

Volume 103 Number 918

# International Review

of the Red Cross

**Humanitarian debate: Law, policy, action**



MORE  
RESPECT  
LESS  
ATTACK

*There is nothing  
like a good vacation to cause the*

## The Sahel



ICRC

# International Review

of the Red Cross

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## EDITORIAL

# THE SAHEL: CHALLENGES AND OPPORTUNITIES

**Adama Dieng\***

Stretching 5000 km from the Atlantic Ocean in the West to the Red Sea in the East, the Sahel is home to over 150 million people from ten<sup>1</sup> countries. For the purposes of this edition, four Sahelian countries, Burkina Faso, Mali, Niger and Chad, have been the central focus. To varying degrees, Sahelians suffer from humanitarian issues brought about by armed conflicts and violent extremism in the region. In addition, although Sahelians are one of the smallest contributors of CO<sub>2</sub> globally, the region is among the worst hit by climate change,<sup>2</sup> further exacerbating already fragile humanitarian conditions in the region. The ongoing hostilities and food insecurity, fuelled by both armed conflicts and climate change, have also led to displacement and large-scale migration of Sahelians both within the borders of the States and throughout the region as a whole. In the beginning of the pandemic, COVID-19 had become an additional complicating factor, which had restricted humanitarian access in the region while armed conflict and violence have increased.<sup>3</sup>

### Armed conflict in the Sahel

Ongoing clashes between armed forces and armed groups in the Sahel have forced millions of civilians to flee their homes in various countries within the Sahel region.<sup>4</sup> Many of those who flee are farmers who can no longer till their land, thereby exacerbating an already existing food instability. As will be seen below, each conflict situation in the Sahel region is unique, with its own complex history and diversity in actors. However, even with such complex histories, international humanitarian law (IHL) must be respected. International humanitarian law is not merely a slogan, it is a responsibility.

Burkina Faso currently finds itself in a devastating state due to armed conflicts and other situations of violence, with various causes to the different conflicts. There was growing instability since the 2014 Uprising and subsequently from 2016 on, there were ongoing attacks against the Burkinabe military forces and civilians by extremist groups. These groups have had a strong presence in Burkina Faso and neighbouring Mali. These various extremist groups have also had conflicts with each other due to the ideological differences of the groups they

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have pledged their allegiance to (i.e. Al-Qaeda or the Islamic State). Since 2015, over 2000 people have been killed and 1.5 million displaced due to violence attributed to extremist groups in Burkina Faso. Additionally, communal violence is prevalent in Burkina Faso, "which threaten[s] to destroy all hope of cohabitation between the communities".<sup>5</sup>

Moreover, the weak presence of State institutions outside the capital of Ouagadougou and the distrust the population has in them has led to the proliferation of many self-defence groups in areas threatened by extremist armed groups and other criminal groups. These groups have themselves been parties to several deadly ethnic or communal conflicts. Although considered legitimate at their formation, many have questioned their activities in respect of which it has been argued they violate the human rights<sup>6</sup> of the people in the region.

Neighbouring Mali has been in a continuous armed conflict since 2012. With various peace agreements between the parties to the armed conflict failing to reach a decisive end to the conflict, it is estimated from May 2020 to June 2021, over 2000 people have been killed in the ongoing armed clashes in Mali.<sup>7</sup> The underlying causes of the conflict go back decades and are highly intricate. The lack of trust among various ethnic groups, horizontal inequalities among the people, and environmental concerns, added to the concentration of power in the hands of the few, are among the issues that have been festering for decades and continue to play out until this day.

The post-colonial Mali of the 1960s saw rebellions and uprisings from the ethnic groups in the North against the government in Bamako. Economic disparities and other inequalities in the North have led to Northerners distrusting the Central government and supporting the communal defence groups and armed groups in their regions. This led to what has been known as the "Tuareg Rebellions" with stiff resistance from the government. Although various peace agreements were signed in the past decades, none have quelled the armed conflicts involving the

1 United Nations, *UN Support Plan for the Sahel: Working Together for a Prosperous and Peaceful Sahel*, May 2018, available at: [https://www.un.org/africarenewal/sites/www.un.org.africarenewal/files/English%20Summary%20Report\\_0.pdf](https://www.un.org/africarenewal/sites/www.un.org.africarenewal/files/English%20Summary%20Report_0.pdf) (all internet references were accessed in May 2022).

2 Red Cross and Red Crescent Climate Centre, "UN: Sahel Region One of the Most Vulnerable to Climate Change", 14 November 2018, available at: <https://www.climatecentre.org/981/un-sahel-region-one-of-the-most-vulnerable-to-climate-change/>.

3 Clémentine André, "The Sahel: A Protection Crisis Aggravated by the COVID-19 Pandemic", *ReliefWeb*, 27 October 2020, available at: <https://reliefweb.int/report/burkina-faso/sahel-protection-crisis-aggravated-covid-19-pandemic>.

4 United Nations High Commission for Refugees (UNHCR), "Decade of Sahel Conflict Leaves 2.5 Million People Displaced", 14 January 2022, available at: <https://www.unhcr.org/news/briefing/2022/1/61e137ac4/decade-sahel-conflict-leaves-25-million-people-displaced.html#:~:text=The%20majority%20of%20the%20region%27s,figures%20for%20December%20still%20pending>.

5 International Committee of the Red Cross (ICRC), "Burkina Faso: Armed Violence and Communal Tensions Escalating Dangerously", ICRC News Release, 21 May 2021, available at: <https://www.icrc.org/en/document/burkina-faso-armed-violence-and-communal-tensions-escalating-dangerously>.

6 Amnesty International, "Burkina Faso 2021", available at: <https://www.amnesty.org/en/location/africa/west-and-central-africa/burkina-faso/report-burkina-faso/>.

7 Kheira Tarif and Anab Ovidie Grand, "Climate Change and Violent Conflict in Mali", ACCORD, 10 June 2021, available at: <https://www.accord.org.za/analysis/climate-change-and-violent-conflict-in-mali/>.

Tuareg communities. In addition, even though not at the same level of intensity, other groups, such as the Arabs, Songhay and Fulani communities in post-colonial Mali, have been involved in armed violence as well. The past ten years have witnessed ongoing clashes between the Malian army and armed groups in the North. There have also been clashes between armed groups and other groups designated as “terrorist” groups in the region.

These conflicts were marred with international involvement of the French forces, the US military and the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA).

By the end of 2021, there were over 350,000 internally displaced persons (IDPs) and over 50,000 Malian refugees.<sup>8</sup>

Niger, with shared borders with both Burkina Faso and Mali, has faced the catastrophic consequences of armed clashes among State forces, armed groups and extremist groups over the last decade. Armed violence within the country and the spillover effects from the conflicts in neighbouring Burkina Faso and Mali on one side and Libya on the other side have contributed to the instability and increasing security concerns in Niger. In the first half of 2021 alone, over 540 conflict-related civilian casualties were reported in Niger.<sup>9</sup> The armed conflict has had a devastating impact on children in Niger: of the 3.8 million people in need of humanitarian aid in Niger, 2.1 million are children and 1.6 million children suffer from malnutrition.<sup>10</sup> More than eighty children between the ages of 15 and 17 years living in towns on the Niger–Burkina Faso border have reportedly been recruited as child soldiers.<sup>11</sup> Over sixty children were killed in conflict-related violence in Niger in 2021 alone.<sup>12</sup>

Chad has also witnessed its fair share of violence and intercommunal tensions. The situation in this Sahelian country involves a complex, but devastating, political history. Armed conflicts and situations of violence due to politics, elections in particular, and land use between indigenous and non-indigenous people because of resettlement have been recorded in the past few decades.<sup>13</sup> In the Lac Province of Chad, which is in the Lake Chad Basin, the insecurity due to armed conflicts has had catastrophic humanitarian consequences. In 2021 alone, over 60% of the population of the province (more

8 UNHCR, “Operational Data Portal – Mali”, available at: <https://data2.unhcr.org/en/country/mli>.

9 Amnesty International, “‘I Have Nothing Left Except Myself’: The Worsening Impact on Children of Conflict in the Tillabéri Region of Niger”, AFR 43/4627/2021, 13 September 2021, p. 20, available at: <https://www.amnesty.org/en/documents/af43/4627/2021/en/>.

10 United Nations Children’s Fund (UNICEF), “More Than 2.1 Million Children Caught Up in a Humanitarian Crisis in Niger”, Press Release, 1 July 2021, available at: <https://www.unicef.org/niger/press-releases/more-21-million-children-caught-humanitarian-crisis-niger>.

11 Amnesty International, above note 9, p. 38.

12 Amnesty International, “Niger: Increasing Number of Children Killed and Recruited by Armed Groups in Sahel’s Tri-Border Area – New Report”, 12 September 2021, available at: <https://www.amnesty.org/en/latest/news/2021/09/niger-increasing-number-of-children-killed-and-recruited-by-armed-groups-in-sahels-tri-border-area-new-report/>.

13 Institute of Peace and Security Studies (IPSS), *Chad: Conflict Insights*, Peace & Security Report, Addis Ababa University, Addis Ababa, Ethiopia, April 2021, p. 3, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/Chad-Conflict-Insights-vol-1-23042021.pdf>.

than 406,500 people) were internally displaced due to prevailing armed conflicts in the province.<sup>14</sup> In the same year over 1.8 million Chadians were affected by severe food insecurity. In addition, the spillover conflicts from other non-Sahelian neighbouring countries such as Libya and Central Africa Republic, and “terrorist” groups in other parts of the Sahel have also led to civilian casualties and displacement.<sup>15</sup> Chad has been at the centre of violent operations of extremist groups, causing hundreds of civilian casualties, including in the capital N’djamen.

