

Trafficking in Persons for Ransom and the Need to Expand the Interpretation of Article 3 of the UN Trafficking Protocol

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Abstract

As the nature of trafficking in persons continues to manifest itself in myriad ways all over the world, interpretation of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), should be broadened to include newly emerging practices that are similar in nature to those it has already embraced under its definition. The Protocol appears to encompass other forms of trafficking which are unnamed or unforeseen by the definition provided under Article 3. It is time to expand its spectrum. Northeast Africa is plagued by a unique form of trafficking in persons—trafficking in persons for ransom. This involves a practice where people are smuggled, abducted, kidnapped and tortured to compel their relatives and families to pay ransom money. Victims are nationals of Eritrea, Ethiopia, Sudan and South Sudan. However, as Northeast Africa hosts particularly high numbers of Eritrean migrants and the largest Eritrean diaspora globally, Eritreans are very vulnerable to being targeted for trafficking for ransom. As trafficking for ransom is an emerging trend, legal ramifications have never been studied in full. Few reports try to address legal issues around the phenomenon, and those that do only give it a few paragraphs of attention. There is need for a closer look at this form of trafficking.

Keywords: Ransom, Trafficking, Trafficking Protocol, Torture, Exploitation, forced begging, debt bondage, Eritreans, migration, kidnapping

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Reality in Northeast Africa reflects the intricate nature of migration, smuggling and trafficking in persons. Inside the region, migrants are trafficked for ransom, which involves being smuggled, abducted, kidnapped and kept as hostages.¹ In hostage camps, captives are tortured often while on the phone with relatives or friends, as a means to expedite the payment of ransom.

The harsh political and economic reality in Eritrea is attributed as the main reason Eritrean nationals flee at an alarming rate. Desperate journeys in search of safety and security make

¹ The research is based on secondary data of recorded and compiled interviews with victims and other actors in trafficking in persons: Human Rights Watch, (HRW), 'Eritrea, Service for Life State Repression and Indefinite Conscriptioin in Eritrea', HRW, 2009; HRW, "'I Wanted to Lie Down and Die' Trafficking and Torture of Eritreans in Sudan and Egypt', HRW, 2014; HRW, 'Yemen's Torture Camps, Abuse of Migrants by Human Traffickers in a Climate of Impunity', HRW, 2014; M van Reisen, M Estefanos & C Rijken, *Human Trafficking in the Sinai: Refugees between Life and Death*, Nijmegen: Wolf Publishers, 2012; M van Reisen, M Estefanos & C Rijken, *The Human Trafficking Cycle: Sinai and Beyond*, Nijmegen: Wolf Publishers, 2014; Amnesty International, 'Egypt/Sudan Refugees and Asylum Seekers Face Brutal Treatment, Kidnapping for Ransom and Human Trafficking', Amnesty International, 2013.

Eritrean migrants vulnerable to traffickers. The traffickers are organised criminal groups who build livelihoods on the continuous flow of migrants and take advantage of the social, political and economic repression in Eritrea. The legal response to this problem in the countries of origin, transit and destination is very weak. Almost all countries affected lack a comprehensive legal framework and show limited interest in investigating and prosecuting the act inside or outside their territories. Trafficking in persons for ransom is one of the newest patterns of trafficking in persons. Records show that apart from Northeast Africa, the practice has plagued the Middle East (Yemen), Southeast Asia (Burma, Malaysia and Thailand) and North America (Mexico),² and yet it is one of the most poorly studied forms of trafficking. A few existing reports attempt to link trafficking for ransom with trafficking for debt bondage and/or forced begging, and a careful assessment of the facts and circumstances of the case reveals the limitation of Article 3 of the Trafficking Protocol in addressing the problem. This article provides a wider perspective on the issue and tries to demonstrate unique features of trafficking for ransom by focusing on the experiences of Eritreans who constitute a relatively large proportion of those experiencing it. The article looks at ways in which trafficking for ransom can be included in interpretations of the Trafficking Protocol, and it makes the case for states to look at the possibility of amending their national anti-trafficking legislation and policy to specifically include trafficking for ransom.

Trends of Trafficking for Ransom in Northeast Africa and the Middle East

Eritrea, situated in Northeast Africa, is a country of origin for the highest number of people in migration, smuggling and/or trafficking situations in Ethiopia, Egypt, Libya and Sudan and, to certain extent, Yemen. In 1998, the border war between Eritrea and Ethiopia claimed the lives of hundreds of thousands of people, displaced thousands of citizens and destroyed economic infrastructure. The Eritrean government follows an isolationist policy in handling the war and post-war impacts which has already resulted in increased political hardship and violations of fundamental human rights.³ Especially since 2001, the human rights situation in the country has gradually degraded.⁴ Eritreans began to flee the country in larger numbers to Ethiopia, Sudan, Djibouti and Yemen. As the influx increased, particularly since 2006, trends started to portray intertwined characteristics of smuggling and trafficking affecting the neighbouring countries. An intermix of smuggling, deceit, abduction, coercion, abuse and extortion has led some observers to the conclusion that the trends partly constitute human

