Organ Trafficking of Eritreans in the Sinai: Perpetration or Provision of Service?

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Abstract

Many of the refugees in the Sinai were on their way to other locations when they were kidnapped and held for ransom. Whether they were taken by strangers using force or coerced through kindly-seeming acquaintances, a number of Eritrean refugees ended up being held captive, tortured, denied access to food or water and sold as a sex slave. The most horrific fates, however, meet those Eritreans who are utilized as a human incubator for illegal organ sales. The fate of these individuals is not kind. Increasingly, refugees are becoming prey to organ traffickers. While some traffickers offer the families of the captured the chance to pay a huge ransom in order to prevent the illegal harvest of the loved one’s organs, other do not. Victims of these traffickers may lose eyes, a kidney, a liver, or a vital organ and thus their lives. While those who lose organs regard their capturers as torturers and modern slave keepers, if they are lucky enough to survive the ordeal, it is possible that the traffickers themselves may believe they are merely providing for the continued existence of tribes that would otherwise have little opportunity to survive in a region that is destitute of jobs and resources. It is possible that organ traffickers believe they are providing a service, while ensuring survival of family groups. This research examines organ trafficking from the perspective of the trafficker in order to gain insight into ways to prevent future abductions and harvests. Qualitative information is gathered from current media and governmental resources that may have been in contact with traffickers, as well as scholarly materials. Scholarly materials may be scant, but they do exist. However, the topic is so current that any investigation must include more current sources, in the development of additional scholarly studies which can, in turn, be used to guide policy.

Keywords:
Eritrea, Ethiopia, Sinai, Israel, human trafficking, organ trafficking
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Organ Trafficking of Eritreans in the Sinai

Chapter One – Introduction to the Problem

Slavery never ended. Slavery exists today. It not only exists, it is nearly ubiquitous, and it prospers. No longer are slaves brought from Africa in the tightly packed bows of boats, or purchased in an open market in the town square. Today’s slavery is deeper, and darker. It is hidden. It preys on the poor, and the disenfranchised, and those without a voice. It is the worst kind of economic exploitation, and it steals the very organs they depend on to live and breathe.

Introduction

Slavery is the control of one person over another, using various means, for the purpose of exploitation, generally economic in one form or another (Makisaka 2009). A great deal of attention has been paid to the victims of exploitation, and those who survive their slavery. It is time to turn the spotlight on those who perpetrate the practice, and to examine the world in which they operate. Who are the slavers? How do they turn people into slaves, and what do they use them for? This project investigates those involved in procurement and exploitation of human beings, with an emphasis on those who participate in organ trafficking, particularly trafficking of Eritreans in the Sinai. A detailed discussion of the overall context of human trafficking is provided, in the framework of the overall development of this particular form of human exploitation. Human trafficking has always existed in one form or another, but as the world has globalized it has become both more prevalent and more vicious. Understanding the overall context of human trafficking will help the reader comprehend the role of human trafficking in organ procurement, particularly as it applies to the residents of Eritrea who transverse the Sinai.

Global Context of Slave Trade and Human Trafficking

Even before the theft of organs from human beings was an issue, the operation of slave trade was described as “odious” (Fitzpatrick 2003 p. 1143; Richter & Richter 2003 p. 2). The act of slavery was defined as the taking of one human being by another to be sold into servitude, for an exchange of monies. Today the process is even more heinous, and it is far less innocuous than the merely selling of humans into sexual or labour servitude. Savona and
Stefanizzi (2007) expanded the definition of slavery, establishing the process as putting people on the black labour market, trafficking for purposes of prostitution, exploiting minors in a variety of forms for financial gain, and even adopting minors for purposes of taking their organs in today’s categories of human trafficking. Albanese (2007) argues that there are only three basic elements of human trafficking: exploitation, harbouring victims, and utilizing coercion. Regardless of how one chooses to describe the capture and sale of humans for financial gain, it is clear that “desperate and often horrifying stories have become common in all areas of the world” (Albanese 2007 p. 56).

**General Background**

Albanese suggests that there are a number of factors that have caused this increase in exploitation: imbalances in the labour market, too much political upheaval in post-conflict situations, governments that are in transition, heavy migration flows, globalized economy that does not distinguish between legal and illegal products, large criminal networks, and high levels of corruption (2007 p. 56). In the paragraphs that follow, an example of globalized economy and the difficulty of determining legal and illegal products are provided.

There are numerous sources which link trafficking to economization of humans (Albanese 2007; Kapstein 2006; Nagle 2008; Purkayastha & Majumdar 2009). Women and children are particular victims to sexual economization. Richter and Richter (2007) report that 50,000 sex slaves are imported yearly into the United States alone. The United States Department of State estimated that in 2002, somewhere between 700,000 and four million men, women, and children were held and trafficked as slaves (US Department of State, 2002). The problem has become so widespread that it has been classified as ‘pervasive’ (Purkayastha & Majumdar 2009).

Underlying the issue of human trafficking is the nature of globalization itself. The process of globalization has resulted in humans from all parts of the globe being able to link together in social networks and in business organizations that were unheard of only a few short years ago. Understanding how social worlds interact through the use of media such as online games to produce a real and tangible economy which can be exploited for criminal purposes will give the reader insight into the massive development of human trafficking as a result of globalization.
Historical Context

Many of the refugees in the Sinai were on their way to other locations when they were kidnapped and held for ransom (Van Reisen, Estefanos, & Rijken 2012). Whether they were taken by strangers using force or coerced through kindly-seeming acquaintances, a number of Eritrean refugees ended up being held captive, tortured, denied access to food or water and sold as a sex slave (IRIN 2011). The most horrific fates, however, meet those Eritreans who are utilized as a human incubator for illegal organ sales (Lijnders 2012). Refugees are at risk for trafficking and torture, and may have their organs removed for illegal trade (Mekonnen & Estefanos 2012). Traffickers may offer families the opportunity to redeem their members while their organs are still intact; they may charge a ransom and then take the organs and return the victim to their families, or they may simply steal the organs and kill the victim.

