HRCDocuments/66/OTH/OTH_3188_86_38c91b51_14be_4915_bf5a_f4b771b5c1f5.pdf.

or abducted.³² UNICEF has specifically noted direct cases of enslavement of children by the terrorist group Boko Haram following abductions. Exploitation by Boko Haram often includes direct use for combat operations, rape, sexualised violence, or even death,³³ as well as forced labour and forced marriage.³⁴ There is evidence that girls and boys are often differently affected by armed conflicts. Sociocultural norms increase the exposure of girls to rape and other forms of sexualised violence, while boys often account for the majority of cases of forced recruitment into armed organisations.³⁵

It has been controversially asserted that terrorist networks in the Sahel do not engage in trafficking to the same degree as organised criminal networks.³⁶ For example, Djallil Lounnas points out that while trafficking syndicates generate significant profits from their criminal acts, terrorist groups do not seem attracted to trafficking, as it does not yield sufficient profits for them and possibly negates their ideological motivation. He notes that terrorists often consider human trafficking as ‘a sort of exploitation of men by men, the exploitation of men’s misery, which is what they are fighting against. In this context, exploiting the suffering of others would be a contradiction of the belief system that has motivated their engagement in such organizations. Thus, human trafficking represents at most a marginal source of income for such organizations.’³⁷ However, the ethical and ideological rationales suggested by Lounnas here are not entirely convincing. The so-called aversion to ‘exploitation of men by men’ usually does not feature whenever vulnerable populations are forcibly conscripted by terrorist groups or sexually exploited. Increasingly, kidnapping for sexual slavery or sale of victims is gaining traction among terrorist groups, which is inconsistent with Lounnas’s proposition.³⁸ Thus, this narrow assessment of trafficking and enslavement may

³² UNICEF, *Build Back Better Lives: Protecting Children from Grave Violations in West and Central Africa*, 2021, <https://www.unicef.org/wca/media/7401/file/Build-back-better-lives-advocacy-note-eng.pdf>.

³³ *Ibid.*

³⁴ J Read, ‘Sexual Violence and the Boko Haram Crisis in North-East Nigeria’, *Humanitarian Exchange*, issue 70, 2017, pp. 24–27, p. 24.

³⁵ UNICEF.

³⁶ D Lounnas, ‘The Links Between Jihadi Organizations and Illegal Trafficking in the Sahel’, *MENARA Working Papers*, no. 25, 2018, p. 4.

³⁷ *Ibid.*

³⁸ A study on the exploitative activities of terrorist groups has, for instance, pointed out that ‘as ISIS expanded in Iraq, its members kidnapped thousands of children from orphanages, schools, and even their families’ homes. Children under the age of 14 reportedly made up over one-third of the 6,800 Yazidis that ISIS abducted in Sinjar in 2014’. See J T Darden, *Tackling Terrorists’ Exploitation of Youth*, American Enterprise Institute, 2019, p. 4. See also, UNODC, *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System*, UNODC, Vienna, 2017.

not fully capture the nuances of practices linked to activities of terrorist groups. Indeed, the kidnapping of girls, including their subjection to sexual slavery, slave trade, and forced marriage, has been well documented,³⁹ negating the view that terrorist groups are not involved in exploitation. Despite the ideological differences, there is also evidence of occasional collaboration between terrorist organisations and trafficking networks. While terrorist organisations sometimes provide protection to traffickers, terrorist groups receive food and shelter from traffickers, with the two ultimately collaborating to exploit vulnerable individuals.⁴⁰

In many Sahel countries, the potential of livestock farming, fishing, and agriculture attracts Boko Haram and other terrorist groups, making the region a complex space for war, refuge, smuggling, and human trafficking. Control over the illicit economies is crucial to the survival of terrorist groups.⁴¹ In Niger, there is evidence that some male members of terrorist organisations are attracted by financial incentives and other war booties offered by the group, such as sexual slaves, while the prospects of a better life and financial security have been noted to attract women and girls.⁴²

Trafficking in Persons and the Accountability of Non-State Armed Groups

This section focuses on the accountability of NSAGs involved in human trafficking, such as terrorist groups, rebel groups, and others. The traditional human rights paradigm focuses on states as the primary duty bearers, whereas an increasing number of victims in the Sahel are trafficked from or into territories controlled by NSAGs. In international law, NSAGs cannot be parties to a treaty and usually do not participate in treaty drafting processes.⁴³ Nevertheless, these entities are generally bound by Common Article 3 of the Geneva Conventions

³⁹ O Quist-Arcton, 'The Lament of the Boko Haram "Brides"', *NPR*, 27 August 2017, <https://www.npr.org/sections/goatsandsoda/2017/08/27/545912049/the-lament-of-the-boko-haram-brides>; H Sherwood, 'Boko Haram abductees tell of forced marriage, rape, torture and abuse', *The Guardian*, 27 October 2014, <https://www.theguardian.com/world/2014/oct/27/boko-haram-forced-marriage-rape-torture-abuse-hrw-report>.