² HRW, 'Yemen's Torture Camps', p. 34, retrieved 28 May 2014, http://www.hrw.org/sites/default/files/reports/yemen0514_ForUpload.pdf. People of the ethno-religious minority Rohingya who flee Burma to escape religious persecution are sold by Thai officials to traffickers in Malaysia who in turn hold them in hidden camps 'until relatives pay thousands of dollars to release them.' See also J Szep & A Marshall, 'Thailand's clandestine Rohingya Policy Uncovered', Thomson Reuters, 2013, p. 2, retrieved 1 December 2014, <http://graphics.thomsonreuters.com/13/12/ROHINGYA-THAILAND.pdf>. In Mexico, criminal gangs kidnap migrants who follow routes through Mexico and keep them hostage forcing them to reveal telephone numbers of their relatives and demand ransom. Amnesty International, 'Invisible Victims: Migrants on the Move in Mexico', Amnesty International, 2010, pp. 11 and 17, retrieved 14 January 2015, <http://www.amnesty.org/en/library/asset/AMR41/014/2010/en/8459f0ac-03ce-4302-8bd2-3305bd9cde/amr410142010eng.pdf>

³ HRW, 'Eritrea, Service for Life', p.3, retrieved 2 March 2014, http://www.hrw.org/sites/default/files/reports/eritrea0409web_0.pdf; M van Reisen et al., 'Human Trafficking in the Sinai', p.16.

⁴ Ibid., the pinpointed reason for people's discontent that causes migration is conscription of adults into the Eritrean National Service for indefinite periods of time. Eritrean National Service Proclamation No.82/1995 obliges citizens between 18-50 years old to take part, for eighteen months, in military training and national development programmes with inadequate remuneration. After the outbreak of the war with Ethiopia, a *de facto* state of emergency was declared and extended the time to an unlimited period.

trafficking.⁵ Although the problem also affects nationals of Ethiopia, Sudan and South Sudan, because Northeast Africa hosts particularly high numbers of Eritrean migrants and the largest Eritrean diaspora globally, Eritreans are very vulnerable to being targeted for trafficking for ransom.

Moreover, the countries become increasingly recognised as having multiple roles as countries of origin, transit and destination for trafficking. The trend of trafficking follows three main migration routes. The first route is an Eritrea-(Ethiopia)-Sudan-Egypt route where by the majority of Eritreans flee to Sudan directly or via Ethiopia with smugglers. In some cases, smugglers turn out to be traffickers at certain destinations and surprise migrants who are not aware of the fact that they have been smuggled by traffickers.⁶ After crossing the Sudanese border, many are forcefully picked up and transported to Sinai, Egypt. Trafficking starts from Ethiopian territory where incidences of kidnapping incidents have been reported in Mai Aini and Shimelba refugee camps.⁷ Similarly in Sudan, trafficking also begins with abduction and kidnapping taking place in and around Shegarab refugee camp, mainly by members of the Rashaida ethnic group.⁸ Victims are transferred to final hostage takers passing through a chain of financial arrangements or deals between different traffickers.⁹ Numbers of cases also involve collaboration of Eritrean, Sudanese and Egyptian police and security forces who take part in and facilitate the kidnapping and transportation of victims for hostage taking.¹⁰ For a number of cases, traffickers demand ransom money, which may be as high as USD 16,000.¹¹ Upon payment, migrants are either freed or sold to other traffickers in Egypt's Sinai.¹² At the main locations of El Arish, El Masoura and Al Mahdiain the Sinai, some members of the minority Bedouin tribes force payment of up to USD 50,000 per person.¹³ Different techniques of torture are applied to facilitate payment including whipping, burning bodies with molten plastics, electrocution, hanging and drowning the victims in water while they are in telephone conversation with their families.¹⁴ Hundreds die due to the dire hostage situations.¹⁵ Those

⁵ D Connell, 'Refugees at Risk', *Foreign Policy in Focus*, 11 April 2014, retrieved 9 May 2014, <http://www.danconnell.net/sites/default/files/Eritrean%20Refugees%20at%20Risk.pdf>

⁶ R Humphris, 'Refugees and the Rashaida: Human smuggling and trafficking from Eritrea to Sudan and Egypt', UN High Commissioner for Refugees (UNHCR), 2013, p. 22, retrieved 4 March 2014, <http://www.unhcr.org/51407fc69.pdf>

⁷ M van Reisen et al., 'Human Trafficking in the Sinai', pp. 25 & 40; Physicians for Human Rights-Israel, 'Hundreds of Refugees Held Hostage in Sinai Torture Camps Need Rescuing', 2012, retrieved 4 March 2014, <http://www.phr.org.il/default.asp?PageID=183&ItemID=1176>; HRW, 'I Wanted to Lie Down and Die', p. 22.

⁸ M van Reisen et al., pp. 28 & 30; The Rashaida ethnic groups are recent migrants from the Arabian Peninsula into Africa who practice pastoralism around the borders of Eritrea, Sudan and Southern Egypt. See also R Humphris, *Refugees and the Rashaida*, p.2. At first, members of this group helped Eritrean migrants with an illicit border crossing. Later, they began to exploit worsening situations in Eritrea that lead to a greater influx of migrants. With collaborators in Eritrea, Ethiopia, Sudan and abroad, they facilitate the abduction and kidnapping of Eritrean migrants and ask ransom of their families. They have formed new criminal networks or built on existing ones; see also L Lijnders & S Robinson, 'From the Horn of Africa to the Middle East: Human trafficking of Eritrean asylum seekers across borders', *Anti-Trafficking Review*, issue 2, 2013, pp.147 & 149.

⁹ M van Reisen et al., 'Human Trafficking in the Sinai', p. 25.

¹⁰ HRW, 'I Wanted to Lie Down and Die', pp. 42-47; Tom Dale, 'Are Eritrean and Egyptian Officials Profiting From Torture?', *Vice*, 12 February 2014, retrieved 4 March 2015, http://www.vice.com/en_uk/read/egypt-eritrea-trafficking-sinai

¹¹ HRW, 'I Wanted to Lie Down and Die', p.12; D Connell, 'The Rerouted Trafficking in Eritrean Refugees', *Middle East Research and Information Project*, vol. 43, 2013, retrieved 10 Oct 2013, <http://www.merip.org/mer/mer268/eritrea-eritrea-refugees>; M van Reisen et al., 'Human Trafficking in the Sinai', p.28.