In 2021, there have been over 300 casualties in these conflicts in Chad.<sup>16</sup> The country’s political crisis and power struggles have also led to several incidents involving political violence during and after elections. The country’s socio-economic problems – 42% of the population lives under the poverty line<sup>17</sup> – have also caused indignation toward the government. This indignation, in turn, has added fuel to recruitment efforts by non-State armed groups (NSAGs).

## Terrorism

The instability in the Sahel region has helped to pave the way for the emergence of some “terrorist” groups in the region. In their efforts to coerce the Sahelian people and government decision-makers for ransom or political concessions, these groups have employed various terrorist activities, including launching deadly attacks against civilians and military targets alike, attacking public and private property, kidnapping individuals, and more.<sup>18</sup> Weak State institutions around the inter-State borders have enabled such groups to flourish in the peripheries and border towns, targeting people in multiple countries at once. Such groups also take advantage of the low security along the borders between the Sahelian States, freely moving between neighbouring countries.

Burkina Faso, Mali and Niger saw over 4000 casualties of terrorist attacks in 2019;<sup>19</sup> these attacks led, in turn, to the displacement of over half a million people.<sup>20</sup> The growing presence of “terrorist” groups in the Sahel has also intensified organized crime and criminal networks that have served as routes for lucrative

14 United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), “Global Humanitarian Overview: Chad”, available at: <https://gho.unocha.org/chad>.

15 *Ibid.*

16 ReliefWeb, “Chad: Overview of Intercommunal Conflicts (July 2021)”, United Nations Office for the Coordination of Humanitarian Affairs, 9 August 2021, available at: <https://reliefweb.int/report/chad/chad-overview-intercommunal-conflicts-july-2021>.

17 The World Bank, *Chad Poverty Assessment: Investing in Rural Income Growth, Human Capital, and Resilience to Support Sustainable Poverty Reduction*, International Bank for Reconstruction and Development/The World Bank, Washington, DC, 2021, p. 19, available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/36443/Chad-Poverty-Assessment-Investing-in-Rural-Income-Growth-Human-Capital-and-Resilience-to-Support-Sustainable-Poverty-Reduction.pdf?sequence=1&isAllowed=y>.

18 Ernest Harsch, “Uniting Against Terrorism Across the Sahara”, United Nations – *Africa Renewal Online*, available at: <https://www.un.org/africarenewal/web-features/uniting-against-terrorism-across-sahara>.

19 United Nations, “‘Unprecedented Terrorist Violence’ in West Africa, Sahel Region”, *UN News*, 8 January 2020, available at: <https://news.un.org/en/story/2020/01/1054981>.

20 *Ibid.*



criminal activities such as drugs, arms trade, human trafficking and the kidnapping of persons for ransom.

The individual States in the Sahel have each put in place various counterterrorism measures at the national level in an attempt to confront these challenges. However, it has been argued that these counterterrorism measures have caused more civilian casualties than they were intended to prevent.<sup>21</sup>

There have also been regional efforts in the fight against terrorism in the Sahel. In 2017, Burkina Faso, Chad, Mali, Mauritania and Niger formed the G5 Sahel joint force to respond to the growing presence of armed and violent groups. The G5 was established for the founding countries to pool resources and efforts to fight common security threats and ensure the security of their citizens.<sup>22</sup> In 2014–2015, several Lake Chad Basin countries, such as Cameroon, Chad, Niger and Nigeria, along with Benin, joined forces to create the Multinational Joint Task Force to fight against terrorism in these States.<sup>23</sup> This taskforce was authorized by the African Union in 2015.<sup>24</sup> To support the counterterrorism measures of Sahelian countries and at the invitation of Mali, France had launched Operation Serval in 2013 which was succeeded by Operation Barkhane in 2014 and deployed 5000 French troops.<sup>25</sup>

Notwithstanding, there have been allegations of violations of IHL and international human rights law (IHRL)<sup>26</sup> by the national forces,<sup>27</sup> regional efforts

21 For example, in Mali, operations to counter Islamist armed groups has taken a heavy toll on civilians, see Human Rights Watch, “Mali: Unchecked Abuses in Military Operations”, 8 September 2017, available at: <https://www.hrw.org/news/2017/09/08/mali-unchecked-abuses-military-operations>; see also Hédi Nsaibia and Caleb Weiss, “Ansarul Islam and the Growing Terrorist Insurgency in Burkina Faso”, *CTC Sentinel*, Vol. 11, No. 3, March 2018, available at: <https://ctc.usma.edu/ansarul-islam-growing-terrorist-insurgency-burkina-faso/>.

22 Office of the United Nations High Commissioner for Human Rights, “Project Supporting the G5 Sahel Joint Force with Implementation of the Human Rights and International Humanitarian Law Compliance Framework”, available at: <https://www.ohchr.org/en/countries-and-territories/africa-region/project-supporting-g5-sahel-joint-force-implementation-human-rights-and-international-humanitarian>.

23 International Crisis Group, *What Role for the Multinational Joint Task Force in Fighting Boko Haram?* Africa Report No. 291, Brussels, 7 July 2020, p. i, available at: [https://d2071andvip0wj.cloudfront.net/291-mnjtf-boko-haram%20\(1\).pdf](https://d2071andvip0wj.cloudfront.net/291-mnjtf-boko-haram%20(1).pdf).

24 *Ibid.*

25 Ministère de l'Europe et des Affaires étrangères, “France’s Action in the Sahel”, available at: <https://ambafrance.org/France-s-action-in-the-Sahel>.

26 ACLED, “State Atrocities in The Sahel: The Impetus for Counterinsurgency Results is Fueling Government Attacks on Civilians”, 20 May 2020, available at: [https://acleddata.com/2020/05/20/state-atrocities-in-the-sahel-the-impetus-for-counter-insurgency-results-is-fueling-government-attacks-on-civilians/?\\_\\_cf\\_chl\\_jschl\\_tk\\_\\_=be635d6ee2b2a8ba27085544f3bd8fc22e7de665-1618383645-0-AbaxfHay6xOarwf9SC8-yofSGG\\_VeMp2tVpx01mqDRg2lKQ-BF7S8VJnxw5-qMZhFlexXbTP3rjGJE-Pf6lXs\\_VbG4RcF5WJ30DiDXebFajTunxYRY8aew3WDigLM7c52xykSlxJ9YLC04nSXjI29RLnHlF7H0dK-tlCXimzjNVasV4FKwE\\_B4gTLGUYl6PW4iD6h3Ju0VwZewRhGo8eWAYjI03bflEuajPykjAl\\_PAmmb8gpXbPbL\\_kHC-PDnV\\_9rCekKdnO20f-uXghDH2IEM6gXq-KuXkRkUBVxuwXChMS\\_TGqA3Jw\\_bwXnAL7xa5XOoWnqj5xVcB\\_CHfIdt0oMuYjpZuvM8H15\\_e1\\_OOce\\_CWx60lzoL5\\_zj3EURSeoQCIJ6S1VWVA81MXIP82DPCUL3k58-0XA9VTl16mFWqC7a39Kg3sisnHPk7XHuaALWgKfOjZKOOpd1J0MbQ36ErwaQTCw8tjsSAFLUwB-SfTdRjMPyLWFWoFgVhffqG0ajTx3PBZTfXrN79iVbFgxfw9WOSsL-dSU8zMf0iD3](https://acleddata.com/2020/05/20/state-atrocities-in-the-sahel-the-impetus-for-counter-insurgency-results-is-fueling-government-attacks-on-civilians/?__cf_chl_jschl_tk__=be635d6ee2b2a8ba27085544f3bd8fc22e7de665-1618383645-0-AbaxfHay6xOarwf9SC8-yofSGG_VeMp2tVpx01mqDRg2lKQ-BF7S8VJnxw5-qMZhFlexXbTP3rjGJE-Pf6lXs_VbG4RcF5WJ30DiDXebFajTunxYRY8aew3WDigLM7c52xykSlxJ9YLC04nSXjI29RLnHlF7H0dK-tlCXimzjNVasV4FKwE_B4gTLGUYl6PW4iD6h3Ju0VwZewRhGo8eWAYjI03bflEuajPykjAl_PAmmb8gpXbPbL_kHC-PDnV_9rCekKdnO20f-uXghDH2IEM6gXq-KuXkRkUBVxuwXChMS_TGqA3Jw_bwXnAL7xa5XOoWnqj5xVcB_CHfIdt0oMuYjpZuvM8H15_e1_OOce_CWx60lzoL5_zj3EURSeoQCIJ6S1VWVA81MXIP82DPCUL3k58-0XA9VTl16mFWqC7a39Kg3sisnHPk7XHuaALWgKfOjZKOOpd1J0MbQ36ErwaQTCw8tjsSAFLUwB-SfTdRjMPyLWFWoFgVhffqG0ajTx3PBZTfXrN79iVbFgxfw9WOSsL-dSU8zMf0iD3).

27 United Nations Security Council, Joint Force of the Group of Five for the Sahel, Report of the Secretary-General, UN Doc. S/2020/1074, 2 November 2020, paras 25–6, available at: [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S\\_2020\\_1074.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2020_1074.pdf).

such as the G5 joint force,<sup>28</sup> and France's Operation Barkhane.<sup>29</sup> Reports have surfaced that these forces have targeted civilians, carried out summary executions, and engaged in torture, rape, enforced disappearances and other reprisals.<sup>30</sup> Such violations risk undermining any counterterrorism gain made by the forces and further breaking the trust and social contract of the local population with the governments involved. Coupled with weak institutions that have not been able to protect them from armed groups and "terrorist" groups, gross human rights violations by national,<sup>31</sup> regional, foreign and international armed forces will make Sahelians less likely to support counterterrorism operations.