What could justify these actions? There have been reports from Eritrea for many years that human trafficking was occurring, but it has only been since 2004 that the issue of organ trafficking became and action item for the United Nations and the World Health Organization. Despite proclamations from the agencies, the kidnappings and organ thefts did not stop; by 2010 they had reached what Mekonnen and Estefanos (2012, Introduction) termed “alarming levels.” It was at this point that reporters and human rights activists were able to identify Bedouin tribes in the Sinai Desert as being part of the trafficking networks.

Since that point in time the area of the Sinai Desert bordering Egypt and Israel has become a nexus of kidnapping, torture, abuse, and organ removal perpetrated largely against Eritreans who are fleeing their nation (Mekonnen & Estefanos 2012). This paper establishes a review of the literature relating to human trafficking, sexual trafficking, torture, and organ abuse in the Sinai region. It establishes a rationale for the study, the conceptual framework, the problem statement and research questions that will be utilized in the investigation, and the design of the research.

The study will consider a number of perspectives during the research. The question will be explored from a sociological perspective and an economic viewpoint. The overall goal will be to consider not only what is happening, but why it may be happening. To address these issues it will be necessary to step outside of the regional viewpoint and investigate the case of human trafficking from a global perspective. The culture of the Bedouin tribes in the Sinai region will be explored, as well as connections with organized crime and the associated sociological perceptions.
Qualitative materials will be gathered from scholarly, governmental, special interest, and media sources. At the beginning of this investigation into the case of organ trafficking and assault on Eritreans in the Sinai, it is difficult to determine whether the trafficking really is fairly recent in nature or if exploitation has been long term but ignored by the media and government because of its heavily charged political nature. Thus, the investigation sought to determine, as far as possible, if victims of organ theft were selected for political reasons, for racial reasons, or reasons of availability. The investigation concluded that victims were selected because of their disenfranchisement.

Aims and Objectives

The aims and objectives of the research were based on the perception of human trafficking, particularly human trafficking for organ procurement, as a globally systemic issue rather than an isolated phenomenon. Prior to beginning the research, a number of general questions evolved that were eventually incorporated in a formal approach to the topic. The questions were utilized to guide the research and to assist in developing the information that would be needed to analyse the factors that eventually can be used to reach conclusions about human trafficking and organ procurement worldwide, but with an emphasis on Eritrea.

The general areas of the research concentrated on the following concepts:

- Sociological perspectives of human trafficking as crime
- Economic perspectives of human trafficking as a facet of organized crime, integrated with the concepts of supply and demand, and
- Explanations of human trafficking from the business perspective.

The final objective of the research was to develop an explanation for why human traffickers, particularly organ traffickers in the area of the Sinai, participate in these activities. By determining why individuals participate in crimes of this nature, it should be possible to develop policy and plans that can be utilized to interfere with trafficking and develop legitimate means for social and economic achievement for individuals who might otherwise turn to crime.

In any case where there is a risk of crimes against humanity, genocide, terrorism, or other crimes defined in the Rome Statute (2002), it is possible that the United Nations could intervene. Thus, determining if organ trafficking in the Sinai rises to the level of crimes described in the Rome Statute was paramount. The investigation sought to determine if the
concept of responsibility to protect (R2P) should come into play, who should intervene if intervention is warranted, and what form the intervention should take.

**General Methodology**

The study was conducted in two parts. The first part of the study comprised a literature review that endeavoured to answer the questions posed in the *Aims and Objectives*. The second segment of the bifurcated investigation sought to determine ways that member nations of the United Nations, as well as the governing body of the United Nations, could utilise the collected information in the development of policy, and in developing plans to leverage policy into action.

**Organization of the Project**

The report introduces the general overview of the topic matter in chapter one. Chapter two considers the sociology of the region. Chapter three addresses the economic and business case perspectives of human trafficking. In chapter four, the trafficking and the perspectives of the ICC are presented. Chapter five considers human and organ trafficking in the perspectives of the responsibility to protect (R2P). The final chapter provides policy recommendations.

**Chapter Two – Sociology of the Crimes of Human and Organ Trafficking**

There can be no doubt that the combination of technology and capitalism has brought knowledge to parts of the world that at one time would have been ignorant of the ability to replace a dying man’s kidney or a child’s lung. As Scheper-Hughes (2004) puts it, the combination of technology and capitalism has stimulated the desire for skin, bones, blood, tissue, genetic materials, organs, and even reproductive capability of individuals. At the same time, globalization has resulted in hundreds of thousands of displaced individuals. The combination of a nearly unquenchable desire for ‘spare parts’ combined with an abundance of poor, disenfranchised and displaced has resulted in a burgeoning body trade (Scheper-Hughes 2004).

Two sets of forces clash in the development of human trafficking and organ trafficking operations in the Sinai. In order to understand the ‘why’ of what happens, and to potentially develop an approach to combatting trafficking that can be utilized in other venues, it is necessary to understand this clash of forces. The first force is vested in those who flee
Eritrea. They are living in a state of Anomie, or instability that results for a breakdown of standards, values, and guiding principles (Marks 1974; Merton 1968).

The nation of Eritrea has essentially been under siege for many years. Residents live in a constant state of political repression, guarded by the military, with no freedom of speech, no economical possibilities, and essentially nothing more than the barest of lives (Mekonnen & Estefanos 2011). Reports from Eritrea suggest that there are between 10,000 and 30,000 political prisoners in Eritrea at the present time, and there are roughly 40,000 individuals incarcerated without trial. There are approximately 600,000 army personnel. Approximately 15% of the population are military members, a figure that is staggeringly high when one realizes that only 24% of the population of Eritrea is still in the country – including those in the army and those incarcerated (Mekonnen & Estefanos 2011). With few economic outlets and a complete breakdown of what would be considered a ‘normal’ society, anomie becomes the norm. It is significant that Eritrea will not comply with normal international record-keeping standards, making any solid figures difficult to acquire. Those residents, who can escape, do. Once they do, they can fall victim to human trafficking in the Sinai Dessert.

Weldehaimanot (2011) pointed out that there were nearly 12,000 Eritrean asylum seekers in Israel by 2009. The typical route of the Eritreans, in a quest to get to Israel, begins when the refugees meet with representatives of smugglers who agree to help them get to Israel once they leave Eritrea. However, once the refugees leave Eritrea and enter the Sinai, they find that the smugglers have raised the agreed upon price for safe passage. When they do not have the money, they are taken captive. Some Eritreans, who have tried to make the passage alone, are simply intercepted and kidnapped before they get to the Sinai (Mekonnen & Estefanos 2011). The net effect is the same: the refugees are now captives.