¹² R Humphris, 'Refugees and the Rashaida', p. 12. The Bedouins are typically socially and economically marginalised people who avoid government control around borders of Eritrea, Sudan and southern Egypt. Some among the members of this group build lives along borders and routes to Israel, making money through illicit smuggling of trafficked persons, drugs and weapons.

¹³ *Ibid.*, p. 4; see The CNN Freedom Project, 'Stand in Sinai now Online', 26 September 2012, retrieved 5 March 2014, <http://thecnnfreedomproject.blogs.cnn.com/2012/09/26/stand-in-the-sinai-now-online/>; D Connell, 'The Rerouted Trafficking in Eritrean Refugees'; L Lijnders and S Robinson, 'From the Horn of Africa to the Middle East', p.139.

¹⁴ The CNN Freedom Project, 'Stand in Sinai now Online'; The 1984 Convention against Torture defines torture as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ... by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity...' However, since

who are not able to pay are often killed by the traffickers.¹⁶ Between 2006 and 2012, Israel was a destination for most of the fleeing migrants.¹⁷ In 2012, the Israeli government renewed its anti-infiltration regulation and fenced its border to deter the growing number of African migrants.¹⁸ Another deterrent was the shoot-to-kill measures carried out by Egyptian border patrol guards at the Israeli border.¹⁹ Due to these measures, while the overall flow of migrants through Egypt significantly reduced, numbers of people released on payment and those who escape the torture camps and return to Cairo have increased.²⁰

Since 2013, most migrants have taken the second route Eritrea-(Ethiopia)-Sudan-Libya. The trafficking pattern has also shifted to this route. To date, large influxes of Eritrean migrants follow this route hoping to cross to Europe from Libya.²¹ Many organised criminals smuggle and traffic migrants from all over the continent. In most cases, Eritreans coming directly or via Ethiopia gather in Sudan and are led by smugglers across the Libyan border. Other traffickers pick up the migrants at the border and keep them in places like Ajdabiya, for extortion.²² In some cases, migrants who made it to the Libyan territory are kidnapped and transferred for ransom and afterwards handed over to other groups who take additional money to arrange for their journey by sea to Europe.²³ Traffickers are nationals of Sudan, Tunisia, Libya, Somalia and Eritrea who physically and mentally assault hostages, with tactics

traffickers are mainly a group of individuals, trafficking for ransom seems to fall outside the spectrum of this definition. A flexible interpretation of the definition could lead to States' liability for failure to exercise due diligence to investigate and punish acts of torture committed by private actors or organised criminals that may amount to a State's facilitation or complicity with the private operations. Further, in the UN Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13, 2004, paragraph 8, States are required to 'prevent, punish, investigate or redress the harm caused by such acts [violations] by private persons or entities'. In addition, the fact that some security officers collude with traffickers amounts to a State's complicity in the unlawful practice. See also Article 1, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 1984, retrieved 5 April 2014, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>; see also *A v United Kingdom* [1998] ECHR 22 & *H.L.R. v France* [1997] ECHR 30; UN Office of the High Commissioner for Human Rights, 'Report of United Nations Committee against Torture', 49th and 50th Session, 2013, p. 255, retrieved 5 April 2014, [http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI%2fGEN%2f1%2fRev.9%20\(Vol.%20I\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI%2fGEN%2f1%2fRev.9%20(Vol.%20I)&Lang=en)

¹⁵ M van Reisen et al., 'Human Trafficking in the Sinai', p. 48; H Sherwood, 'Hundreds of Eritreans enslaved in torture camps in Sudan and Egypt', *The Guardian*, 11 February 2014, retrieved 9 March 2014, <http://www.theguardian.com/world/2014/feb/11/eritreans-enslaved-traffickers-sudan-egypt-torture-camps>

¹⁶ S M Weldehaimanot, 'Kidnapping, Hostage-Taking And Ransoming Of Eritrean Asylum Seekers In The Sinai Desert', Release Eritrea, 2011, p. 16, retrieved 18 February 2015, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1932457; M van Reisen et al., 'Human Trafficking in the Sinai', pp. 40 & 52.

¹⁷ UNHCR, 'Population Statistics', http://popstats.unhcr.org/PSQ_RSD.aspx; HRW, "'Make Their Lives Miserable" Israel's Coercion of Eritrean and Sudanese Asylum Seekers to Leave Israel', HRW, 2014, p.17, retrieved 2 October 2014, http://www.hrw.org/sites/default/files/reports/israel0914_ForUpload_1.pdf

¹⁸ M Omer-Man, 'The Origin and Politics of Israel's Refugee Debate', +972, 28 January 2014, retrieved 18 February 2015, <http://972mag.com/the-origins-and-politics-of-israels-refugee-debate/86180/>. The new regulation authorises detention of infiltrators for three years with the possibility of renewing until deportation. In addition, fences recently built along the border made crossing impossible.

¹⁹ HRW, 'I Wanted to Lie Down and Die', p. 26.