## Effects of regional violence on the civilian population

In addition to the usual consequences of armed conflicts that disrupt the lives of civilians, Sahelians have also faced harsher effects, with civilians becoming direct targets of attacks by various parties to the different armed conflicts taking place in the region. Various reports have shown that armed groups, community self-defence groups and security forces have directly targeted civilians.<sup>32</sup> In the first six months of 2020 alone, in the Central Sahel region which includes Burkina Faso, Mali and Niger, there were over 4660 casualties due to armed conflicts and violence.<sup>33</sup> Between February 2021 and February 2022, nearly 2000 civilians were killed in Burkina Faso, Mali and Niger.<sup>34</sup> These attacks were based on ethnic and religious identity and perceived support to community defence groups. In addition to direct targeting of civilians, civilian objects such as farms, crops and food reserves have been destroyed, adding to the already existing food instability in the region.<sup>35</sup>

Decades-long armed conflicts in the Sahel have also limited the accessibility of essential services and humanitarian assistance to the victims and those most

28 Office of the United Nations High Commissioner for Human Rights, "Status Report: OHCHR Project Supporting the G5 Sahel Joint Force with Implementation of the Human Rights and International Humanitarian Law Compliance Framework, 1 May 2018–31 March 2020", 5 August 2020, paras 120–4, available at: [https://www.ohchr.org/sites/default/files/Documents/Countries/Africa/G5Sahel\\_Report\\_E\\_Final\\_05.08.2020.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/Africa/G5Sahel_Report_E_Final_05.08.2020.pdf).

29 United Nations MINUSMA, "Communiqué de presse MINUSMA : Rapport sur les événements de Bounty du 3 janvier 2021", Bamako, 30 March 2021, available at: [https://minusma.unmissions.org/sites/default/files/communiqué\\_minusma\\_-\\_rapport\\_bounty5.pdf](https://minusma.unmissions.org/sites/default/files/communiqué_minusma_-_rapport_bounty5.pdf).

30 Human Rights Watch, "Sahel: End Abuses in Counterterrorism Operations", 13 February 2021, available at: <https://www.hrw.org/news/2021/02/13/sahel-end-abuses-counterterrorism-operations>.

31 United Nations MINUSMA, Human Rights and Protection Division, "Note on Trends of Human Rights Violations and Abuses in Mali 1 April–30 June 2020", August 2020, paras 11–13, 33 and 40, available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/quarterly\\_note\\_on\\_human\\_rights\\_trends\\_april-june-2020\\_english\\_version\\_final\\_0.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/quarterly_note_on_human_rights_trends_april-june-2020_english_version_final_0.pdf).

32 Global Centre for the Responsibility to Protect, "Central Sahel, Niger", 1 March 2022, available at: <https://www.globalr2p.org/countries/niger/>.

33 ICRC, "Central Sahel: Spike in Violence Leads to Higher Deaths, More Than 1 Million Fleeing Homes", ICRC News Release, 14 September 2020, available at: <https://www.icrc.org/en/document/central-sahel-spike-violence-leads-higher-deaths-more-1-million-fleeing-homes>.

34 Global Centre for the Responsibility to Protect, above note 32.

35 *Ibid.*

vulnerable. The International Committee of the Red Cross has estimated that around 1.5 million Sahelians live in areas that are “virtually impossible to access humanitarian aid and essential services”.<sup>36</sup>

Protracted armed conflicts in the Sahel also lead to prolonged disruption of education due to the lack of access. The ongoing hostilities have led to the closure or destruction of over 6000 schools,<sup>37</sup> infringing upon the right to education of children. Schools provide not only education but also a psychological safe harbour where children can be children and interact with their peers in a safe environment,<sup>38</sup> the destruction of which causes significant difficulty in the lives of children. For the seven million Sahelian children out of school due to armed conflicts and violence,<sup>39</sup> the destruction of schools jeopardizes not only their present but also their future lives.<sup>40</sup>

Various reports have also shown that children in the region, especially young boys, have been direct targets of attacks by different armed groups and other parties to the conflicts,<sup>41</sup> in violation of IHL and IHRL’s rules safeguarding children from harm. Young children have also been recruited by armed forces and armed groups<sup>42</sup> in the Sahel as fighters or other roles, notwithstanding the prohibitions on the recruitment and use of child soldiers under IHL and IHRL. This puts children at risk of being killed, wounded and detained in armed conflicts. Such involvement of children in armed conflicts also has long-term psychological effects, often impeding their re-integration into society post-conflict. The continued exposure to violence makes these children particularly prone to mental health problems, including post-traumatic stress disorder and depression.<sup>43</sup> In October 2021, the United Nations Security Council unanimously adopted a first-of-its-kind resolution put forward by Niger and Norway on the protection of education in armed conflicts.<sup>44</sup>

Girls and women in the Sahel also face high rates of sexual and gender-based violence in the hands of armed forces and various armed groups. Rape, forced and child marriages, female genital mutilation and trafficking of girls and

36 ICRC, “After Ten Years of Armed Violence in the Sahel, There is Still Time for Humanity”, ICRC Statement, 10 February 2022, available at: <https://www.icrc.org/en/document/after-ten-years-armed-violence-sahel-there-still-time-humanity>.

37 UNOCHA, “Sahel Crises Leave Devastating Impacts on the Most Vulnerable”, 3 January 2022, available at: <https://reports.unocha.org/en/country/west-central-africa/card/3EJsed29Gg/>.

38 Bede Sheppard, “Keeping Schools Safe from the Battlefield: Why Global Legal and Policy Efforts to Deter the Military Use of Schools Matter”, *International Review of the Red Cross*, Vol. 101, No. 911, p. 671.

39 UNOCHA, above note 37.

40 Save the Children, “Children in Mali, Niger, Burkina Faso Face Greater Risk of Recruitment by Armed Groups”, 20 October 2021, available at: <https://www.savethechildren.net/news/children-mali-niger-burkina-faso-face-greater-risk-recruitment-armed-groups>.

41 Amnesty International, above note 9, p. 19.

42 Amnesty International, above note 9, p. 27; see also Save the Children, above note 40, p. 37.

43 Rochelle L. Frounfelker *et al.*, “Living Through War: Mental Health of Children and Youth in Conflict-Affected Areas”, *International Review of the Red Cross*, Vol. 101, No. 911, p. 486.

44 United Nations Security Council, Resolution 2601 (2021), UN Doc. S/Res/2601 (2021), 29 October 2021, available at: [https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/UN%20Security%20Council\\_Education%20Under%20Attack\\_Resolution%202601%282021%29\\_Oct21\\_EN.pdf](https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/UN%20Security%20Council_Education%20Under%20Attack_Resolution%202601%282021%29_Oct21_EN.pdf).

women have increased in the Sahel in the past decade.<sup>45</sup> Stories published in this edition of the *Review* of girls and women subjected to sexual violence highlight the severe impacts of sexual and gender-based violence in the Sahel and demonstrate the importance of strengthening the protection of girls and women in armed conflicts, and the respect of IHL in general.

Furthermore, impunity and lack of accountability for violations of IHL and IHRL in the Sahel continue to fuel existing grievances in the region. Although reports have shown serious violations of IHL and IHRL by national, foreign and international armed forces and various armed groups, there has been little to no accountability or redress to ensure respect for IHL and human rights. IHL violations in connection to the armed conflicts and human rights law violations must be investigated. This requires States to take domestic measures as well as international support to ensure that such investigations are effective. This will not only redress past violations but will also help maintain social cohesion in the Sahel in the future.

To reiterate, international humanitarian law is not merely a slogan; it is a responsibility. All States have an obligation to respect and ensure respect of this body of law. The violation of IHL, as well as human rights, first and foremost affects human dignity, based on which various international humanitarian and human rights laws were drafted upon. Therefore, human dignity requires respect and at least accountability in the cases of its violation.

## Climate change

The Sahel region is at the core of the harsh reality of climate change, where temperatures are rising 1.5 times faster than the global average. For Sahelians whose main sustenance depends on agriculture and pastoralism, this has meant worse and frequent droughts and floods, crippling food production capabilities. In an already semi-arid environment, the farmlands and grazing lands in the Sahel have suffered deforestation and overgrazing, diminishing the capacity of the soil to retain water and making it susceptible to soil erosion.

With over 70% of the population in the Sahel<sup>46</sup> depending on agriculture and pastoralism as the primary source of income, the adverse impacts of climate change have further added to an existing problem. With differences in the economic development and capacity of the individual countries, the ability to cope with the effects of climate change differs. Weak governance institutions have further diminished this capacity, negatively impacting the lives of Sahelians and contributing to the underdevelopment of the region. With existing problems of

45 GBV AoR, “GBV in the Central Sahel – GBV AoR West and Central Africa: Briefing Document for the Central Sahel Ministerial Meeting – 20 October 2020”, *ReliefWeb*, available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/gbv\\_central\\_sahel\\_advocacy\\_doc\\_final\\_english\\_0.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/gbv_central_sahel_advocacy_doc_final_english_0.pdf).

46 Oriol Puig Cepero *et al.*, *Climate Change, Development and Security in the Central Sahel*, Cascades, June 2021, p. 12, available at: <https://www.cascades.eu/wp-content/uploads/2021/06/Climate-Change-Development-and-Security-in-the-Central-Sahel.pdf>.

weak institutions and poor governance, internal power struggles and corruption, the Sahelian governments have not been able to adequately respond to the questions and concerns of Sahelians regarding the negative impacts of climate change, economic development, food insecurity, violence and displacement. Former United Nations Secretary-General Ban Ki-Moon referred to climate change as a "threat multiplier" that worsens existing social, political and economic tensions and conflicts.<sup>47</sup> In the case of the Sahel, climate change has indeed contributed to driving existing socio-economic and political tensions farther and escalated the conflicts.