⁴⁰ Lounnas.

⁴¹ Y H Daouda, 'Poverty and Living Conditions with Boko Haram in the Lake Chad Basin: The Case of Southeastern Niger', *Review of African Political Economy*, vol. 47, no. 163, 2020, pp. 126–134, <https://doi.org/10.1080/03056244.2020.1722086>.

⁴² *Ibid.*

⁴³ B Saul, 'Enhancing Civilian Protection by Engaging Non-State Armed Groups Under International Humanitarian Law', *Journal of Conflict & Security Law*, vol. 22, no. 1, 2017, pp. 39–66, <https://doi.org/10.1093/jcsl/krw007>.

of 1949, and obligations imposed by the Additional Protocol II of 1977 may apply, especially where such armed groups exercise territorial control.⁴⁴ The application of international human rights law to NSAGs is, however, much more controversial, as those armed groups usually lack the ability to implement the full range of human rights obligations owed by states.⁴⁵ In principle, the existing human rights framework and treaty body mechanisms are ill-equipped to hold armed groups accountable or to mandate them to provide remedies to victims of human trafficking and other human rights abuses.⁴⁶

Although IHL governs the conduct of hostilities between belligerents, it is less relevant in areas not affected by armed conflict, to which displaced populations may have migrated, or when armed hostilities have come to an end. In such cases, the displaced populations will enjoy protection from the state if they fall within its territorial jurisdiction. These issues are primarily addressed by human rights law.⁴⁷ Nevertheless, IHL would apply in conflict zones, especially where the issue of trafficking of children for use in combat operations or similar issues arise. In this regard, IHL applies to NSAGs, based on the principle of equality of parties to the conflict.⁴⁸ The Appeals Chamber of the Special Court for Sierra Leone (SCSL) has indeed stated that ‘it is well settled that all parties to an armed conflict, whether states or non-state actors, are bound by international humanitarian law, even though only states may become parties to international treaties.’⁴⁹ Human rights law, on the other hand, is predicated on vertical relationships between the state and the individual.⁵⁰ This begs the question to what extent NSAGs can be held accountable for human trafficking.

In 2016, the United Nations Security Council (UNSC) adopted a resolution regarding human trafficking in conflict situations.⁵¹ The resolution condemned ‘all acts of trafficking, particularly the sale or trade in persons’, for the purpose

⁴⁴ Article 1(1), Additional Protocol II to the Geneva Convention 1977; see also Saul.

⁴⁵ Saul, p. 40.

⁴⁶ J M Henckaerts and C Wiesener, ‘Human Rights Obligations of Non-State Armed Groups: An Assessment Based on Recent Practice’, in E Heffes, M D Kotlik and M J Ventura (eds.), *International Humanitarian Law and Non-State Actors: Debates, Law and Practice*, Springer, Berlin, 2020, pp. 195–227, p. 196.

⁴⁷ *Ibid.*

⁴⁸ Heffes and Frenkel.

⁴⁹ SCSL, *Prosecutor v. Norman*, Decision on Preliminary Motion Based on Lack of Jurisdiction, 31 May 2004, Case No. SCSL-2004-14-AR72(E) (Child Recruitment), para 22.

⁵⁰ Henckaerts and Wiesener, p. 205.