²⁰ T Dale, 'Sinai Trafficking Victims Face Hardship in Cairo as they Await Resettlement', *The Guardian*, 9 May 2014, retrieved 25 Jan 2015, <http://www.theguardian.com/global-development/2014/may/09/sinai-trafficking-victims-cairo-resettlement>

²¹ US Department of State, *Trafficking in Persons Report 2013*, pp. 397-399; M Manrique, J Barna, P Hakala, B Rey & E Claros, 'In-Depth Analysis Mediterranean flows into Europe: Migration and the EU's foreign policy, European Union', 2014, p. 5, retrieved 18 February 2015, <http://www.europarl.europa.eu/euroscola/resource/static/files/mediterranean-flows.pdf>

²² Xinhua, 'Somali man arrested over Lampedusa migrants' ship tragedy', 9 November 2013, retrieved 18 February 2015, http://news.xinhuanet.com/english/africa/2013-11/09/c_132874172.htm; Human Rights Concern, 'Eritrean Refugees in Libya: Forced to Clear Land Mines', *Asmarino Independent*, 19 March 2013, retrieved 20 May 2014, <http://asmarino.com/press-releases/1690-eritrean-refugees-in-libya-forced-to-clear-land-mines>

²³ M Schwartz, 'Letter from Lampedusa: The Anchor', *The New Yorker*, 21 April 2014, retrieved 29 April 2014, http://www.newyorker.com/reporting/2014/04/21/140421fa_fact_schwartz April 21 2014

including various methods of torture and rape.²⁴ The amount of money usually requested is relatively very small reaching up to USD 3,000.²⁵

The third, currently active, migration route includes Eritrea-(Djibouti)-Yemen. Though relatively small in number, Eritreans who follow this route also face risk of kidnapping, torture and ransom inside the territory of Yemen. The majority of the victims are nationals of Ethiopia and Somalia.²⁶ Migrants who cross the Red Sea to the shores of Yemen are abducted and kept hostage for ransom. Since 2006, organised criminal groups operate in smuggling networks extending through Ethiopia, Djibouti, Somalia and Saudi Arabia.²⁷ Trafficking intensified as desperate migrants were kidnapped and detained for ransom by traffickers in the desert camp around Haradh.²⁸ Migrants pass through chains of sales or deals between different gang groups before reaching their final destination.²⁹ Inside Yemen, the sales start when migrants reach the shore and are picked up by traffickers who pay boat crews USD 133 per head.³⁰ Traffickers sell the migrants to other traffickers who run their own independent camps.³¹ Migrants are kept in the camps where they are forced to make phone calls to ask for money of amounts up to USD 1,300.³² Treatment of hostages in these camps is similar to Sinai's torture camps where captives are beaten, sexually harassed and raped to facilitate payment.

Trafficking for Ransom under Article 3 of the Trafficking Protocol

The 2000 Trafficking Protocol adopted to supplement the UN Convention on Transnational Organized Crime (UNTOC) was part of the response to a global 'need for a comprehensive international approach' to address 'all aspects of trafficking in persons.'³³ The Protocol makes a significant shift by specifying that victims of human trafficking are not criminals.³⁴ It centres on three objectives: prevention and combating of trafficking in persons, protection of victims of the crime, and promotion of cooperation among States.³⁵ The Protocol widened the scope of the definition of trafficking at the time to accommodate protection against other forms of exploitation in addition to forced prostitution and forced labour.³⁶ Other forms of exploitation specifically mentioned in the Protocol are organ removal, slavery and slavery-like practices and servitude.³⁷ The scope also extends to trafficking of men and boys, though it gives special attention to women and children.³⁸ Under Article 3, trafficking in persons is defined to mean:

²⁴ Ibid.

²⁵ Agence France-Press, 'Lampedusa shipwreck migrants 'raped by traffickers', *The Telegraph*, 8 November 2013, retrieved 18 February 2015, <http://www.telegraph.co.uk/news/worldnews/europe/italy/10436645/Lampedusa-shipwreck-migrants-raped-by-traffickers.html>

²⁶ HRW, 'Yemen's Torture Camps', p. 22.

²⁷ Ibid., p. 30.

²⁸ Ibid., p. 27.

²⁹ Ibid., p. 30.

³⁰ Ibid., p. 35.

³¹ Ibid., p. 37.

³² Ibid., pp. 22 & 45.

³³ Preamble, Trafficking Protocol.

³⁴ Ibid., Articles 6-8.

³⁵ Ibid., Article 2.

³⁶ Ibid., Art 3a-c; Article 3, UNTOC.

³⁷ A D Jordan, 'The Annotated Guide To The Complete The Complete UN Trafficking Protocol', International Human Rights Law Group, 2009, pp. 9-10, retrieved 18 February 2015, http://www.hrlawgroup.org/resources/content/Traff_AnnoProtocol.pdf

³⁸ Article 3a, Trafficking Protocol.

...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Any organised criminal activity is considered to be trafficking in persons upon proof of fulfillment of three elements enshrined in the definition: *act*, *means* and *purpose*. The only exception is trafficking of children where the requirement of *means* is waived.³⁹ A careful examination of the facts and circumstances related to trafficking of Eritrean migrants for ransom easily demonstrates the first two elements of the definition. The last, a *purpose* of exploitation, has been more difficult to demonstrate, primarily because exploitation is undefined, and requires attention.

Act, as defined as ‘...recruitment, transportation, transfer, harbouring or receipt of persons...’ includes elements that commonly suggest mobility (national or transnational) of people by any one or a combination of the *means* enumerated under the definition. *Act* in the Eritrean context of trafficking signifies transnationality of the crime encompassing the transportation, transfer, harbouring or receipt of the victims. It is not clear whether recruitment is a relevant consideration in this context; because unlike trafficking in persons for forced labour or sexual exploitation, victims are not lured by employment opportunities offered or promised by traffickers before they fall into the traffickers’ hands.⁴⁰ A series of *acts* of receiving and harbouring victims takes place during the transporting and transferring of victims as most victims have to go through chains of sales or deals until they reach the final destination where they are harboured for extortion of money from their relatives.⁴¹ Looking at the facts, transferring of Eritrean victims through the chains of deals from one trafficker to another uniquely reflects the criminal act element in the trafficking process.