With limited access to land and water, which are scarce natural resources in the Sahel, and which are inadequate for the growing population in the region, migratory routes of pastoralists have increasingly gone through land traditionally used for cultivation by farmers. At the same time, farmers are increasingly expanding their cultivation into land traditionally used as pastoral corridors. This has led to violent clashes between farmers cultivating the land and pastoralists who often cross intra-State borders to feed their cattle. In the past decade, farmer–herder violence has led to over 15,000 casualties, with half that number reported in the past three years alone.<sup>48</sup> Although the root of the dispute is competition over scarce resources, these grievances have been fuelled and utilized by "terrorist" groups to drive recruitment into their own forces.

For Sahelian countries, climate change is an important, cross-cutting agenda, and this is reflected in the fact that all five members of the G5 Sahel have signed and ratified the Paris Agreement on Climate Change. However, due to the lack of adequate resources within the Sahel and the countries within the region being some of the smallest CO<sub>2</sub> contributors in the world, regional action alone cannot provide the necessary mitigation of the harsh effects of climate change. Therefore, Niger worked with Ireland to co-author a draft thematic resolution on climate change and security and brought it for a vote before the Security Council at the end of 2021. This draft resolution requested the "integration of climate-related security risk as a central component into comprehensive conflict-prevention strategies"<sup>49</sup> – though, ultimately, the Security Council failed to adopt it, with twelve votes in favour and two against with one abstention. This edition's interview with his excellency S.E. Abdoulaye Abarry Dan Bouzouwa, the Ambassador of Niger to the United Nations Security Council from 2020 to 2021, highlights the importance of recognizing the security implications of climate change, particularly in the Sahel.

47 United Nations Secretary General, "Secretary General's Remarks on Climate Change at the Policy Spotlight with Friends of Europe [as prepared for delivery]", 3 April 2014, available at: <https://www.un.org/sg/en/content/sg/statement/2014-04-03/secretary-generals-remarks-climate-change-policy-spotlight-friends>.

48 Leif Brottem, "The Growing Complexity of Farmer-Herder Conflict in West and Central Africa", Africa Center for Strategic Studies, 12 July 2021, available at: <https://africacenter.org/publication/growing-complexity-farmer-herder-conflict-west-central-africa/>.

49 United Nations, "Security Council Fails to Adopt Resolution Integrating Climate-Related Security Risk into Conflict-Prevention Strategies", Meetings Coverage and Press Releases, 13 December 2021, available at: <https://www.un.org/press/en/2021/sc14732.doc.htm>.



Mobilizing the international community for improved and urgent action against climate change is more critical than ever. Climate change is a global problem affecting every country, although some countries, such as those in the central Sahel, are more affected than others. The harsh effects of the increase of temperature in the Sahel at a rate of 1.5 times the global average witnessed in the Sahel, such as heavy flooding and intense droughts, should be seen as a wake-up call for the international community to commit to effective action against climate change.

## Displacement

Regardless of the location and parties to the Sahel's various armed conflicts and the differing effects of climate change, one fact remains the same throughout the region: millions of people have been displaced from their homes and forced to flee adverse conditions all over the Sahel region. Drivers of displacement – such as conflict and harsh climate conditions – are closely interlinked in the Sahel, often making it difficult to identify a single or proximate cause for displacement and related instability.

Although it is often overlooked, the Sahel has one of the fastest growing displacement crises in the world. By February 2022, over 2.6 million Sahelians were internally displaced – that is, they have been driven out of their homes but remain inside the same country. This represents a ten-fold increase in less than a decade: in 2013, there were 217,000 IDPs in the Sahel. More than half a million of the 2.1 million IDPs were displaced in 2021 alone. An additional 930,000 people have left the borders of their own countries and sought refuge in neighbouring States, such as Burkina Faso, Mali and Niger, driving the total number of displaced persons in the Sahel to 2.7 million people.<sup>50</sup>

In just three years (from 2018 to 2021), Burkina Faso had more than tenfold IDPs, hitting 1.5 million people, making it one of the fastest-growing displacement crises in the world.<sup>51</sup>

Even after being forced to flee to escape the violence, in the very places these people have fled to, camps for IDPs and refugees in the Sahel have come under serious attack by armed groups,<sup>52</sup> in violation of IHL.

It is well accepted that no one willingly chooses the path of exile or to abandon their homes to stay at IDP or refugee camps.<sup>53</sup> The millions of people in

50 UNHCR, "Sahel Emergency", available at: <https://www.unhcr.org/sahel-emergency.html>; see also R4Sahel, Coordination Platform for Forced Displacements in the Sahel, "Sahel Crisis", 28 February 2022, available at: [https://data2.unhcr.org/en/situations/sahelcrisis#\\_ga=2.78032402.746070936.1647523116-1880873679.1635088108](https://data2.unhcr.org/en/situations/sahelcrisis#_ga=2.78032402.746070936.1647523116-1880873679.1635088108).

51 United Nations, "Burkina Faso: Rising Displacement Adds to Sahel Crisis", *UN News*, 4 February 2022, available at: <https://news.un.org/en/story/2022/02/1111332>.

52 Global Centre for Responsibility to Protect, "Atrocity Alert No. 202: The Sahel, Nigeria and Central African Republic" 6 May 2020, available at: <https://www.globalr2p.org/publications/atrocity-alert-no-202-the-sahel-nigeria-and-car/>.

53 Allocution de Monsieur Adama Dieng, Secrétaire général adjoint et Conseiller Spécial du Secrétaire général des Nations unies pour la prévention du génocide, Dialogue Régional de Protection et de Solutions dans le cadre des déplacements forcés au Sahel Bamako, 12 September 2019.

the camps all across the Sahel have been forced out of their homes due to the adverse conditions of armed conflicts and climate change. The stories of IDPs included in this edition of the *Review* put a human face to the Sahel region's displacement crisis and tell of their experience and resilience.

Displacement also brings along with it various factors that limit the enjoyment of the rights of IDPs and refugees. Many IDPs and refugees have difficulties accessing the basic necessities of life, such as food, water, shelter, clothing and health services. These persons have left their homes and livelihoods, often leaving them with little to no income to afford these basic necessities. For many Sahelians who already live below the poverty line, displacement leads them to extreme poverty, which causes still more abuses of their human rights and threatens their fundamental human dignity.<sup>54</sup>

While there are many national, regional and international humanitarian efforts to alleviate at least some of the humanitarian needs of IDPs and refugees in the Sahel region, the displacement crisis requires a lasting solution. As the displacement crisis is a result of the armed conflicts and effects of climate change, Sahelian States along with regional and international organizations need to work together to solve these underlying causes of displacement.

## Opportunities in the Sahel

Although the challenges mentioned above in the Sahel are numerous, it is also a region full of opportunities.

### Focus on the youth

In 2020/2021, 64.5% of Sahel's 150 million people were young people under the age of 25 years.<sup>55</sup> This massive young population is an abundant human resource for development within the region and the global market. Effective investment in the education and potential of the Sahelian youth will serve to ensure steady economic development in the region. Increasing economic development, education and employment opportunities in the Sahel will help counter violent extremism and voluntary recruitment of youth by the armed groups that often attract young individuals with financial incentives.

However, this requires a thorough analysis and study of the factors that make the youth more vulnerable to violent extremism or voluntary recruitment into armed groups. No one is born a "terrorist"; rather, people are made into "terrorists". Poor socio-economic backgrounds and educational status, marginalization and collective grievances, injustice, oppression, poor governance,

54 Office of the United Nations High Commissioner for Human Rights, "OHCHR and the Human Rights Dimension of Poverty", available at: <https://www.ohchr.org/en/poverty>.

55 Alliance Sahel, "Mali: Supporting Job Opportunities Created by Young People", 15 January 2020, available at: <https://medium.com/@sahelalliance/mali-supporting-job-opportunities-created-by-young-people-18347295ca5f>.

misuse of belief, ideologies and ethnic or cultural differences could be some factors that make the youth more prone to take up violent extremism.<sup>56</sup>

Including the Sahel's youth in decision-making, most importantly, will help remedy the deep-rooted grievances with and distrust towards the Sahelian governments. A particular focus on communities that have been socially, economically and politically marginalized will help strengthen the social cohesion of the diverse communities in the region as well.

## African solutions to African problems

Similar to most parts of Africa, elders and religious leaders are community leaders of high importance in the Sahel. Elders are held in high regard and are respected for their experience and wisdom. Religious leaders, as spiritual guides for many people, likewise have enormous influence over their followers.<sup>57</sup> This helps explain why the customary and community-led initiatives aimed at conflict resolution have been quite successful in some parts of the Sahel. Since time immemorial, communities in the Sahel have developed knowledge on causes of conflicts and ways to mitigate them. By involving community leaders, such initiatives will have more meaning and, therefore, legitimacy within the local population than the government's policies, which are often considered top-down approaches.

The time has passed where IHL was just a concern of the military or governments. Now it is time to make IHL a part of the daily agenda of elders, religious leaders and other community leaders. It is important to have sustained dialogue with these community leaders with the aim of disseminating IHL and influencing the behaviour of armed groups to ensure respect for the law.

Meaningful conflict resolution processes should include the local communities' traditional rituals and initiatives to address conflicts, particularly related to intercommunal violence and agro-pastoralist violence.<sup>58</sup> In this regard, meaningful discourse should also involve local intermediaries facilitating and mediating discussions between local communities. Examples include griots,<sup>59</sup>

56 UNESCO International Institute for Capacity-Building in Africa (IICBA), *Youth Empowerment for Peace and Resilience Building and Prevention of Violent Extremism in Sahel and Surrounding Countries: A Guide for Teachers*, 2019, p. 17.