⁵¹ UN Security Council, ‘Resolution 2331 (2016) Adopted by the Security Council at its 7847th Meeting, on 20 December 2016’, S/RES/2331(2016), 20 December 2016.

of sexual slavery and forced labour by terrorist groups, including those operating in the Sahel, such as Boko Haram.⁵² To a large extent, NSAGs often disregard international law and make concerted attempts to undermine it. Indeed, whereas human rights law obligations should subsist during an armed conflict and in post-conflict situations, the reality is that the justice mechanism embedded in human rights law is largely reactive.⁵³ Regarding the obligation to prohibit human trafficking, including in armed conflict situations, state-centricity remains the dominant approach. The state-centric paradigm ignores the fact that international armed conflicts have become increasingly rare in the post-World War II era, with NSAGs exerting growing influence on the lives of individuals in many parts of the world.⁵⁴ Most human rights treaties address the obligation to protect victims during conflict situations with little or no reference to NSAGs. For instance, the UN *Convention on the Rights of the Child* (CRC) provides in Article 38 that state parties must ‘respect and ... ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.’ This includes an obligation to refrain from recruiting children below the age of 15 into state armed forces. As far as the recruitment of children is concerned, the CRC does not make any reference to NSAGs, which typically recruit children. This gap is partly addressed in the Optional Protocol to the Convention, which states that, ‘armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.’⁵⁵ It has indeed been argued that the language ‘should not’, used in the provision, suggests that the article does not intend to impose legal obligations on NSAGs.⁵⁶ Nonetheless, the obligation to prevent such recruitment falls squarely on the state.⁵⁷

Aside from the CRC, some regional instruments in Africa re-affirm the state-centric paradigm for preventing human trafficking in the Sahel and other parts of the continent. For instance, the African Charter on Human and Peoples’ Rights (ACHPR), adopted in 1981, indicates the obligation of states to promote and protect human rights without specifically referencing the protection from and prevention of human trafficking. Nonetheless, the prohibition of human

⁵² *Ibid.*

⁵³ Jespersen, p. 10.

⁵⁴ D Murray, *Human Rights Obligations of Non-State Armed Groups*, Hart Publishing, Oxford, 2016, p. 1.

⁵⁵ Article 4(1), *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*.

⁵⁶ C Ryngaert, ‘Human Rights Obligations of Armed Groups’, *Revue Belge de Droit International*, vol. 41, 2008 pp. 355–381.

⁵⁷ Article 4(2) Optional Protocol.

trafficking can be implied from Article 5,⁵⁸ which recognises the dignity of the human person and explicitly prohibits all ‘forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment.’ Again, the legal obligation to protect from and prevent human trafficking lies with states that are expected to regulate the conducts of non-state actors. Similar obligations, imposed on African states by Article 11 of the Protocol to the ACHPR on the Rights of Women in Africa 2003 (Maputo Protocol) and the African Charter on the Rights and Welfare of the Child 1990 (ACRWC), suggest that the conduct of NSAGs, including terrorist and other organisations, is to be regulated by states, which are sometimes not as powerful as those non-state entities. Indeed, even more powerful states in the Sahel such as Nigeria have not reported any prosecutions or convictions of NSAGs for recruiting children for combat operations, although other offences such as the sexual exploitation of women and girls displaced by armed conflict have been on the increase in the country and region.⁵⁹

Regulating the conducts of powerful NSAGs by states might be difficult to achieve, especially where states have lost parts of their territories to armed groups, including those acting in a state-like manner. Evidence shows widespread trafficking of children by terrorist groups in the Sahel in violation of international law. Between 2009 and 2015, Nigeria lost a large part of its territory in the northeast to Boko Haram, with overwhelming evidence of human trafficking and exploitation by the group.⁶⁰ Even though the lost territory has largely been reclaimed by the government, it is important to determine the scope of obligations of the terrorist group and other NSAGs in control of the lost territory. Although IHL does not explicitly reference or prohibit human trafficking,⁶¹ relevant legal mechanisms such as the Rome Statute prohibit exploitative practices such as sexual slavery, rape, forced prostitution, enforced sterilisation, forced pregnancy,

⁵⁸ D Ogunniyi and O Idowu, ‘Human Trafficking in West Africa: An Implementation Assessment of International and Regional Normative Standards’, *The Age of Human Rights Journal*, no. 19, 2022, pp. 165–185, <https://doi.org/10.17561/tahrj.v19.6851>.

⁵⁹ Onomrerhinor and Aimienrovbiye, p. 95.

⁶⁰ V Felbab-Brown, “‘In Nigeria, we don’t want them back’: Amnesty, Defectors’ Programs, Leniency Measures, Informal Reconciliation, and Punitive Responses to Boko Haram”, Brookings Institution, May 2018, retrieved 28 April 2023, <https://www.brookings.edu/research/in-nigeria-we-dont-want-them-back>; C W Ogbondah and P O Agbese, ‘Terrorists and Social Media Messages: A Critical Analysis of Boko Haram’s Messages and Messaging Techniques’, in B Mutsvairo (ed.), *The Palgrave Handbook of Media and Communication Research in Africa*, Palgrave, Cham, 2018, pp. 313–345, p. 316.