The refugees are kept in open areas with no bathrooms and very little food and water. They are forced to work in marijuana fields, and the women are raped repeatedly. Fees for release can be from $20,000 to $30,000 USD. Refugees are required to ask friends and family for the money, and are tortured while they are speaking to their loved ones in order to stimulate payment. If payment is not forthcoming, the level of the torture is increased. Organs are taken if necessary, to pay the fee. Some Eritreans are killed in front of others, to instill the desire for complicity. Mass graves have been found in the general area (Mekonnen & Estefanos 2011).

The conditions for the Bedouin tribes that perpetrate the crimes are little better; when President Mubarek left office, over half of the Bedouin tribes were living in poverty.
Although billions of dollars were poured into developing tourism in the region, the Bedouins did not get jobs, and no money tricked down into the local economy. Large parts of the region were taken by the Mubarak government and sold, leaving the Bedouins not only benefit of their farmland and way of life, but bereft of any of the financial results of the sale (Gerges 2012).

For their survival, the Bedouins now live in poverty, with little access to jobs. They smuggle goods and arms to Gaza, smuggle immigrants from Africa and Egypt to Europe, and grow drugs. Further, the Sinai area is now a destination for criminals, jihadis, and soldiers of fortune (Gerges 2012). During Mubarak’s rein, Sinai served as a tool for Hamas and Palestinians, and many of the Bedouins became sympathizers. Tunnels used for food and arms still exist, and are utilized in further criminal activities.

From a sociological perspective, there is little difference in the conditions facing the Eritreans and the Bedouins. The Eritreans largely chose to flee Eritrea, while the Bedouins chose to remain in their area and seek alternative means of survival. The clash may be one of ideologies and violence between the two groups, but the conditions that led them to this clash are similar.

Chapter Three – Economic and Business Cases of Organ Trafficking

Business Risk in the Organ Trafficking Trade

The UN’s Global Initiative to Fight Human Trafficking (GIFT) (2014) suggests that there are three types of organ trafficking. In the first case, traffickers either entice or force the individual into giving up an organ. In the second case, victims agree to give up an organ for a price, the organ is harvested, and the agreed-upon price is not paid. In the third type of trafficking, the individual seeks medical care, is told that they are ill, and their [healthy] organ[s] are removed. According to GIFT (2014) the individuals most vulnerable to falling prey to these schemes are individuals who are illiterate, who are migrants or refugees, or homeless persons. Any organ that can be removed and sold is considered a commodity.

The trafficking of organs requires the convergence of a number of conditions; it is a convergence that is unlikely to occur by accident. The first condition is demand. As populations become less healthy and people live longer, the need for spare organs reaches a crescendo. If morality is not carefully maintained, the society develops a ‘plug and play’
approach to life. However, to fulfill that demand, a supply must be located. The very basic economic factor is the law of supply and demand: if the supply is low and demand high, the price rises. In the case of illegitimate or unauthorized sources of organs, the higher the price rises, the greater the risk offset and the more profitable the participation in the illegal organ trade.

The World Health Organization (WHO) has estimated that in 2010 alone, over 10,000 organs were sold, or one organ per hour. The demand far exceeds the supply, and the strict rules relating to transplants rule out many people who desperately wish to have a transplant. Over 113,000 patients were on the waiting lists for organs in 2012 (Samadi 2012). Over 76% of the organs sold on the black market are kidneys, reflecting a dramatic rise in organ failure as a result of conditions like diabetes and high blood pressure. In some countries, the demand is fulfilled by lower income residents who sell their organs for cash (Samadi 2012). In other areas, such as the Sinai, the organs are taken by force. Survival rate for organ receivers is lower than when the organ has been vetted, and diseases such as HIV and hepatitis B are far more likely to be transmitted when the organs are bought on the black market.

Delays in procurement, disruptions in the supply chain, inventory risk, and environmental factors can cause risk in the organ supply business. Discussing organ trafficking in the context of everyday supply and demand and supply chain disruption, it becomes clearer as to the difficulties that the UN and other agencies will face when attempting to disband the organizations which supply illicit organs. Reviewing the risks also provides a clearer picture of what motivates those who deal with the procurement and trafficking of human organs. Chopra and ManMohan (2004) provided insight into supply chain issues, albeit within the context of legitimate business. They suggest that disruptions, delays, systems, procurement, receivables, inventory, and capacity can all impact the success or risk of the operation. It should be noted that Chopra and ManMohan addressed these issues in the context of general business, not in terms of organ trafficking. However, organ traffickers would face the same general risks as other businesses. GIFT (2014) defines the organ trade as organized crime involving many offenders. The offenders could realistically be described as the supply and distribution chain: recruiter, who identifies the ‘donor’, the person who transports the organ, the staff at least one clinic, hospital, or medical center (and probably two), medical professionals, middleman, contractors, buyers, and organ banks. With a system this complex, there is plenty of room to make errors.
**Disruptions and Delays**

Disruptions in the supply chain are always a risk; natural disasters can interfere with the steady supply of refugees seeking to leave Eritrea and enter Israel. War and terrorist attack can cause the ‘supply’ to seek cover while simultaneously increasing the potential for demand. Delays in transporting the supplies, or humans that will have their organs harvested, can result in poor quality as the donors arrive at the site of the operation. Dehydration, pregnancy and other conditions can make transplantation less successful; high levels of hormones or inappropriate chemicals in the donor body can impact the chance that the recipient will be able to retain the transplanted organs.

**The Operating System**

It is in the area of systems that the organ trafficking scheme in place in Eritrea/Sinai truly excels. Money is extracted from individuals wishing to ensure passage into Israel. Instead of taking the individuals to Israel, they are kidnapped and put in camps. Once in the camps they are tortured and forced to contact their relatives and friends to beg for money for their ransom. They are tortured and the women are raped. They are pressed into forced labor. All the while the extortion continues. Specimens that appear healthy may have organs extracted during the time the extortion is continuing, or they may be pressed into donorship if the extortion is unsuccessful. If a woman becomes pregnant, the child can be used for sexual trafficking or can be used for organ harvest. In terms of extortion, so much the better; perhaps families would pay more for mother and child, rather than just mother. It is a system of redundancies, of plans A, B, and even C. As a business model, it is impressive.