The second element *means* is defined as: ‘...threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person...’ Trafficking for ransom mainly involves abduction, deception and abuse of position of vulnerability of the victims.⁴² In many cases involving Eritrean migrants, abduction also occurs in collaboration with civilian and security officers. Kidnapping takes place in towns or refugee camps or en route to borders.⁴³ Threat and coercion also involve beating, torture, harassment and rape of victims in hostage camps to maintain obedience.⁴⁴ Unlike other forms of trafficking, families of victims are systematically threatened until they submit to the payment demands of the traffickers.⁴⁵ Delay in payment

³⁹ Ibid, Article 3b.

⁴⁰ L Lijnders & S Robinson, ‘From the Horn of Africa to the Middle East’, p.143.

⁴¹ HRW, ‘I Wanted to Lie Down and Die’, p. 4.

⁴² D Connell, ‘Refugees at Risk’.

⁴³ Amnesty International, ‘Egypt/Sudan Refugees’, p.10; HRW ‘I Wanted to Lie Down and Die’, p. 23.

⁴⁴ D Connell, ‘The Rerouted Trafficking in Eritrean Refugees’.

⁴⁵ M van Reisen et al., ‘Human Trafficking in the Sinai’, p. 48; H Sherwood, ‘Hundreds of Eritreans enslaved in torture camps in Sudan and Egypt’.

may result in serious harm, continued or intensified torture and even death of the captive.⁴⁶ Using torture as a *means* to achieve the trafficking *purpose* is not common among other forms of trafficking, though the overall treatment of victims, for instance, in trafficking for sexual exploitation or forced labour may amount to torture.⁴⁷ Nonetheless, trafficking for ransom clearly meets the *means* element of the Protocol's trafficking definition, as abduction, deception, abuse of a position of vulnerability, threat and coercion are demonstrably present.

The *purpose* of trafficking is exploitation, elaborated by the definition as constituting '...at a minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.' Exploitation is an oft-noted problematic part of the Protocol, as no definition of 'exploitation,' especially 'exploitation of the prostitution of others' and 'sexual exploitation,' is given by either the Protocol or any other international law.⁴⁸ The supposedly 'catch all' phrase, 'at a minimum' was intended to ensure the inclusion of additional forms of exploitation that are not included in the definition, such as 'forced marriage', 'forced adoption', 'the purchase or sale of children' and 'the making or distribution of child pornography.'⁴⁹ Analysts claim the definition provides a non-exhaustive list of exploitation.⁵⁰

The *purpose* in this case is collection of ransom. In some trafficking for ransom cases, *purposes* outlined in the Protocol's definition, such as sexual exploitation, forced labour, slavery or practices similar to slavery, are used as *means* to arrive at the purpose of collecting ransom. While in the hands of traffickers, captives (mainly women) suffered sexual assault or rape, and others were forced to work.⁵¹ The fact that captives are abducted, kidnapped, kept under control of the traffickers and sold and transferred through various dealers also portrays elements enshrined under the definition of slavery in the 1926 Slavery Convention.⁵² However, the question as to whether ransom qualifies as exploitation in the Protocol definition remains open.

Does Exploitation Encompass Ransom?

Ransom is a commonly recognised crime among various countries mainly linked with kidnapping, abducting and taking hostage of individuals.⁵³ Although no international framework directly counters ransom, some international conventions can apply to ransom as committed in relation with other criminal activities. The 1983 International Convention against the Taking of Hostages considers hostage taking as seizing or detaining and threatening to kill, to injure or continue to detain any person in order to compel any third party 'to do or abstain from doing any act as an explicit or implicit condition for the release

⁴⁶ HRW, 'I Wanted to Lie Down and Die', pp. 33, 34 & 37; SM Weldehaimanot, 'Kidnapping, Hostage-Taking And Ransoming'; M van Reisen et al., 'Human Trafficking in the Sinai', pp. 62-63.

⁴⁷ Organization for Security and Co-operation in Europe, 'Trafficking in Human Beings Amounting to Torture and other Forms of Ill-Treatment', 2013, pp.14-39, retrieved 26 April 2014, <http://www.refworld.org/pdfid/51d4158d4.pdf>

⁴⁸ A D Jordan, 'The Annotated Guide', p. 8.

⁴⁹ UNTOC, 'Travaux Préparatoires of the Negotiations for the Elaboration of the UNTOC and the Protocols Thereto', UNTOC, 2006, p. 344, retrieved 8 June 2014, http://www.unodc.org/pdf/ctoccop_2006/04-60074_ebook-e.pdf

⁵⁰ S Scarpa, *Trafficking In Human Beings: Modern Slavery*, Oxford University Press, Oxford, 2008, p. 5.

⁵¹ HRW, 'I Wanted to Lie Down and Die', pp. 34-36; see also M van Reisen, et al., 'Human Trafficking in the Sinai', p.26.

⁵² Article 1, Slavery Convention, 1926; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956; R Humphris, 'Refugees and the Rashaida', p.12; M Van Reisen et al., 'Human Trafficking in the Sinai', pp. 42, 47-57; HRW, 'I Wanted to Lie Down and Die', pp. 33-36 & 59.