⁶¹ M Hurtado, Á Iranzo Dosdad and S Gómez Hernández, ‘The Relationship Between Human Trafficking and Child Recruitment in the Colombian Armed Conflict’, *Third World Quarterly*, vol. 39, no. 5, 2018, pp. 941–958, <https://doi.org/10.1080/01436597.2017.1408404>.

and comparable forms of sexual violence as war crimes when they occur in non-international armed conflicts.⁶² The Rome Statute also considers as war crime the deliberate displacement of ‘the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.’⁶³ In other words, population displacement by NSAGs may constitute a war crime where such displacement is not underpinned by security reasons.

In principle, IHL imposes some legal obligations on NSAGs in areas where they control a territory, including human rights obligations.⁶⁴ For instance, a 2007 report, submitted by the Panel of Experts on Sudan to the UN Security Council, noted that ‘although it is the primary responsibility of the Government of the Sudan to guarantee the human rights of its citizens and to protect them from any transgression, the different armed opposition movements also bear responsibility in areas under their control.’⁶⁵ Similarly, the International Commission of Inquiry for Syria pointed out that, although NSAGs ‘cannot formally become parties to international human rights treaties, they must nevertheless respect the fundamental human rights of persons forming customary international law.’⁶⁶ The UN Human Rights Council also noted in its General Comment 26 that human rights ‘protection devolves with territory and continues to belong to [citizens], notwithstanding change in Government of the State party.’⁶⁷ These obligations are, however, yet to fully crystallise in the form of a legally binding instrument.

Although IHL and human rights law do not sufficiently address the accountability of NSAGs for the offence of human trafficking, international criminal law clearly imposes liability on individual members of NSAGs for offences such as slavery, torture, war crimes, and others, largely based on collective criminality, via doctrines such as command responsibility and joint criminal enterprise.⁶⁸ Furthermore, members of NSAGs may be individually liable for the transnational crimes of human trafficking, e.g., per the *UN Protocol to Prevent, Suppress and Punish Trafficking*

⁶² Article 8(2)(e)(vi) Rome Statute; see also Hurtado *et al.*

⁶³ Article 8(2)(e)(viii) Rome Statute.

⁶⁴ K Fortin, *The Accountability of Armed Groups Under Human Rights Law*, Oxford University Press, Oxford, 2017, p. 19.

⁶⁵ UN Security Council, *Report of the Panel of Experts on the Sudan*, S/2007/584, 2007, para 282.

⁶⁶ UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/21/50, 2012.

⁶⁷ UN Human Rights Council, ‘CCPR General Comment No. 26: Continuity of Obligations’, Adopted at the Sixty-First Session of the Human Rights Committee on 8 December 1997 CCPR/C/21/Rev.1/Add.8/Rev.1, General Comment 26. (General Comments) (Contained in Document A/53/40, annex VII), para 4.

⁶⁸ Saul, p. 42.

in Persons, Especially Women and Children (UN Trafficking Protocol), supplementing the *UN Convention against Transnational Organized Crime*. The scope of the Protocol extends to offences that are ‘transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences’ (Art. 4), and requires states to criminalise all forms of human trafficking (Art. 5). Again, this legal regime relies on the implementation of international law by states, giving little power to NSAGs to implement and enforce it.⁶⁹

While there are growing attempts to hold NSAGs accountable for human rights abuses, including the offence of trafficking in persons, the scope of this obligation remains unsettled, at least from a legal normative standpoint.⁷⁰ It is generally accepted that states remain the primary duty bearers, with the expectation that they will regulate the conduct of NSAGs. It is clear, however, that the current legal regime, whether under IHL or human rights law, may not sufficiently address the accountability of NSAGs for human rights abuses, including the different forms of human trafficking. A distinction has been drawn in the literature between ‘human rights violation’ and ‘human rights abuse’; only states can be said to violate human rights, while the idea of abuse is more appropriate for characterising the conduct of NSAGs, as the various human rights treaties do not address them but impose obligations on states.⁷¹