**Procurement and Receivables; Inventory and Capacity**

Procurement, or the process of acquiring organs, can happen in a number of ways on a global scale. There is little to no exchange rate risk; it is a seller’s market. Single source is not a concern; a new batch of organs can be procured nearly immediately. There are no contracts, and if for some reason an organ does not fail, its donor is still good for extortion. If all else fails, it is easy to dispose of the ‘merchandise’. Inventory can be flexible, and camps can run at capacity simply because the living conditions of the donors are of no concern to the individuals that run the organ trafficking rings. With no obsolescence, demand and supply uncertainly is, once again, no concern.
Chapter Four – Trafficking, the ICC, and Crimes Against Humanity

When the International Criminal Court (ICC) was established, it represented an opportunity for the international community to try cases relating to the overall categories of crimes against humanity and mass crimes. The Council of Foreign Relations (2012) established that the ICC would try four categories of international crime: “genocide, crimes against humanity, war crimes” (CFR 2012). In 2017 the ICC will begin to try crimes of aggression, described later in this section.

The ICC was developed as a ‘court of last resort,’ to be used only when nation states and their courts either could not conduct an adequate trial, or would not (Akhavan 2013). Not all nations are signatories to the Rome Statutes, and not all nations agree that the ICC has power over their nation. Verbiage in the Statute allows the ICC to take jurisdiction over crimes that occurred in states that are not signatories. In addition, nations who are not signatories can waive their rights in matters and ask the ICC to take jurisdiction in a matter if they feel it justified (CFR 2012).

As of the date of this article, 122 nations are States Parties to the Rome Statute of the International Criminal Court. Thirty Four of them are African states (ICC 2013). Complicating the current case study, neither Eritrea, Ethiopia, Egypt, nor Israel are signatories to the Statute. None of the open cases in the ICC relate to human trafficking and organ trafficking in the Sinai (ICC 2014). It should be noted, however, that the ICC will indeed act on conditions in non-signatory nations; of the current situations being addressed by the ICC, four involve nations that are States Parties to the Statute but two, the situation in Darfur, Sudan, and Libya, are not (ICC 2014). If the situation in the Sinai continues to escalate, a state party (involved or not) can refer the case; the UN Security Council can refer the case, or the case can be proposed by the ICC’s Chief Prosecutor.

Definition of Crimes Subject to ICC Intervention

The Rome Statute discussed earlier, established crimes that would fall under the jurisdiction of the International Criminal Court. There are four broad categories of crimes that fall under the attention of the ICC. Nations or peoples can request that the ICC review, and if appropriate prosecute crimes of genocide, war crimes, the crime of aggression, and crimes against humanity.
**Genocide**

The crime of genocide, or ethnic cleansing, consists of acts that intend to destroy a particular group, whether that group is comprised based on their national origin, their race, their religion, or their ethnic makeup. Group members may be killed, physically or mentally harmed, kept in conditions intended to make them die, forced to be sterilized, or have their children taken away, by force if necessary (Rome Statute 2002 p. 4-5).

**War Crimes**

The definition of War Crime utilized by the Rome Statute is very complex. The crimes are only under ICC jurisdiction if they are committed as part of a plan, especially a large scale one. In situations of war or conflict, when the Geneva Convention of 1949 has been violated, the crimes become subject to intervention by the organization. Breaches that can be considered war crimes include killing, torture, and inhumane treatment, unlawful confinement, taking hostage, violating international laws, and enforcing prostitution (Rome Convention, 2002 p. 6-8). The actions being committed by the Bedouins clearly fall into these generally categories of crime; the question then becomes whether or not they would be considered a war crime given that the acts occur as the Eritreans are fleeing their own country.

**Crimes of Aggression**

At of 2014, the ICC does not yet have jurisdiction over crimes of aggression. Crimes of aggression were not defined in the original Rome statutes because the parties were unable to reach agreement on what a crime of aggression was and whether or not it should be included in the Statutes. Inclusion was deferred until consensus could be reached; that occurred in 2010, and implementation delayed until 2017. The crime of aggression focuses mainly on the actions by one nation to another. Thus, they are not pertinent to this discussion and are not expounded upon.

**Crimes Against Humanity**

The conceptualization of crimes against humanity was based on the infliction of pain or damage to civilians. Certainly it appears on the face that the crimes of trafficking and organ trafficking would be part of the crimes against humanity. Murder, enslavement, forced
transfer, deprivation of liberty, torture, rape, forced prostitution or sexual slavery, and extreme sexual violence are all acts defined as crimes against humanity when in significant numbers. In addition, the Rome Statute (2002) allows prosecution for inhumane acts that are inflicted with intent to cause great suffering, including mental or physical damage (Rome Statute 2002 pp. 4-6).

*Treaties and Guidance on Humanitarian Issues of Intervention*

The United Nations has the right and the ability to bring about a Commission of Inquiry when there is believed to be human rights violations within a nation, without first referring it to the ICC. There are two forms of commissions of inquiry. The first is the national commission of inquiry; the second is the international commission of inquiry. Fact finding commissions can also be utilized under some circumstances.

*National Commissions of Inquiry*

National commissions of inquiry are the starting point when requesting investigation or charges into human rights abuses. In order to be effective, the commissions have to be independent, transparent, and funded (Geneva Academy of International Humanitarian Law 2011, hereinafter referred to as Geneva Academy). These commissions are ideally utilized when accusations of misbehaviour are first levied. The commissions should investigate the human rights issues. If human rights violations are found to have occurred then the national commissions should arrange for prosecution and for the perpetrators to be brought to justice (Geneva Academy 2011). If the State cannot or will not investigate, the next level pursuit is the International Commissions of Inquiry. Even though a commission is developed and it conducts an inquiry, it may not find that an actionable offense has occurred. New South Wales, for example, conducted an official inquiry into human and organ trafficking in Australia and New South Wales. They concluded that Australia was a destination nation for traffickers and that Australia, and New South Wales in particular, should take steps to monitor ongoing conditions (New South Wales 2013). The Geneva Academy (2011) specifically cautioned that the National Commissions of Inquiry can be misused, so care must be taken to ensure that the accusations are indeed justified before being prosecuted.
International Commissions of Inquiry

When National Commissions have either failed to investigate the charges that have been made by humanitarian groups or the groups believe the commission to be ineffective, the next appropriate level of investigation and inquiry would be the International Commission of Inquiry. This Commission has no defined method of investigation or pursuit; they can investigate single charges or ongoing situations (Geneva Academy 2011). There is no particular method of inquiry that must be followed; the internal commission can investigate anything from a single alleged incident to a situation that is ongoing (Geneva Academy, 2011).