⁵³ 'Global Incident Map,' retrieved 3 Nov 2014, <http://www.globalincidentmap.com/beta/kidnapping-for-ransom>; see also US legislation: 18 U.S. Code § 1201 - *Kidnapping*.

of the hostage.’⁵⁴ The definition of hostage taking and its inclusion of ransom apply to practice in Sudan and Egypt as it is common that hostages face kidnapping, abduction, and threats of death, injury or continued detention in order to compel relatives to pay ransom as a condition for their release.⁵⁵

The Trafficking Protocol does not define the term ‘exploitation’. Neither do other international laws. Despite this, it can be understood, from the context, that exploitation entails taking advantage of another person. The International Organization of Migration (IOM) defines exploitation as ‘the act of taking advantage of something or someone, in particular the act of taking unjust advantage of another for one’s own benefit.’⁵⁶ However, the meaning of exploitation can go further to imply benefiting of whatsoever as a result of contravention with the physical integrity of another person.⁵⁷ Trafficking for ransom meets both of these as we see that the traffickers *benefit* (in this case financially from ransom payments) from *taking advantage of* people they are holding. *Taking advantage* in practice here is both by contravention of physical integrity (as in the second understanding above) or further by threats. As a side note, this definition of exploitation includes *means* (taking advantage) within it for the end result of benefit to the trafficker. This is tautological as the definition of trafficking then includes a *means* to exploitation, but then common definitions of exploitation include *means* within them as well.

Limited to the context of trafficking, ransom can be understood as coercive or forceful transporting, transferring and harbouring or taking hostage of persons for the purpose of extortion of money in exchange for their release. Thus, the intention of the trafficker is to threaten the families of captives, forcing them to pay a demanded amount of money. Traffickers apply various methods of facilitating extortion which are successful enough to motivate them to target more victims. Unlike the categories of exploitation included under the Trafficking Protocol definition,⁵⁸ the act of contravention with the victim’s physical integrity in this case not only affects the victim, but also impacts third parties in order to bring about the desired result. Involving exploitation of more than one class of victims (the third-party relatives) portrays a distinct characteristic. Trafficking for sexual exploitation, forced labour and organ removal constitute exploitation of only one class of victims who are actually kept under the control of their traffickers. The Trafficking Protocol is silent about third party victimisation through trafficking, and this should be explored further.⁵⁹ In

⁵⁴ Article 1, International Convention Against Taking of Hostages, G.A.Rea.146, 1938.

⁵⁵ R Humphris, ‘Refugees and the Rashaida’, p. 12; M van Reisen, et al., ‘Human Trafficking in the Sinai’, p. 40; Connell, ‘The Rerouted Trafficking in Eritrean Refugees’; L Lijnders & S Robinson, ‘From the Horn of Africa to the Middle East’, p.139.

⁵⁶ IOM, ‘International Migration Law: Glossary On Migration’, 2004, p. 22, retrieved 10 June 2014, http://publications.iom.int/bookstore/free/IML_1_EN.pdf

⁵⁷ A G Korvinus et al., ‘Trafficking in Human Beings: The concept of exploitation in the Dutch trafficking provision’, 2006, retrieved 18 February 2015, pp. 3-4, http://www.legislationline.org/download/action/download/id/4992/file/Article_-exploitation-in-the-dutch-trafficking-provision_2006_en.pdf

⁵⁸ Under the trafficking definition, the concept of exploitation was broadly interpreted in to two categories: labour exploitation and sexual exploitation. Organ removal is the third. These three categories have a common characteristic: the act of contravention with the victim’s physical integrity. It can be with or without consent. The same could apply to other forms of exploitation that were foreseen to be included within the sphere of the definition. Global Alliance against Forced Labour, ‘Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work’, ILO, 2005, p. 7, retrieved 8 June 2014, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/declaration/documents/publication/wcms_081882.pdf; UNODC, ‘Travaux Préparatoires’, p. 344.

⁵⁹ Further study may be needed to determine whether families and friends of captives can be regarded as victims of trafficking or victims of threat. Reference was made to third parties affected by trafficking involving labour or sexual exploitation as ‘derivative victims’ that includes families or dependents of victims who suffered in intervening victims in distress or to prevent victimisation. However, it is not clear whether such reference can also be extended to families affected by trafficking for ransom due to the fact that intervention by third parties is non-physical, inevitable and enforced constantly. See M Y Mattar, ‘Incorporating the Five Basic Elements of a Model Anti trafficking in Persons Legislation in Domestic Laws:

addition, intention of the trafficker to gain advantage by contravention with victim's physical integrity does not involve work or service of the victims.

As we explore below, recent research by Reisen et al. links ransom situations with concepts of debt bondage and forced begging, which have been defined as forms of exploitation in trafficking. In international anti-slavery law, debt bondage is considered a practice similar to slavery and thus fits the Trafficking Protocol's list of possible forms of exploitation which includes slavery-like practices.⁶⁰ Forced begging on the other hand is not tied to the Protocol as specifically, but being something that could arguably be included in the non-exhaustive listing of examples of exploitation, or arguably be defined as forced labour which is in the list.⁶¹ Nonetheless, linking ransom to debt bondage or forced begging does not particularly hold, unfortunately, and this paper maintains that the stronger argument for defining these ransom cases as trafficking is made by exploring how ransom can be defined as exploitation, as above.

The Concept of Ransom and Debt Bondage

Reisen et al. consider the *purpose* of the trafficking to be debt bondage and forced begging.⁶² Their conclusion is based on situations in which trafficked victims are tortured to pay off debts and are forced to beg.⁶³ In international anti-slavery law, debt bondage is considered a practice similar to slavery and is defined as a status or condition arising out of a person's pledge of his personal or third person's service as security for a debt.⁶⁴ The third person has to be under his control and the value of the services, if assessed, 'is not applied, towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.'⁶⁵ In addition, the practice qualifies as a status similar to slavery when the value of such services is not defined or limited. In ransom situations, the victims' pledge of their personal or a third person's service is absent.