In practice, the state-centric approach may create a legal vacuum in which the state is unable to enforce its domestic law while the armed groups are not subject either to direct obligation under international human rights law.⁷² This, in many ways, may impact negatively on the prevention of human trafficking and protection of victims. Where trafficking has occurred, obligations imposed on states, e.g., to provide assistance and protection to victims of human trafficking,⁷³ are not normally extended to NSAGs. At best, from a human rights law perspective, these entities only possess negative obligations, which might indeed prove useful for prohibiting the recruitment or trafficking of children for direct combat activities. However, a challenge remains. The relevant treaties, including the Protocol to the CRC on Armed Conflict,⁷⁴ the Geneva Conventions,⁷⁵ the Rome Statute,⁷⁶

⁶⁹ *Ibid.*

⁷⁰ Fortin, p. 4.

⁷¹ See, for instance, Henckaerts and Wiesener, p. 205.

⁷² Murray, p. 10.

⁷³ Art. 6 of the UN Trafficking Protocol.

⁷⁴ Art. 1 of the Optional Protocol obliges states to protect children who have not attained the age of 18 from taking direct part in hostility. Art. 4 prohibits the recruitment of children below the age of 18 from taking any part (direct and indirect) in hostility.

⁷⁵ Art. 4(3)(c) & (d) of the 1977 Additional Protocol II, Geneva Convention.

⁷⁶ Art. 8(2)(b) xxvi and art 8(2)(c)vii Rome Statute.

and others, prohibit the direct or active participation of children in hostility, whereas children may be used for other purposes falling short of direct and active participation, such as sexual slavery, domestic work, and others.⁷⁷

These deficits may further restrict the applicability of international law in protecting children not directly involved in armed conflict. As such, while international law imposes some obligations on NSAGs, it is clear that the level of protection available to the civilian population is limited, especially in the area of human trafficking. For the most part, the prohibition of the use of children from directly taking part in hostility is where human rights law and IHL largely intersect. While human rights obligations (on the prevention of child soldiering) may be disregarded by NSAGs, since human rights law has states' obligations at its core, these obligations may be reinforced by IHL, which gives a more considerable recognition to NSAGs. However, child soldiering is not the only area in which victims are exploited during armed conflict. A wide range of exploitations take place in conflict situations, which are not necessarily governed by any treaty law. As a result, this paper suggests that customary international law could provide a framework for imposing anti-trafficking obligations on NSAGs.

The Customary International Law Character of Human Trafficking and the Implementation of Human Rights Standards by Non-State Armed Groups

One question that might arise is whether human trafficking prohibition has attained a customary international law status. Indeed, unlike IHL, no exhaustive study has compiled the customary international law character of specific human rights provisions, including the prohibition of human trafficking.⁷⁸ In general, a number of human rights rules have been characterised as customary international law, and even as *ius cogens* applicable to NSAGs.⁷⁹ The Syrian Commission of Inquiry, for example, indicated that 'human rights obligations constituting peremptory international law (*ius cogens*) bind States, individuals and non-State collective entities. Acts violating *ius cogens* – for instance, torture or enforced disappearances – can never be justified'.⁸⁰ In other words, it is possible to identify

⁷⁷ Hurtado *et al.*, p. 943.

⁷⁸ B D Lepad, 'Toward a New Theory of Customary International Human Rights Law', in B D Lepad (ed.), *Reexamining Customary International Law*, Cambridge University Press, Cambridge, 2017, pp. 233–265, p. 239.

⁷⁹ A Bellal and E Heffes, 'Yes I Do: Binding Armed Non-State Actors to IHL and Human Rights Norms Through Their Consent', *Human Rights & International Legal Discourse*, vol. 12, no. 1, 2018, pp. 120–136.

⁸⁰ UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/19/69, 2012, para 106.

certain human rights which NSAGs are obligated to respect even in the absence of treaties. The point here is that human trafficking bears some semblance with slavery,⁸¹ and can, therefore, constitute customary international law. It is, indeed, often referred to as a form of modern slavery, including under the UK *Modern Slavery Act* of 2015. As Yasmine Rassam noted, the ‘international *opinio juris* of the term “slavery” has evolved’ to include trafficking in persons.⁸² It is generally accepted that the prohibition of slavery is among the least controversial aspects of customary international law that has attained the status of *ius cogens*.⁸³

Thus, there is a need to further develop the current accountability framework governing the activities of NSAGs. For instance, the United Nations Action Plan mechanism can be better articulated to address the growing challenge of human trafficking by NSAGs in the Sahel.⁸⁴ So far, 38 Action Plans have been signed, of which 11 are with government forces and 27 with NSAGs.⁸⁵