The main goal of the commissions of inquiry is to determine that accountability is in place and that if violations occur, they will be dealt with. It is permissible to determine, as did New South Wales, that the nation will (or will not) be able to deal with any violations that occur or whether they are likely to need assistance (Geneva Academy 2011). In order to reach these conclusions there must be some type of fact gathering. Once gathered, the facts are analysed. Fact gathering is the priority for International Commissions. The International Commissions are tasked both to investigation human rights violations and violations of humanitarian law. It is possible that one set of violations is present but not the other, and this must be considered. Fact finding should determine first if violations occurred, secondly where they occurred, which type of law was involved (humanitarian versus human rights), and who should be held accountable and at what levels, whether the accountability should be for state or non-state actors non-state actors (Geneva Academy 2011). This type of distinction would be particularly important in cases involving human and organ trafficking, because so many different groups, organizations, and political units may be involved in the trafficking webs.

In October 2012, Sheila Keetharuth of Mauritius was appointed to bet the first Special Rapporteur on human rights in Eritrea, as part of a commission of inquiry. Mike Smith of Australia and Victor Dankwa of Ghana serve in the Commission of Inquiry as well (Horn Affairs 2014). Interviews with Eritreans in Italy led Ms. Keetharuth to report that the situation is ‘dire’. Preliminary findings were that there was “forced conscription, extrajudicial killings and enforced disappearances” (Horn Affairs 2014 para. 1). There was no mention of organ trafficking. However, when Ms. Keetharuth attempted to go to Egypt to investigate conditions in the Sinai, the government denied her request for a Visa.
Fact-finding Commissions

The International Humanitarian Fact Finding Commission (IHFFC) was established to address violations of international humanitarian law during armed conflict (IHFFC 2012). While the idea of the Commission is to conduct investigations on violations during armed conflicts and wars, the IHFFC has not actually been utilized. One of the difficulties is that it is difficult to meet the criteria of ‘state action’ necessary for intervention (Geneva Academy 2011). It seems unlikely given the facts already described that the conditions in the Sinai, even if visited upon those fleeing conflict between Eritrea and Ethiopia, would actually meet the criteria for state actions necessary for intervention.

Discussion

It is at this point that many pundits disagree on whether or not the Rome Statutes can be leveraged for intervention by the ICC in cases of human trafficking and organ trafficking. The Statute does not specifically state that organ trafficking, for example, is a covered crime. One of the problems, Lijnders and Robinson (2013) pointed out, is that the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN 2000) states that there must be recruitment of individuals, by threat or use of force, and for purpose of exploitation. Individuals who pay another individual or group to smuggle them into a nation (in this case Israel) for the purpose of immigration will still be considered to meet the first two requirements (recruitment and use of force). The difficulty, Lijnders and Robinson suggest, is that it can be very difficult to prove the third requirement, that of being for the purpose of exploitation. If individuals are exploited for ransom (as is the case with the Eritrean refugees), to intimidate hostages into paying more quickly or to make the personal payment process (for those who have money) to go more quickly, then the type of exploitation does not necessarily meet the types of exploitation defined in the protocol.

One way to circumvent this seeming omission is to realize that most refugees who are kidnapped are initially kidnapped to extract money from their families. They are forced to contact relatives and beg for money so that they will not be tortured. Although the argument may seem somewhat circuitous, they are being forced to beg for their living. Thus, they meet the requirement for forced labor, or slavery (Edwards 2007).
Chapter Five – Human and Organ Trafficking in the Perspectives of R2P

The Current Situation: R2P from a UN Standpoint

The essential position of the UN is that all nations have sovereign rights and thus the right to make decisions as to what actions will occur within its own borders. Nations are loathing to give up that right, or to accept what they perceive to be interference by the United Nations or by any other nation. Lauterpacht (1950) regarded actions by other nations to be “dictatorial interference in the sense of action announcing to the denial of the independence of the State” (p. 167). The UN’s Charter states that no one should intervene in domestic matters of any state (United Nations 1945). The contravention to this is that if the situation becomes critical to the survival of a nation’s citizens, the UN, upon appropriate vote, can intervene to protect.

However, even if one could make the argument that sovereigns have the right to treat their citizens as the leadership desires, it is difficult to justify treating visitors to one’s nation in a harsh manner, as they are citizen from another nation with its own set of rules. Further, as the numbers of displaced persons in nations have increased, new international regulations have been set up to define standards of care for these peoples. By becoming signatories to these agreements or by virtue of the act of accepting refugees, nations cede sovereignty to the United Nations to some extent, and to some extent to humanitarian organizations, for oversight of these temporary residents. Once this change in international status has occurred, then, there should be no insistence on rights related to national sovereignty related to these peoples. There is, instead, the requirement to protect. However, the agenda stops short of requiring protection when the state is complicit. Because state crimes are omitted from the UN designations, it is possible to argue that the requirement to protect in the case of state complicity was deliberately omitted.

The concept of the right to protect, or R2P, evolved after the need to have formal framework authorizing international intervention on humanitarian grounds was recognized. The International Commission on Intervention and State Sovereignty (ICISS) suggested terminology that would allow intervention in humanitarian cases without impinging on any sovereign rights that a nation might assert were involved (Haines & Kassimeris 2010). Deng, Kimaro, Lyons, Rothchild, and Zartman (1996) believed that using conflict management techniques might be one way to address issues that might impose on sovereignty, without
escalating any ill feeling. The goal was to protect both the rights of the nation and any mistreated populations.