In the situation we find in Egypt, Libya, Sudan and Yemen, linking the purpose of trafficking with exploitation for debt bondage is tenuous due to the following points. Firstly, there are no clear indications that service of captive victims is anticipated by the traffickers. Secondly, even if the traffickers may attach the amount of money they spend to buy them as a debt to the captives, the threat and force they apply is not to derive profits out of the extorted, but is to collect money from the families of the captives.

From the United Nations Protocol to the European Convention', *Tulane Journal of International and Comparative Law*, Vol. 14, no. 1, 2006, p. 27.

⁶⁰ Article 1(a) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1957.

⁶¹ Though not globally applicable, it has however recently been defined as trafficking-related exploitation in European Union (EU) Trafficking Directive (2011/36). 'Within the context of this Directive, forced begging should be understood as a form of forced labour or services as defined in the 1930 ILO Convention No. 29 concerning Forced or Compulsory Labour.'

⁶² M van Reisen et al., p. 80.

⁶³ Ibid.

⁶⁴ Article 1(a) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1957.

⁶⁵ Ibid.

The Concept of Ransom and Forced Begging

Reisen et al. and others have attempted to link ransom with forced begging.⁶⁶ To show the definition of trafficking has been extended, Reisen et al., refer to the recently adopted European Union (EU) Trafficking Directive (2011/36) that includes forced begging as a 'possible form of exploitation.'⁶⁷ The Trafficking Protocol does not explicitly refer to forced begging as form of exploitation, but rather leaves this open by providing the non-exhaustive list of examples of exploitation.⁶⁸

A recent ILO meeting considered begging as forced labour 'when people are employed by someone to perform such activities and must give away whatever they obtained by doing so.'⁶⁹ The ILO defines forced labour as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.⁷⁰ Facts and circumstances in the kidnapping and abduction of migrants clearly show that the relationship between the traffickers is not based on employment/work, and it is unclear how the meaning of service in the definition of forced labour applies. Therefore, the fact that hostages are forced to communicate with their relatives to beg for money, or the fact that families are forced to beg on the streets and in public places to collect ransom money, could have no importance to determine the existence of forced begging. Rather, coercing captives by torture is the most common method the traffickers use in order to facilitate payment by relatives.

The situation can also be examined to see if it fits with organised begging where proof of employment relationship is not required. Organised begging is recognised as a separate form of trafficking-related exploitation by the UN Office on Drugs and Crime.⁷¹ However the context of begging may be limited to situations where 'children, elderly persons or disabled migrants...tend to beg in public places and on public transport.'⁷² The current trend of organised begging is derived by 'consumer oriented demand' and usually focuses more on engaging children for begging.⁷³ An attempt to link ransom with this form of exploitation has to deal with the following major differences. Firstly, in organised begging, people who give money to the beggars are not controlled by the traffickers, whereas in trafficking for ransom, relatives of the captives are attached to the situation because their families and relatives are being abused inside the hostage camp. Secondly, with regards to organised begging, when beggars receive no or insufficient money through begging, traffickers can and often do simply interrupt the relation with the beggars.⁷⁴ In the hostage camps, however, captives receiving a smaller amount than the traffickers receive extended threats and physical harm, while refusal

⁶⁶ L Lijnders & S Robinson, 'From the Horn of Africa to the Middle East', p. 143, 'captives who do not have connections abroad often see their families forced to beg for money or sell their belongings such as jewellery, property and livestock for their release.' See also M van Reisen et al., p. 80, 'the refugees who find themselves in the houses of the Bedouins are regularly tortured while being forced to beg their relatives to send money.'

⁶⁷ The EU Trafficking Directive also states: 'Within the context of this Directive, forced begging should be understood as a form of forced labour or services as defined in the 1930 ILO Convention No. 29 concerning Forced or Compulsory Labour.'

⁶⁸ UNODC, *Travaux Préparatoires*, p. 344.

⁶⁹ ILO, 'Forced labour and human trafficking', 19th International Conference of Labour Statisticians, ILO, Geneva, 2013 p. 9, retrieved 11 June 2014, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meeting_document/wcms_222037.pdf. Note: This was a meeting of statisticians, and thus this definition does not carry the weight of a convention for instance.

⁷⁰ Forced Labour Convention, 1930, No. 29, retrieved 04 February 2015, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:C029:NO

⁷¹ UNODC, 'Human Trafficking Indicators', retrieved 5 Jan 2014 http://www.unodc.org/documents/human-trafficking/HT_indicators_E_LOWRES.pdf

⁷² Ibid.

⁷³ I Cherneva, 'Human Trafficking For Begging', *Buffalo Human Rights Law Review*, 2011, p. 65.

⁷⁴ Ibid, p. 66.

to pay results in killing of the captive in retribution.⁷⁵ Thirdly, people voluntarily give money to beggars, while relatives of the captives pay money due to the coercion and pressure from traffickers.⁷⁶ Fourthly, in hostage camps, the amount of money to be received by the captives is fixed and sometimes negotiable, while in organised begging the amount is not fixed and no negotiation is made between the traffickers and the people on the street.⁷⁷

From the Trafficking Protocol to National Legislation and Policy

The article has looked at ways in which trafficking for ransom can be included in interpretations of the UN Trafficking Protocol and has debated with others who have tried to make it fit by considering ransom a form of debt bondage or forced begging and thus trafficking. Considering it as exploitation in its own right however remains the most robust argument for definitional inclusion. Regarding impact of these semantics, the Trafficking Protocol and anything it might include or not include is irrelevant unless states amend or draft their national anti-trafficking legislation and policy to specifically include trafficking for ransom or to be broad enough to allow trafficking for ransom to easily fit definitional criteria of trafficking. Though the scope of this paper is limited to legal analysis, of course states' implementation of appropriately worded and relevant legislation and policy must follow.