Moreover, organisations like Geneva Call, which has a track-record of engaging with NSAGs, could, for instance, be invited to provide technical support to formulate a coherent legal normative standard. Geneva Call has already developed an innovative mechanism via the Deed of Commitment, which allows NSAGs to pledge to respect specific human rights norms and be held accountable for their commitment. In the past, there have been Deeds of Commitment on diverse themes, including on the Prevention of Starvation and Addressing Conflict-Related Food Insecurity (2021), the Deed of Commitment for the Prohibition of Sexual Violence in Situations of Armed Conflict and Towards the Elimination of Gender Discrimination (2012), and the Deed of Commitment for the Protection of Children from the Effects of Armed Conflict (2010). In principle, the Deeds of Commitment are signed by the leadership of NSAGs and countersigned by

⁸¹ Among the forms of exploitation listed in the definition of ‘trafficking in persons’ contained in Art. 3 of the UN Trafficking Protocol are ‘slavery or practices similar to slavery’.

⁸² A Yasmine Rassam, ‘Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law’, *Virginia Journal of International Law*, vol. 39, 1998, pp. 303–332, p. 309.

⁸³ *Ibid.*, p. 310.

⁸⁴ An action plan is ‘a written, signed commitment between the United Nations and those parties who are listed as having committed grave violations against children in the Secretary-General’s Annual Report on Children and Armed Conflict. Each action plan is designed to address a specific party’s situation, and outlines concrete, time-bound steps that lead to compliance with international law’. See Office of the Special Representative of the Secretary-General for Children and Armed Conflict, ‘Action Plans’, n.d., retrieved 30 May 2023, <https://childrenandarmedconflict.un.org/tools-for-action/action-plans>.

⁸⁵ *Ibid.*

Geneva Call as a witness, while the government of the Republic and Canton of Geneva signs as custodian. A specific Deed of Commitment prohibiting human trafficking by NSAGs could, therefore, be formulated to ensure increased protection for trafficking victims in the Sahel and elsewhere. As NSAGs cannot become parties to human rights treaties, they may not feel obliged to respect rules they never formulated. The Deeds of Commitment give NSAGs the opportunity to formally express their consent to be bound by relevant norms and take ownership of these rules, which could improve compliance.⁸⁶

Conclusion

This paper assessed the challenges of armed conflict-induced trafficking in the Sahel. While noting that domestic laws generally provide a mechanism for holding NSAGs responsible for human trafficking, it demonstrated the legal limits of regulating the conducts of these entities, especially when they exercise territorial control. Regarding the challenge of trafficking by organised criminal networks, the paper demonstrated the increased risks faced by IDPs in the Sahel and stressed the need for states in the region to take stronger measures to respond to this challenge. The paper also recognised the legal and practical limits of imposing human rights obligations on NSAGs, such as terrorist organisations. Beyond the negative obligation precluding them from enlisting child soldiers, they lack the legal capacity to act in a state-like manner, including providing support and assistance to victims of trafficking.

Another weakness with human rights law is that it primarily addresses states, thus, discountenancing the position of NSAGs even though they are more likely to exploit vulnerable individuals during a conflict situation. Nevertheless, some solutions are available in IHL, especially where NSAGs are controlling a territory. IHL expressly recognises NSAGs both in Common Article 3 of the Geneva Conventions and in the Additional Protocol II of 1977. However, the scope of the obligations is, again, very limited, and many individuals may continue to be exploited in a conflict situation by terrorist groups and by individual and organised criminals.

In conclusion, the paper highlighted the existing deficits in broader anti-trafficking governance, especially where NSAGs are concerned. It argued that customary international law could provide a solution to the anti-trafficking gaps in the Sahel and made a case for the adoption of an anti-trafficking Deed of Commitment within the Geneva Call mechanism.

⁸⁶ Geneva Call, 'A New Deed of Commitment on the Prevention of Starvation and Addressing Conflict-Related Food Insecurity', retrieved 30 May 2023, https://www.genevacall.org/doc_starvation.

Dr Daniel Ogunniyi is a lecturer at the Wilberforce Institute and the Law School at the University of Hull in the UK. His research interests lie in the areas of modern slavery, human rights, climate-induced displacement, and international law. Email: d.ogunniyi@hull.ac.uk