57 *Ibid.*

58 Office of the United Nations High Commissioner for Human Rights, "Mali: Senior UN Official Calls for Holistic Approach to Tackle Security and Human Rights Crisis", 9 November 2021, available at: <https://www.ohchr.org/en/press-releases/2021/12/mali-senior-un-official-calls-holistic-approach-tackle-security-and-human>.

59 Griots are West African oral historians, story tellers, musicians, poets or praise singers. Griots originated in the 13th-century empire of Mali and since then have preserved the history, oral tradition and the line of descent of the people in their communities. Griots have been respected and high-ranking members within the empire and have often been referred to as the "living archive of people's traditions". See Lize Okoh, "What Is a Griot and Why Are They Important?", *the culture trip*, 24 May 2018, available at: <https://theculturetrip.com/africa/mali/articles/what-is-a-griot-and-why-are-they-important/>.

traditional and community leaders, and women<sup>60</sup> in the Sahel.<sup>61</sup> Such intermediaries should also be used to disseminate IHL and IHRL to raise awareness of these fields of law within the local community. In such cases, it is also essential to show how the basic principles of these fields of law are engrained in the local values of the communities.<sup>62</sup>

In this context, the idea of involving traditional and religious leaders in the Sahel's crisis exit strategies is beginning to gain ground. In December 2021, a regional meeting led by the United Nations Office for West Africa and the Sahel (UNOWAS) was held in Dakar with conclusions on the need for better use of endogenous strategies,<sup>63</sup> with various innovative efforts presented on the mobilization of religious leaders in favour of the protection of the civilian population, in the context of humanitarian work and peace-building efforts.

### Involving financial organizations

With immense natural resources, massive potential for renewable energy, culture and physical heritages and young human capital, the Sahel, even with its challenges, offers a multitude of opportunities for investment and development. This gives States, development partners and investors various opportunities for investment that could build the resilience of Sahelian countries to the effects of climate change and food insecurity. It also creates opportunities to empower women and the youth through development towards the goal of promoting peace.

Financial organizations can play a mammoth role in the development and peace building of the Sahel. These organizations have the opportunity to invest in the youth, female entrepreneurs, farms and pastoralists in the region. In most parts of the Sahel, where access to financial services is limited, such investments would empower individual entrepreneurs and build resilience within communities. The World Bank, the African Development Bank Group, the European Investment Bank and Agence française de développement are some of the organizations working to build resilience in the Sahel.

60 Christiane Agboton Johnson, "Peace and Security: Women's Leadership in Conflict Prevention and Resolution in the Sahel Region – Half the Sky...", Centre for Humanitarian Dialogue, April 2013, available at: [https://www.peacewomen.org/sites/default/files/Peace%20and%20Security%20-%20Women's %20leadership%20in%20conflict%20prevention%20and%20resolution%20in%20the%20Sahel%20Region.pdf](https://www.peacewomen.org/sites/default/files/Peace%20and%20Security%20-%20Women's%20leadership%20in%20conflict%20prevention%20and%20resolution%20in%20the%20Sahel%20Region.pdf). In Sahelian countries, women have always contributed to maintaining social cohesion. In Mali, women have contributed to the peace-building process after the Tuareg conflict in the 1990s by physically going to bases of NSAGs and negotiating release of detainees. A specific organization that has played a role both in the 1990s and early 2010s was the Women's Movement for Peace and Preservation of National Unity.

61 Bakary Sambe, "From Beneficiaries to Co-operants: Overcoming Conflicts of Perception in the Sahel", *iD4D*, 17 June 2021, available at: <https://ideas4development.org/en/overcoming-conflicts-perception-sahel/>.

62 ICRC, *Increasing Respect for International Humanitarian Law in Non-International Armed Conflicts*, Geneva, February 2008, p. 31, available at: <https://shop.icrc.org/increasing-respect-for-international-humanitarian-law-in-non-international-armed-conflicts-pdf-en.html>.

63 Bureau des Nations Unies pour l'Afrique de l'Ouest et le Sahel (United Nations Office for West Africa and the Sahel; UNOWAS), "Contribution des légitimités religieuses et traditionnelles à la consolidation de la paix, la prévention et la résolution des conflits en Afrique de l'Ouest et au Sahel", Note conceptuelle du Séminaire Régional 16 au 17 décembre 2021, Dakar, Senegal.

The engagement of the African Development Bank in the Sahel is a case in point: its investments in agriculture, energy, transportation, entrepreneurship and women's empowerment have had positive impacts on the local population. The interviews with Yero Baldeh<sup>64</sup> and Amel Hamza<sup>65</sup> from the African Development Bank included in this edition of the *Review* highlight how such support from financial organizations can apply on the ground and support the conflict resolution and peace-building agenda.

Although all of the above are commendable initiatives, these are not enough. Other financial organizations and even private banks should be involved in the security and development agenda of the Sahel. There is no return on investment without peace or respect of rules. These organizations and banks must also support the efforts on ensuring respect for IHL and IHRL in the Sahel, enabling the protection of civilians and civilian objects.

## The Sahel in a decade

The past decade in the Sahel has carried unprecedented humanitarian challenges due to armed conflicts, climate change and displacement. We must now work together to ensure that the next decade promises Sahelians a significant, positive change: a Sahel built by Sahelians and Sahelian values, that will accommodate all others in peace and harmony. This future of the Sahel requires solid and effective leadership that respects human dignity and ensures that no one is left behind. Governments should respect both their IHL and IHRL obligations. Non-State actors should also understand, recognize and respect their commitments to protect human beings and human dignity both in times of armed conflicts and in peace.

This requires inclusive and participatory dialogues between governments and local communities to resolve conflicts and sustain the peace-building process.

It is now the time for Sahelians, both young and old, to carry IHL and IHRL as their own and hold violators of these branches of law accountable for their actions.

A sustainable peace-building process also requires accountability for atrocities and violations of international law. Ending the culture of impunity in the Sahel will play an essential role in respecting and ensuring respect of IHL and human rights, thereby ensuring the respect of human dignity. The role of domestic judiciary systems should be immense in this regard.

To successfully turn around the current humanitarian crisis in the region, Sahelians need to create a strong movement within the region instead of looking outward or being dependent on non-Sahelians for solutions. Scaling up local

64 Director of the Transition States Coordination Office of the African Development Bank.

65 Acting Director of the Gender, Women and Civil Society Department and Manager of the Gender and Women Empowerment Division of the African Development Bank.



conflict resolution and peace-building initiatives will be a more sustainable form of ensuring peace in the region.

The announcement of the withdrawal of French troops in February 2022<sup>66</sup> after nine years in Mali should be seen as an opportunity for all Sahelian countries at large, and not only Mali and the members of the G5, to take the rule of law and the respect of IHL and IHRL into their own hands. Sahelian countries need to develop their leadership capacity to manage the security challenges and finally bring the mantra “African solutions to African problems” to reality.

Africa is indeed the continent of the future, and the Sahel is a model of that future. All stakeholders must come together to unlock the opportunities the region has to offer.

To this effect, this “Sahel” edition of the *Review* has brought together perspectives of diplomats, humanitarian actors, armed forces, think tanks, financial institutions as well as legal, agricultural and climate change experts in a unique collection of articles. The academic articles and interviews in this edition will help fill the literature gap and serve as an important reference point about the complex issues that Sahelians face. They will also be an important entry point within the Sahel and outside, into diplomatic, political, humanitarian and academic discussions that aim at permanently solving the complex humanitarian challenges in the Sahel region.

Written by twenty-one authors on a wide range of issues impacting the daily lives of Sahelians, this edition of the *Review* presents a starting point for action and motivation to ensure respect of IHL and IHRL in the Sahel. As explained above, the current situation in the Sahel is not solely attributable to a single factor. Instead, it needs analysis of each factor that has contributed to the instability and displacement, as the authors in this edition have done.

66 France 24, “Macron Announces French Troop Withdrawal from Mali”, 17 February 2022, available at: <https://www.france24.com/en/france/20220217-live-macron-holds-conference-on-sahel-engagement-as-france-poised-to-withdraw-troops-from-mali>.



## VOICES AND PERSPECTIVES

# Women of the Sahel: Portraits of women living through violence and conflict in the Sahel

### Abstract

*Armed conflict, violence, climate shocks, displacement and the COVID-19 pandemic have all contributed to the extremely complex humanitarian situation in the Sahel region of Africa. Their impact is felt, first and foremost, by civilians. Common threads running through the narratives of many of the articles in this issue of the Review point to the particular challenges facing women in the Sahel region – owing to their vulnerable position – and the key role they play in their communities.*

*These women have to cope on their own: their fathers, husbands and sons are either in detention or missing. The challenges they face include obtaining food and access to care, education and employment, as well as rebuilding their lives and homes. In their daily struggle for survival, they also remain prime targets for violent attacks.*

*Two humanitarian issues arise here. The first and most obvious, that of protection, should not overshadow the increasingly significant issue of women's inclusion and participation. In fact, there has been a shift away from viewing women as vulnerable potential victims and towards recognizing them as effective – even key – agents of change in the region, thus highlighting the importance of investing in women, the driving force behind efforts to rebuild society.<sup>1</sup>*

*The stories of the women from the Sahel region featured below<sup>2</sup> reflect their desire to rebuild society and their capacity for resilience.*

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## Fada N’Gourma, Burkina Faso

Fig. 1 - Colour online, B/W in print



© Halimatou Amadou/ICRC.