There is a difficulty with using this logic, however, in the current situation. What do you do when the goal of the abuse is clearly commercial or fiscal rather than an act of war or related to a more general human rights abuse? In addition, as Bulley pointed out, every time an intervention takes place, the intervention itself brings added suffering (Bulley 2010). Thus, it can be exceptionally difficult to decide when intervention is necessary and warranted and which interventions may simply make the situation worse. In addition, there is the practical reality that nations may not wish assistance or intervention. One suspects this would be especially true in a case where the government is benefitting in some way from the illegal acts themselves. As earlier sections of this paper have pointed out, the government of nations that tolerate human trafficking and organ trafficking will inevitably benefit financially from influx of cash into the economy. As a result, any desire to improve the humanitarian situation is likely to be buffered by the sure knowledge that reducing forced prostitution and illegal organ trafficking will hurt the local economies. In areas that are exceptionally poor, such as the Sinai, this consideration would likely have significant impact into the decision-making process and willingness to accept police or military aid or intervention, should it be offered.

**Pillars of R2P**

The sixty-third session of the United Nations issued Agenda items 44 and 107, implementing the responsibility to protect (United Nations 2009). A three-pillared strategy for advancing the R2P agenda was established, defining the protection responsibilities of the state (pillar one), international assistance and capacity-building (pillar two), and timely response requirements (pillar three). Perhaps the most troubling of the pillars, in the context of the trafficking or human organs in Sinai, relates to the responsibilities of the individual States.

**Primary Responsibility Lies with the State**

The mandate from the UN is clear. “Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means” (UN 2009 p. 4). The primary responsibility of protecting Eritreans, then, lies with the nation of Eritrea.
Responsibilities of International Community

Should the individual nations find it impossible to protect their citizens, the international community is tasked with taking collective action through the Security Council to help protect these populations (UN 2009). Perhaps even more important in the context of Eritrea and their fleeing residents is the international mandate to assist with capacity building. When there appear to be no other alternatives, the UN Security Council can take military action to help maintain the safety of the State’s peoples.

The key to developing a solution to the problems of the Eritreans may be based in paragraph 29 of the Agenda items. The language is strong and decisive. Given that the cries against the Eritrean peoples occur in a two stage process and across two national boarders of Eritrea and Egypt, there are two responsible States. The UN has allowed for the possibility that States will not assist their own people for a variety of reasons, including complicity in the crimes. The Eritreans are not protected in their own nation; they are not being protected as they cross the Sinai of Egypt. The third pillar thus comes into play. If State leadership is “determined to commit crimes and violations relating to the responsibility to protect” (UN 2009 para. 29), then the assistance measures would be useless and capacity building for “timely and decisive response” begins.

Timely and Decisive Response

Timely and decisive response can encompass a wide variety of actions on the part of the international community. While the UN “has a strong preference for dialogue and peaceful persuasion” (UN 2009 para. 51), it acknowledges that peaceful persuasion does not always have an effect. The UN is able to take additional non-military steps to convince the State of its need to protect, without asking the Security Council for permission or authorization. As part of this intervention the Human Rights Council can deploy a fact finding mission or appoint a special rapporteur. This appointment is not part of the timely response, but it is one of the final steps leading to that response. This is the point at which the R2P process stands relating to Eritrea. With the appointment of Keetharuth the UN is heading towards a timely and decisive response. Given Keetharuth’s failure to discuss or reveal any evidence or organ trafficking, the concern of analysts like Mariam becomes more understandable.
The investigation by the Special Rapporteur can also be utilized to ‘send a message’ to the government of a nation or nations. Failure to accept that message can lead to what the UN terms “more robust” measures (UN 2009 para. 56). As the UN pointed out, no strategy is complete unless there is a method of enforcement. Thus, if the mere presence of Keetharuth is not enough to encourage the governments of Eritrea and Egypt to protect the Eritreans, it is likely that a more coercive measure would take place. The first level of a more coercive response is the levelling of sanctions. Given that Eritrea has not only failed to respond to previous sanctions but has actively refused overtures of humanitarian gestures, it seems unlikely that the nation will comply with any type of response should of international prosecution and potentially force.

A Question of State Collusion

It is difficult to see how the situation could have gotten to the point that it has without collusion or at the very least, tolerance, by multiple state actors. The nation of Eritrea typically rejects foreign aid, including food aid, dooming its population to unrelenting poverty bordering on starvation. Its large Army is filled mainly with those who have been forced into service, with an indeterminate release date (Keetharuth 2014). Eritrea remains in constant battle with Ethiopia in a centuries long battle over borders. Roughly 3,000 people a month flee Eritrea (Greenwood 2012). They cross Egypt’s Sinai desert in an effort to reach Israel.

In the general sense, traffickers can be anyone and they can function at any level of the civilian, military, or governmental worlds. Kim (2011) reported that people can be trafficked into a very wide variety of slavery situations, including organ removal. However, when people are being actively kidnapped and forced into the armed services, as are many Eritreans, it is very difficult to believe that the government is not complicit. Yet Francis and Francis (2010) have characterized trafficking in persons, including organ trafficking, as a stateless crime largely because of its ubiquitous nature.

The international group EveryOne has appealed to the governments of “Egypt, Palestine, Israel, Sudan, Ethiopia, Eritrea, Libya, Tunisia, Dubai, Saudi Arabia, the European Union and those countries outside Europe that have links with the trafficking in Northern Sinai” (Ramachandran 2012 para. 5) for assistance in prosecuting the individuals involved as well as breaking the financial links the kidnappers depend on to transfer ransoms. They have also published open letters to the UN High Commission, the UN High Commissioner for
Human Rights, and the UN Special Rapporteur on Trafficking in Persons. There is no possibility that the respective governments are not aware of the controversies surrounding the actions of the Bedouins. Ramachandran (2012) asserts that the governments of Egypt and Palestine have known that human trafficking and organ trafficking has been going on for many years in their states, but have not taken action. The situation has gotten so open and so well known that even the main stream media now reports on the atrocities, and provides pictures of the perpetrators.