In looking at the national legal arrangements in the Northeast African countries affected by the problem, it is evident that almost none of them have adequate legal frameworks and enforcement mechanisms. Eritrea, Ethiopia, Libya and Yemen do not have comprehensive legal frameworks to suppress and punish trafficking committed inside or outside their territories. Only a few provisions are available in their respective criminal codes addressing limited aspects of trafficking and offering very limited protection.⁷⁸ Egypt's new law issued in 2010 appears to be clearer than Article 3 of the Trafficking Protocol in defining the scope of exploitation but does not encompass ransom.⁷⁹ The new Sudanese Anti-Trafficking Act, however, addresses the issue of trafficking for ransom, although it treats ransom as a distinct 'illegal objective'.

Article 7 of the Sudanese Anti-Trafficking Act defines trafficking in persons as abducting persons or transferring or deporting or harbouring or receiving or detaining them to exploit or use them in illegal acts or to achieve illegal objectives for... material return or gain... through the 'use of force or any form of coercion or kidnapping or fraud and deception or abuse of power and influence or the exploitation or abuse of a position of vulnerability or need.'⁸⁰ The definition is wide enough in scope to very clearly include all forms of trafficking in persons through a broad interpretation of 'exploitation' that makes it possible to address exploitation beyond sexual exploitation, labour exploitation and removal of organs.

⁷⁵ HRW, 'I Wanted to Lie Down and Die', pp. 33, 34 & 37.

⁷⁶ Ibid., pp.1, 25 and 54; M van Reisen et al., p. 68.

⁷⁷ M van Reisen et al., p.43.

⁷⁸ Arts 605 and 565 of Proclamation No.1/91-Transitional Penal Code of Eritrea; Article 418 of the Penal Code of Libya; Articles 596, 597 and 635 of Proclamation No.414/200-Criminal Code of the Federal Democratic Republic of Ethiopia; Article 248 Criminal Code of Yemen.

⁷⁹ Article 2 of the Law Regarding Combating Human Trafficking, No.64/2010. The Act appears to have been modelled after the Trafficking Protocol. The catch-all phrase: 'in any of its forms' opens space for other forms of exploitation that are not only unnamed but also unforeseen. It also makes clear that exploitation could extend to forcing children to beg and engage in acts of pornography.

⁸⁰ Article 7 of the Sudan Anti-Trafficking Act, 2013; the Article defines Illegal objectives as material returns, gains, or promises of return or gain or grants of any kind of benefits.

Purpose defined as using a victim to ‘achieve an illegal objective for material gain’ matches the basic feature of ransom as it aims directly at gaining monetary benefits. Importantly, using victims for gaining benefit does not involve victims’ labour or service since an employment relationship between traffickers and victims is never considered. Contravention with captives’ physical integrity by itself is not part of the definition of the *purpose* and instead is used as a *means*. Thus, circumstances of third party victimisation can possibly be included under the purpose of achieving the illegal objective more adequately.

National legislation and policy both in the Northeast African region and elsewhere would usefully be amended to specifically include trafficking for ransom or to ensure definitional breadth wide enough to ensure trafficking for ransom easily fits definitional criteria of trafficking. Reports from the Middle East (Yemen), Southeast Asia (Malaysia, Myanmar and Thailand) and North America (Mexico) suggest that trafficking for ransom as a phenomenon does not necessarily have regional specificity and policymakers could benefit from legal analysis of the problem *vis a vis* the Trafficking Protocol as well as national legislation in Northeast African states where the problem is possibly most pervasive.

Conclusion

We have seen that trafficking for ransom meets commonly used definitions of exploitation, as traffickers *benefit* financially from ransom payments, through *taking advantage of* people they are holding. While ransom can be interpreted as exploitation, it does not share the same features of exploitation as the types that are specifically mentioned in the Protocol. Trafficking for ransom affects third parties for instance, and their victimisation needs additional legal exploration. Further, in trafficking for ransom, sexual exploitation, forced labour, slavery or practices similar to slavery are used as *means* to arrive at the end *purpose* of collecting ransom, while in other cases sexual exploitation etc., are in and of themselves the end purpose. The Sudanese Anti-Trafficking Act simplifies this by defining the end purpose of trafficking as using a victim ‘to achieve an illegal objective for material gain.’

It is necessary for the worldwide effort against trafficking in persons to turn its face to forms of trafficking unforeseen at the time of the drafting of the Trafficking Protocol. It is also important to highlight the need to widen interpretations of the Protocol’s trafficking definition in order to properly address new forms of trafficking, with types of exploitation not explicitly mentioned as examples in the Protocol and those that go beyond the three common categories of labour exploitation, sexual exploitation and organ removal. It is equally important for the countries already affected by the problem to adopt new and comprehensive national legislation or to amend existing laws and policy in order to address new practices like trafficking for ransom. Limited to the context of trafficking, ransom can be understood as coercive or forceful transporting, transferring and harbouring or taking hostage of persons for the purpose of extortion of money in exchange for their release. It must be possible for interpretations of national law to encompass this.

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