*Alice arrived with her family in Fada N’Gourma, in the eastern part of Burkina Faso, in December 2020. She gave birth one evening in July 2021. The following morning, she had to give up her bed to another new mother, owing to a lack of space in the maternity unit. The health centre in sector 11 of Fada N’Gourma only has six beds, but handles more than one hundred births per month.*

I had to flee from my home village of Boulgou.<sup>3</sup> We could not live there in peace any more; we were being hunted. The village is deserted now. I was pregnant when I fled with my husband, his other wife and our children. Our escape was physically challenging: we had to borrow tricycles for part of the journey. Whenever we heard the slightest noise we would get off our bikes and hide, and then continue on foot, as the risk of being caught was very high. We decided to split up and travel on separately, in order to have a better chance of surviving if something

1 Vanessa Mounkar and Yero Baldeh, “A Whole of Society Approach: Women Are Key to Building Resilient Communities beyond COVID-19”, African Development Bank Group, 12 November 2020, available at: <https://www.afdb.org/en/news-and-events/whole-society-approach-women-are-key-building-resilient-communities-beyond-covid-19-joint-op-ed-vanessa-mounkar-and-yero-baldeh-38961>.

2 The women’s stories were collected and transcribed by Halimatou Amadou, Zalissa Sanfo, Mohamed Cissé, Abdoul Rahamane Yaou Diaouga and Mahamadou Hama between 2020 and 2022, and edited by Nour Assaf. Some names have been changed.

3 In Burkina Faso.

terrible happened. If we had stayed together, our whole family could have been wiped out.

Many of the people who fled were never heard from again. They are no longer in the village and have not been seen since. Others were later found dead in or near their vehicles, somewhere in the bush.

When we arrived, we were welcomed by the host community. They donated the clothing that we and our children now wear. At the moment, our main worry is food. Life is very complicated here. There is nothing for the women to do but sit around all day, twiddling our thumbs. It is my husband who goes around the town, taking on all the odd jobs he can find, such as digging septic tanks, so he can put food on the table. If he doesn't find any work, we don't get to eat.

We have found refuge here in Fada, in sector 1; we rent two houses for 5,000 CFA francs each.<sup>4</sup> We owe back rent but the landlord does not hassle us. We rely on donations for the clothes on our backs.

I don't know when we will be able to go home. We don't know when this crisis will end. Things are getting worse and worse. I hope to get enough food and enough money to set up a small business to support myself and my family. No one can live forever on the charity of others, or by begging.

I sometimes lie awake at night, thinking about all the people who were killed. All the people I knew who had stayed in our village are now dead. It's terribly sad.

If we ever return home, I am not sure how we will manage to live with the weight of all those memories. I hope that I will be able to raise my children well and that they will never have to see what I have seen.

The future remains uncertain; it's the rainy season but we can't even grow any crops here. What are we going to eat?

4 Equivalent to approximately €7.60 as of May 2022.



## Tadress, Tillabéri, Niger

Fig. 2 - Colour online, B/W in print



© Abdoul Rahamane Yaou Diaouga/ICRC.

*Aissa is a widow, the mother of three children and the head of her family since the death of her husband. She and her children are among the 120 families (around 700 people) who fled Tingara, Niger, in December 2018, following threats from armed groups, to seek refuge in Tadress, on the outskirts of Tillabéri. Four years later, these families are still wholly dependent on humanitarian aid, having lost everything when they fled their homes.*

I used to live in a small, peaceful village called Tingara. In recent years, our land had become progressively less fertile owing to scant rainfall, and there was not enough fodder for our animals. After the death of my husband, I became the head of our family and had to take care of our three children.

In Tingara, we made a living from farming and raising livestock. During the dry season, we [the women] would grow fruit and vegetables to sell at market to compensate for the poor harvests we'd experienced in recent years owing to a lack of rainfall. When the harvests were not as good as we had hoped, we compensated by selling lettuce and other seasonal produce in order to make ends meet.

Even before the attack on our village, armed groups would regularly take our animals, especially small livestock. Sometimes they would stop us on our way back from the weekly market and take our goods and money. Many of those who resisted were killed.

*One Sunday morning, at around 11 am, the villagers received death threats from an armed group.*

“We know all of you. You have twenty-four hours to leave these lands, otherwise we will come back and kill each and every one of you”, the armed men said, pointing their guns at us.

As soon as they had turned their backs, we grabbed whatever we could and fled. There were pregnant women, old people and sick children among us. We left the land of our ancestors for an unknown destination, abandoning everything in order to survive. The men decided that the weaker women and children would ride on carts and that the rest of us would walk.

It took us two weeks to reach Tillabéri on foot. Some of the pregnant women even went into labour and gave birth along the way, before continuing the journey with us. We left the very elderly women, who could walk no further, in the villages along our route.

The community in Tadress welcomed us, marking a turning point in our lives: a new start, with new challenges. We have been here for three years now. Some of us have set up small businesses, and the men have found work in the town. Our new life has its advantages: for example, we can get water from a standpipe only a short walk away. However, we still have to live with a great deal of uncertainty. We are living on scraps of land that do not belong to us, and the locals regularly come to check on their property.

We are struggling to figure out how to live on other people’s land without problems. Back in Tingara, we stored our crops and had enough to eat even though the harvests were often poor. Most importantly, the land we farmed belonged to us.

We women also feel useless; while the men manage to find jobs in town to put food on the table, we are unable to do the same. For us, these last three years in Tadress have been a period of enforced idleness.

Once, a humanitarian organization asked us to sweep Tillabéri town centre. We each received 80,000 CFA francs.<sup>5</sup> In the three years we’ve been here, this was the only time we managed to find work and earn money to live on. It’s depressing to be in this situation: we can’t help our menfolk, we can’t grow crops and we’re not even sure whether we’ll still be here tomorrow, as we could be forced out at any moment.

My fondest memories of life in Tingara revolve around the freedom and autonomy we had, including with respect to our work. I don’t necessarily want to go back to my home village, but I would like to live somewhere without conflict, without the threat of danger and of an uncertain tomorrow.

5 Equivalent to approximately €103 as of May 2022.

## Gao, Mali



Fig. 3 - Colour online, B/W in print

© Mohamed Cissé/ICRC.

*Nafissa<sup>6</sup> works as a midwife at the regional hospital in Gao, Mali. She is also the focal point for the mental health and psychosocial support programme. She provides support to women who have experienced violence and danger, and who have no access to health care.*

*On the lack of access to health care:*

I remember a pregnant woman who suffered terribly during delivery. Her labour dragged on, and it became obvious that she would have to be evacuated urgently to the hospital in Gao, almost 100 kilometres from the health centre in Doro. The transfer took twelve hours. It was too late to save the baby, who was stillborn. The mother survived, despite the risk of uterine rupture and haemorrhage. However, she had to go through the additional trauma of having to carry the lifeless body of her baby, who could have survived.

This is a familiar experience for many women in Mali. My health worker colleagues and I often witness such tragic events when we intervene in obstetric and neonatal emergencies, mostly caused by delayed transfers to health-care facilities.

6 Statement recorded in March 2021.

Access to health care is difficult. The roads are poor, the distances are long, the means of transport are inadequate – sometimes patients have to be transported on donkeys or horse carts.

*On the omnipresent danger in the region:*

The lack of security further complicates access to health care. We are not safe from attacks on ambulances on the way to hospital.

Last year, we admitted a pregnant woman from Bourem health centre because she had eclampsia during a full-term pregnancy. Eclampsia is a life-threatening emergency for the mother and her unborn child.

The transfer normally takes about two hours. On the way, armed men attacked the rented vehicle carrying the pregnant woman. While she was having contractions, she was shot in the arm. Fortunately, the vehicle was able to make its way through the gunfire and reach the hospital. The patient was immediately admitted and her condition stabilized by the surgical team. She subsequently gave birth by caesarean section. Both mother and baby survived, which was nothing short of a miracle.

*On sexual violence:*

Sexual violence is another threat to women in northern Mali. Many women have experienced this kind of violence. Nevertheless, it remains a taboo subject. Above all, it is a weapon used by armed groups, with horrific consequences.

I remember a young patient who was a victim of sexual violence. She had been humiliated and beaten by her stepfather. She was told that she was worthless, that no man would marry her. Rejected by her peers, she ended up dropping out of school. She felt a great deal of guilt.

Fortunately, she was quickly referred to us. We provided medical care to prevent sexually transmitted infections and unwanted pregnancy. With psychosocial support, she managed to overcome her ordeal and even returned to school.

A lot of effort is being put into improving antenatal and obstetric care. However, more still needs to be done and the maternal mortality rate remains deplorably high, particularly in armed conflict zones. Unfortunately, social barriers still restrict access to medical and psychosocial care for many victims of sexual violence.

## Mopti, Mali



Fig. 4 - Colour online, B/W in print

© Michele Cattani/ICRC.

***Adja** was just 13 years old when armed men burst into her village, opened fire indiscriminately on the inhabitants, and then left.<sup>7</sup> Her assailants had left her for dead, but Adja was “lucky” enough to survive.*

*Adja had to undergo emergency surgery at the hospital in Mopti, Mali. After three months in recovery, she was able to leave the hospital and was taken in by a family in her village who had survived the attack. However, she has been left with a disability and dropped out of school because she could no longer walk long distances to get to class.*

*Adja is now 15 and cannot draw water from a well, carry a bucket on her head or pound grain. She is stuck in a kind of limbo.*

<sup>7</sup> The attack took place in March 2019 in Ogossagou, Mali.



## Thiou, Burkina Faso



Fig. 5 - Colour online, B/W in print

© Halimatou Amadou/ICRC.