Perception of Eritrean Performance

Clearly in any situation where a state crime may be involved, R2P would be far more difficult to enact. The question in Eritrea is the extent of the government’s culpability in human trafficking. Eritrea argues that the mass exodus of Eritrean peoples is a result of interference by international actors and reluctance by young people to enter mandatory military service. Keetharuth (2014) pointed out that the government may assert that a military contract is only six months, but in actual practice the conscription is open ended. As a result, when it is time for mandatory service, many young people flee the nation. There is little difference between being committed indefinitely into the Eritrean military, and being kidnapped by Bedouins attempting to make an escape.

Any actions by the UN must take into account whether Eritrea is performing in a manner which causes direct harm, or whether the nation is simply failing to protect its residents. In determining culpability for the loss of thousands of lives of fleeing Eritreans, accountability of the various parties must be considered. Whether the horrific violation of rights is due to actions of Eritrea, inactions of Eritrea, actions of the Bedouin tribes acting alone, or acting in concert with organized crime groups must be considered. Further, many of the crimes in the migrating population occur in Egyptian Sinai, where camps of kidnappers hold refugees hostage. Complicating the issue is the actions of Israel, who refuses to allow entrance of many of the refugees. An argument could be made that each of the groups is complicit in the humanitarian crisis incubating in the Sinai. Finally, at every turn the UN will face issues of sovereignty; Eritrea has already accused the UN of being prejudiced against them because they will not cede sovereignty to UN control.
The Eritrean Perception of Challenge to Sovereignty

An Eritrean journalist has provided a number of reasons why the UN should reject the report of the Rapporteur. Not all of them are presented here, but several bear consideration. Reviewing the issues she cites provides insight into exactly what attitudes the UN and the Security Council would be dealing with, should it decide to take some type of action in Eritrea or to refer the matter to the ICC. Her first point is that “discriminatory justice is not justice, and describes an international system where ‘selective prosecution’ and the ‘ impunity granted to major powers’ undermines its credibility and efficacy” (Mariam 2014, para. 1). She cites Chartrand and Philpot (2014) who contend that the international scales of justice have become unbalanced. It is the contention of Chartrand and Philpot (2014) that one of the reasons the United Nations investigates Zimbabwe, Eritrea, and Sudan is that they are the only three African nations which have resisted the efforts of AFRICOM, the US military command in Africa.

Mariam (2014) believes that the UN’s Human Rights Council (UNHRC) has its integrity undermined by utilizing techniques of selective prosecution and by giving immunity to states that use the UNHRC as a foreign policy instrument. Since the UNHRC has a mandate to promote and protect violation of human rights, it must find situations it can present as human rights violations in order to maintain its power base. This belies the portion of the charter in Resolution 65/251 which requires that the council be impartial, objective, and not selective (United Nations 2010). One specific charge is that Keetharuth was appointed Special Rapporteur for Eritrea because she had taken an anti-Eritrean stance in the past and was well known for her activities against that government.

Mariam also asserts that Special Rapporteurs have a financial interest in finding the nations they investigate to be guilty of human rights violations and thus in need of supervision. A per diem of more than $650 per day plus travel and expenses reflects a fiscal reality that is out of the reach of the average resident of the majority of the countries that are being investigated. It is Mariam’s contention that Rapporteurs are generally not motivated by altruism.

A second issue deals with the failure of the UNHCR and the Rapporteur to address an issue that Eritreans find very dear: they have been in conflict with Ethiopia intermittently since 1993 when Eritrea declared its independence from Ethiopia. Despite the Algiers Peace Agreement of 2000 neither Eritrea nor Ethiopia has respected the boundaries that the
Ethiopian-Eritrean Boundary Commission proposed (Heintz 2010). Through various interventions the UN failed to negotiate an acceptable solution to the two countries. Eventually the UN Security Council and the Organization of African unity established a peacekeeping operation in the area to monitor hostilities and assist the two countries to maintain their commitments (UNMEE 2008). However, by 2008 the mission had failed; it was recalled after Eritrea would not cooperate and cut off its fuel supplies (UNMEE 2008). It should be noted that the Eritrean perspective is that the UN was interfering with their sovereignty and the right to solve their own issues, a contention that underlies all of the issues relating to human rights defined in this paper. Failure to at least acknowledge these concerns by the Rapporteur appears to the Eritreans as prejudice.

It is possible that sanctioning Eritrea violates the nation’s right to self-determination and self-defence, at least in the Eritrean perception. Levying financial sanctions made it impossible to develop an adequately prepared military. The ongoing battles with Ethiopia decimated the available military force and with little money for pay, conscription became necessary. In the Eritrean perception, then, many of the negative conditions in Eritrean society today, the conditions which have caused the mass exodus, are caused or made more critical by UN interventions in sovereignty (Mariam 2014). Given that the original battle with Ethiopia was a struggle for Eritrean independence, Eritreans that have not fled the homeland may feel that they are being punished for daring to declare sovereignty to begin with.
Chapter Six – Policy Recommendations and Combatting Trafficking

The crime of human trafficking in the context of the stealing of one’s organs appears to be found at the crossing of human rights, criminal justice, and labor and asylum law (Edwards 2007). The possibility of prosecuting human trafficking and organ trafficking under the umbrella of the ICC has been suggested. The larger issue becomes finding a category of crime that the actions would fit, but that the ICC can oversee.

Potential ICC Prosecution

Crimes of genocide, war crimes, the crime of aggression, and crimes of humanity and be presented by the ICC. In this particular case, the human trafficking and organ trafficking or Eritreans, it is possible to argue that the intent of the acts by local tribes in the Sinai meets the definition of crimes of genocide and ethnic cleansing. In this case, the act seem to be designed first for economic increase, but second to dispense with the Eritreans if selling them, and subsequently their organs, is not successful. Addressing the definition of crimes of genocide and considering the implications, the acts seem designed to kill or physically or mentally harm Eritreans based on a combination of the conditions they are kept in and taking of children by force when necessary, to be used as pawns in the child sex trade. This particular charge would not necessarily apply to any other groups that are being forced into trafficking; each group would have to be evaluated independently.