*In Thiou, a town halfway between Ouahigouya, the capital of the northern region of Burkina Faso, and Koro, the first town across the border in Mali, 100 displaced men, women and children are queuing in the blazing sun to collect a month's supply of food. It is 10 o'clock in the morning. In front of a large warehouse, a few kilograms of rice, sugar and salt and litres of oil are being distributed to each family. In the shade of an acacia tree, women are being taught to spot the signs of child malnutrition. Among them is **Maimouna**, a small, slim, quiet and self-effacing woman.*

*Maimouna<sup>8</sup> is in her forties. She carries a black plastic bag that serves as a handbag to store her identity documents. Ten months ago, she and her nine children left their village of Kain-Ouoro and walked for 45 kilometres barefoot before they finally found refuge in Thiou.*

8 Statement recorder in February 2020. See also the video available at: <https://t.co/Tjg9wB9xUo>.

We had to flee for our lives. Everything had been burnt to the ground. We arrived here with nothing.

*In Thiou, there are no open-air camps. Most of the displaced people are hosted by local communities. Maimouna and her family found shelter with Adjarou, a farmer and long-time friend. The two families – twenty people in total – share everything; their lives are now intertwined.*

When Adjarou earns some money, he shares it with us. On days when no money comes in, we all have to manage as best we can.

Fig. 6 - Colour online, B/W in print



© Halimatou Amadou/ICRC.

*Maimouna has taken on a range of menial jobs to help with the household expenses.*

I pound millet, I go into the bush to fetch bundles of wood to sell, and sometimes I pick onions in the garden.

*Adjarou and several other families have banded together to grow vegetables in his garden, hoping to generate an income. He explains:*

I worry about feeding the whole family. I hope that the conflict will end so that they can go home, because there is not enough land for all of us to cultivate.

## Niamey, Niger



Fig. 7 - Colour online, B/W in print

**Kadidjatou<sup>9</sup>** is 44 years old and has four children. She has adapted to living with a disability in spite of the difficult access to health care and precarious security situation in her country and the region.

My name is Kadidjatou Amadou Salifou. I lost the use of my legs after contracting polio when I was 2 years old. It's a miracle I survived. At that time, polio was a little-known disease [in Niger] and was considered a curse.

I spent several months in the National Hospital in Niamey and the hospital in Lomé, Togo, before I was sent home to begin physiotherapy. I had to drag myself around on the floor, but I refused to be confined to our family home. I didn't have many friends to play with. I used to dream of a normal life, of being able to stand up and walk a few steps. I refused to fall apart physically or psychologically. I kept saying to myself: "What do I do now?" I knew that my family had high expectations of me.

9 Kadidjatou's full story, "Niger: Kadidjatou, surprendre malgré le handicap", International Committee of the Red Cross, 9 September 2020, is available at: [www.icrc.org/fr/document/niger-kadidjatou-surprendre-malgre-le-handicap](http://www.icrc.org/fr/document/niger-kadidjatou-surprendre-malgre-le-handicap).



To help me, my father used his limited savings to buy me a pair of crutches. Every morning I used to sit in front of the house and spend the whole day watching people, cars and life go by. I refused to be excluded from everyday life.

In our neighbourhood, people weren't aware of what poliomyelitis was. I often felt pity when they talked about me or my disability. School had also become a living hell; I couldn't put up with the taunts of my classmates any more – I wanted to quit. When I was 15, I dropped out of school.

I enrolled on a training course for people with disabilities. I chose to learn how to sew. I was pleased to finally find myself in an environment where I did not inspire pity.

After I completed my dressmaking diploma, I was given a sewing machine. It took me a while to hone my skills, but I got there in the end. I then took a leap of faith and opened my own workshop. It was an amazing experience: I made women's and children's clothing, and also trained other disabled people free of charge.

*Today, in addition to being a skilled seamstress, Kadidjatou successfully competes in a range of sporting disciplines. She excels in sports such as weightlifting, javelin, table tennis and wheelchair racing. She has won gold, silver and bronze medals in the numerous regional and international competitions in which she has represented Niger.*

## Dakar, Senegal



Fig. 8 - Colour online, B/W in print

© Zalissa Sanfo/ICRC.

*Halimatou was born in Niamey and grew up in Niger, France, Côte d'Ivoire and Belgium. Having begun her career as a communications adviser at Médecins Sans Frontières and the Alliance for International Medical Action, she joined the International Committee of the Red Cross in 2019 as a public relations officer and spokesperson for French-speaking Africa. For nearly fifteen years, she has recorded the life stories of families affected by conflict, natural disasters and epidemics in Africa. During her assignments, Halimatou has met displaced people and refugees, but also humanitarian workers, whose lives see-saw between hope and doubt.*

*On her commitment to humanitarian work:*

There was never any doubt that I would work in the humanitarian sector. I feel that I have always been involved in this field. My parents fled to Europe in the 1980s. Living in exile made us obsessed with remaining connected to our roots. Even as a 10-year old, I regularly watched TV news programmes and read the international papers. My parents spent their lives collecting stories and articles about Niger and other West African countries. These constituted my first press reviews and shaped my interest in journalism and international relations very early on.

My mother was a volunteer for the Red Cross in Belgium. I often accompanied her on her humanitarian assignments: I remember the “multicultural meals” that brought together migrants from many countries, and the debates on citizenship and racism. For many of us, these precious moments broke through our social isolation. I learned about solidarity and what it means to belong to a community. This is certainly why I understand the significance of humanitarian work and why I feel close to the victims of the conflict today.

*On her experience of working on the ground with people affected by conflict:*

Unfortunately, it is often civilians who pay the heaviest price. I meet many women and children on my travels. Whether in camps for displaced persons, in hospitals or in urban areas, these women’s lives have been touched by violence and suffering, but also by hope. When I write about them, I try to convey their emotions, to reflect the fragile nature of our societies and to highlight the humanity beyond the horror. The leitmotifs in many of their life stories are patience and resilience.

*Kétiné* is one of the words in Fulani that is closest to my heart: it means “to listen”. When I talk to people in need, I engage in active listening. When I first started writing down people’s stories, it was a very raw experience: I was overwhelmed by the emotions of the people I had met and felt a certain responsibility towards them. Above all, I wanted their stories to raise awareness and I wanted my work to have a social impact.

In 2011, in Mineo, Italy, I collected the stories of migrants who had survived a shipwreck. They had crossed the desert and experienced violence in Libya; they told me about their anguish regarding their uncertain future. One of the migrants, a young Nigerian named Abdoul, called me three years later to tell me that he had left the transit centre and was working in Rome. It was such a joy to hear his voice. Unfortunately, you don’t always know what happens to the people that you help.

With time, I have learned to shoulder less of the burden of other people's pain, to appreciate the fleeting glimpses of humanity revealed by a smile at the end of a conversation. This is also what helping people means.



Fig. 9 - Colour online, B/W in print

© Halimatou Amadou/ICRC.

*On the purpose and scope of her work as a woman humanitarian worker in the Sahel region:*

Women's vulnerability often belies their surprising strength. Last summer, in Fada N'Gourma in Burkina Faso, I met Aïssa, a slender, charismatic woman. One day, she took me by the hand and showed me around the site for internally displaced people where she lived with hundreds of others. She was extremely determined: she described to me in detail the water and shelter needs of the community; she did not leave a single person out and knew the stories and needs of every family. Earlier, ensconced in her hut, she had told me how she had fled her village with her family in the middle of the night after her husband had been killed. She is currently living apart from her two children because there is no suitable accommodation available for them.

There are so many stories; in one way or another, they all relate to my own. The people we help are often surprised that I understand their language and that I, a woman, work in this field. It reassures them to talk to someone who looks like them; people sometimes tell me that they are proud and happy that I am no longer "lost", because I – like them – have experienced life in exile.



## Interview with Yero Baldeh and Amel Hamza

**Director of the Transition States Coordination Office of the African Development Bank (Y. B.), and Acting Director of the Gender, Women and Civil Society Department and Manager, Gender and Women Empowerment Division of the African Development Bank (A. H.)\***



*Yero Baldeh has over twenty-four years of professional experience, seventeen of which with the African Development Bank. He is currently the Director of the Transition States Coordination Office at the African Development Bank (AfDB), Abidjan, Cote d'Ivoire. Prior to this, he was the Country Manager for Ghana, Lead Coordinator of the Transition States Coordination Office and Country Manager in Sierra Leone, among other posts. Before he joined the Bank in 2004, Dr Baldeh was the Head of The Gambia Social Development Fund.*



*Amel Hamza has more than thirty years of management and technical experience on gender and related topics, with over a decade of successful track record in the AfDB. She is currently leading the AfDB's roll-out and implementation of the 2021–2025 Gender Strategy. Prior to joining the AfDB, Dr Hamza worked in academia in her home country of Sudan and held different positions in UNICEF and UN Women. She holds a master's degree in Development Studies with specialization in Women and Development from the Institute of Social Studies, from the Netherlands.*

\* This interview was conducted in 2021 and finalized in March 2022.

**Keywords:** Sahel, African Development Bank, economic development, High 5s, gender equality and women's empowerment, Africa, fragility, resilience, humanitarian–development–peace (HDP) nexus.

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***1. By way of introduction, could you please briefly highlight what the African Development Bank (AfDB) Group is, its mandate and activities it engages in, in general and specifically with regards to addressing fragility and building resilience as well as women empowerment and civil society engagement (CSE) in Africa?***

The AfDB Group (the Bank) is a regional, multilateral, development finance institution established to contribute to economic development and social progress in Africa. As the premier development finance institution in the continent, the Bank Group mobilizes and allocates resources for investments, and provides policy advice and technical assistance in order to support African member countries' development, poverty reduction and improvement of living conditions for Africans. The Bank currently has eighty-one member countries (fifty-four African and twenty-seven non-regional), with its headquarters in Abidjan, Côte d'Ivoire.