There seems to be some level of evidence that the crimes are both economically stimulated and ethnically motivated. Greenwood (2012) pointed out that the largest problem, or perhaps the most crucial at this point, is the capture of Eritrean refugees by the Bedouin gangs in the Sinai. Eritreans are captured as they seek to cross the Sinai on their way to seek asylum in Israel. The real test of motivation, perhaps, would be to ask what would happen if the supply of Eritreans disappeared, but another equally disadvantaged group appeared. Would the outcome be the same? The evidence acquired thus far suggests that the true motivation is economic, rather than ethnic; the possibility of ethnic cleansing may be just a welcome side-effect to the Bedouin population. The question of motivation will become integral to any intended ICC prosecution.

The group Physicians for Human Rights (PHR), an Israeli non-governmental organization (NGO) has been investigated the reports of capture and torture for ransom as
reported by family and friends of those captured. The situation is particularly ironic in Eritrea because the asylum-seekers are fleeing atrocities committed by the Eritrean government. As Lijnders and Robinson (2013) stated, these actions are no accident nor are they simply convenient; they are well organized and intricate trafficking networks that intercept refugees coming out of Eritrea. This population has turned into a “breeding ground for abductions, aggravated smuggling, and trafficking” (Lijnders & Robinson 2013 paragraph 1). It is difficult to look at accounts of whipping, torture, being buried in the sand, being subjected to electric shocks, being hung by hands and legs, being branded, and submitted to long term sun exposure during ransom extortions and not believe that these actions are racially or ethnically motivated.

It is always easier to forestall violence before it starts than to stop violence once it has begun. There has been a great international shortcoming in addressing the issues that lead to violence, and stopping the violence as soon as it starts. Human trafficking, including organ trafficking, is a global crime, but its nexus in the Sinai desert has been largely ignored by international watchdogs. Numerous human rights violations in Eritrea have led to mass exodus of the citizens of Eritrea, paving the way for exploitation at the hands of those who promise a false sense of economy or security.

Few analysts would disagree with the contention that it is very difficult to get accurate information about the true situation in Eritrea because of the combination of politics, militarization, and exodus. Reports from official sources clash with media reports and reports from survivors, at nearly every turn. Political leaders in all of the nations involved assert that if reports of trafficking or organ trafficking are brought to them, definitive action will be taken. However, news crews and humanitarian groups alike have repeatedly stated that they have turned over names and descriptions of individuals to the authorities and nothing has been done. This is especially concerning given that Colonel Tewelde Habte Negash, Hanibal Kahsay, and General Teklai Kifle, all from the Eritrean forces, are involved with the trafficking schemes (Mekonnen & Estefanos 2011).

Kim (2011) believes that there is little doubt that, should the international community become active, this case can be prosecuted through the ICC as a crime against humanity. Her argument, summarized here, is persuasive. Article 7 of the Rome Statute establishes that a crime against humanity must comprise acts that are “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack” (Rome Statute 2002 Article 7(1); Elements of Crimes). Six elements must occur. Perpetration
of the attacks must be established; the attacks must be against civilians; the acts must be systematic or widespread; they must be in pursuit of or furtherance of a State policy or organizational policy; the acts must be part of the attack, and the perpetrators must know that the conduct was part of the attack (Kim 2011 p. 20).

The attacks are clearly perpetrated, and are perpetrated against Eritrean civilians. Kidnapping for purposes of trafficking, or taking a person’s money and then keeping them in captivity, are forms of attack. In the case of the Eritreans, there are multiple cases of attacks over a long period of time. This constitutes systematic and widespread attacks. The acts are part of a long term conspiracy or even a criminal conspiracy (Rome Statute 2002 Article 25(3)). Policies do not need to be explicitly stated to be viable; in the case of the Eritreans being trafficked, the sheer volume of reports that have gone not only to the governments of Eritrea and Egypt but also to Israel, and been ignored, trigger the reality that the States have a policy of allowing the trafficking to continue. None of these States has asked for any sort of assistance. That the acts are part of the attack is satisfied because the trafficking constitutes the attack against the civilians that are kidnapped (Kim 2011). Finally, the perpetrators know that they are part of the attack. They may not know the names of the other individuals in the chain of trafficking, but they are quite aware that they are taking steps to traffic those captured, and upon occasion to traffic their organs.

The Statute also requires that a situation be grave in order to justify the action of the ICC. The situation in Eritrea and Sinai meets all of the criteria established for gravity. However, it is important to understand that the very acts which make trafficking such a profitable commodity to the traffickers require complicity by others who are not economically disadvantaged. Human trafficking, whether for purposes of forced labor, sexual slavery, or organ harvests, all require there to be clients in order to remain profitable. Since it is unlikely that an individual looking for a human kidney will be out in the middle of the Sinai looking for that kidney, it is evident that there must be middle men involved as brokers. Further, there must be individuals who have studied medicine to harvest the organs, and there must be a place to store the organs, even temporarily. Finally, there must be someone to transport the organs (GIFT 2014). There is not possibility that organs make it from point A to point B without there being an association between leaders who permit it, the Bedouins who locate the supply, and businessmen [criminals] who develop the supply chain. Thus, the trafficking of humans and organs meets the criteria for gravity.
Combatting Trafficking in the Sinai from the Holistic Perspective

In order to combat trafficking in the Sinai, the three pillars of R2P must be enacted. If the leaders of Eritrea and Egypt will not assist in the process, then the second pillar of international involvement must proceed. At the present time, a special rapporteur has been appointed. There are many concerns that she is not objective; it may help to expand the committee and provide more oversight of this particular process.

If the situation can not be involved through non-aggressive means, more aggressive actions should not commence without careful consideration of the potential damage to civilian populations. Prosecution of leaders of Egypt and Eritrea for crimes against humanity should be considered as a leverage point or point of negotiation.

Peace-keeping forces should be considered as a last resort. Allowing the situation to continue unchecked should not be an option.

Any plan for the future must involve capacity building and economic assistance to the Bedouins and the Eritrean peoples so that they can begin to re-establish a normal lifestyle and social mores that are more amendable to rebuilding of the respective societies.

Future Research

Future research is needed to determine the extent of criminal involvement in the trafficking supply chain and to determine if the knowledge of the Bedouins can be utilized in tracing international human trafficking operations.

Future research should also be conducted to determine the depth of involvement of terrorists and jihadist organizations in the human and organ trafficking supply chains.
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