The AfDB's Ten-Year Strategy (2013–2022) with its two main objectives – Inclusive Growth and the Transition to Green Growth – reflects the aspirations of the entire African continent. Under the leadership of Dr Akinwumi A. Adesina, the President of the Bank Group, five development priorities known as the High 5s (Light up and Power Africa; Feed Africa; Industrialize Africa; Integrate Africa; and Improve the Quality of Life for the People of Africa) were established in 2015 to accelerate collective progress towards the African Union's Agenda 2063 and the Sustainable Development Goals (SDGs).

Specific strategies or policies (such as the strategies for Addressing Fragility and Building Resilience in Africa<sup>1</sup>; Gender; Governance; and Private Sector Development) guide the Bank's thematic work, with dedicated departments/units such as the Transition States Coordination Office (RDTs) that applies a "fragility lens" in bank policy dialogues, knowledge products and operations. We look forward to share more on the Bank's agenda to prevent and address the complex, multidimensional and often interlinked drivers of fragility, and how we strengthen resilience on the African continent via a one-bank approach (i.e. with sectors and regions).

As mentioned above, the aim of gender equality and women's empowerment (GEWE) is at the core of the Bank's mandate to spur sustainable economic development and social progress on the continent. This is because gender equality is both a human right and an economic necessity. As a cross-cutting sector, GEWE is institutionalized through the Gender, Women and Civil Society Department and systematically integrated throughout the Bank's operations and policies. Over the years, the Bank has increased its focus on gender equality and leveraged its convening power to promote women and girls'

1 For more information, see AfDB Group, "Fragility & Resilience", available at: <https://www.afdb.org/en/topics-and-sectors/topics/fragility-resilience> (all internet references were accessed in March 2022).

empowerment as a key development priority. Recent developments reflect the priority given to the gender agenda, including the creation in March 2020 of the Gender Equality Trust Fund, first of its kind and one of the largest funds dedicated to gender equality on the continent. In November 2020, the Board of Directors approved the Gender Strategy for 2021–2025: “Investing in Africa’s women to accelerate inclusive growth”.<sup>2</sup>

We very much encourage you to have a look at our Gender Strategy, but let us now share some highlights. We all know that knowledge products are an enabler for evidence-based policy reforms, technical assistance and tailored development projects. This is why the Bank invests in the production of gender data and knowledge which helps unpacking country-specific gender constraints and ensures alignment with national development plans for enhanced women’s empowerment. Additionally, the Bank invests in special initiatives to accelerate opportunities for women, such as the Affirmative Finance Action for Women in Africa initiative to help tackle access to finance for women entrepreneurs and women-led businesses.<sup>3</sup> Another example is Fashionomics Africa, through which the Bank supports micro-, small- and medium-sized enterprises in the creative industries (textile and apparel) that show high-impact potential for women’s empowerment.<sup>4</sup> Furthermore, gender mainstreaming through the Bank’s Gender Marker System in our regular operations (e.g. infrastructure and human capital development projects/programmes) plays a crucial role in setting a tracking mechanism of targets and the allocation of resources, hence driving progress towards gender equality.

For example, between 2016 and 2019 the Bank’s operations facilitated the creation of 3.8 million jobs, with a specific focus on women and youth. More recently, during the COVID-19 pandemic, the Bank supported the African governments, private sector and civil society with a US\$10 billion Crisis Response Facility, where boosting resilience and gender equality are centre-stage. Once again, the importance of gender in the Bank’s approach was shown.

## ***2. What are AfDB’s engagement and approaches in the Sahel region?***

The Sahel region has immense potential but also faces significant challenges such as widespread poverty, security issues and climate change, each having devastating impacts on the population. The Bank is thus committed to assisting the Sahel region to advance towards an end of the cycle of violence, economic dependence, poverty and climate vulnerability. We support governments’ inclusive governance and service delivery agendas, community-centric approaches, and private sector-driven development, especially in rural and border communities, so that no one is left behind.

2 AfDB Group, *The African Development Bank Group Gender Strategy 2021–2025*, 3 February 2021, available at: <https://www.afdb.org/en/documents/african-development-bank-group-gender-strategy-2021-2025>.

3 AfDB Group, “AFAWA (Affirmative Finance Action for Women in Africa)”, available at: <https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/afawa-affirmative-finance-action-women-africa>.

4 Fashionomics Africa, available at: <https://fashionomicsafrica.org/>.

Given the current security situation in several parts of the region, high levels of defence expenditure are inevitable and likely to continue to maintain long-term peace and stability. The Bank views security and peacebuilding projects by governments and humanitarian–development–peace (HDP) nexus partners (according to their respective mandates) as an indispensable public good in our mutual quest for wealth creation, sustainable economic growth, people’s wellbeing, and long-term social prosperity. In all of these, particular emphasis needs to be on the “do no harm” principle and doing good.

For example, the Bank is doing its part with a portfolio of more than US\$3 billion in the G5 Sahel (Burkina Faso, Chad, Mali, Mauritania and Niger), including investments in agriculture, energy, transport infrastructure, human capital development, youth employment and entrepreneurship, and women’s empowerment, as well as strengthening governance for basic service delivery. We are working very closely with partners in the Sahel, such as the African Union, the Regional Economic Communities, the Executive Secretariat of the G5 Sahel, the Lake Chad Basin Commission, the Sahel Alliance, the United Nations’ (UN) system and other development and humanitarian partners such as the International Committee of the Red Cross (ICRC), the private sector and civil society. Together and according to our respective mandates, we collectively support countries in the region in their quests to achieve development progress.

During the One Planet Summit for Biodiversity earlier this year, President Adesina pledged US\$6.5 billion to speed up the realization of Africa’s Great Green Wall to create green growth corridors by restoring, developing and sustainably managing 100 million hectares of degraded land across the Sahara and Sahel. The “Wall” will stretch 7,000 km from Dakar to Djibouti and will create up to ten million jobs by 2030. The Bank will contribute to the Wall through several programmes, including via “Desert to Power” to generate up to 10 GW of new solar energy and provide clean electricity for up to 250 million people across the Sahel’s eleven countries. Another programme is the Africa Adaptation Acceleration Program, helping governments in the Sahel to scale up adaptation measures and transition towards digitally enabled, data-driven agriculture.<sup>5</sup> With our partner, the Global Centre for Adaptation, we plan to leverage US\$2 billion from our investment pipeline and mobilize US\$25 billion more.

***3. How did the partnership between the Bank and the ICRC come about and how do the goals and mission of the Bank align with/converge with the working modalities of the ICRC, including the Fundamental Principles of the Red Cross and Red Crescent Movement? Which areas do you foresee as particularly relevant for a strong Bank and ICRC collaboration and how does this relate to the HDP nexus?***

A strong partnership between the Bank and the ICRC makes complete sense to leverage each other’s comparative advantages, achieve synergies and complementarities. For

<sup>5</sup> AfDB Group, “Africa Adaptation Acceleration Program”, available at: <https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/africa-adaptation-acceleration-program>.

example, both institutions signed a letter of intent in January 2019 stipulating the joint vision to further advance the collaboration towards bolstering resilience of the poorest and most vulnerable communities in fragile settings on the African continent. This collaboration contributes to the AfDB's mission to spur inclusive and sustainable economic growth and social progress, as well as the ICRC's mandate to protect the lives and dignity of the victims of armed conflict and other situations of violence.

HDP nexus partners must incentivize and support the efforts of governments to reinforce existing social contracts at local level, strengthen administrative effectiveness of social services delivery, promote citizens' contribution to public policy and help rebuild trust and confidence in inclusive governance and public administration. It is our belief that the provision of solutions needs to be in close collaboration with local communities, with a specific focus on women and youth. Combined, these contribute to preventing grievances and marginalization, which could otherwise turn into breeding grounds for violence, communal conflicts and terrorism. Enabling business environments for private sector investments along regional and domestic value chains is paramount to transform our rural communities into zones of economic prosperity.

It is in this regard that the Bank and the ICRC are in the process to explore the development of a framework agreement, similar to the fiduciary principles agreements we have with UN agencies, but specifically tailored to the ICRC according to its unique mandate. The framework agreement would be intended to set the basis for sustained and regular collaboration between both organizations according to shared priorities to support African populations in fragile and conflict-affected contexts. All of this of course is in alignment with our respective institutional mandates. This process is ongoing.

The ICRC is also a potential partner for strengthening capacity on CSE in line with the spirit of the letter of intent signed in January 2019. The Bank is currently designing a programme for building capacity on CSE, and the ICRC's experience, knowledge management potential and outreach capacity especially in fragile contexts would be immensely useful in this regard. It requires concerted and continuous efforts to develop capacities of national and community-based organizations to realize strengthened CSE across the lifecycle in Bank programmes and projects that seek to address fragility and build resilience.

Furthermore, our partnership is also encompassing action-oriented policy dialogues and platforms such as our collaboration in the Finance in Common Summit during the Paris Peace Forum, in 2020 and ongoing since then, to ensure a common agenda for resilience financing. Readers hopefully also had a chance to join the recent Africa Resilience Forum (ARF), but, if not, please have a look online, including a spotlight contribution from ICRC President Peter Maurer.<sup>6</sup>

6 AfDB Group, "Africa Resilience Forum (ARF2021)", available at: <https://www.afdb.org/en/events/africa-resilience-forum-arf2021>; AfDB Group, "Multimedia, Highlights of the 2021 Africa Resilience Forum", available at: [www.afdb.org/en/events/africa-resilience-forum-arf2021/multimedia](http://www.afdb.org/en/events/africa-resilience-forum-arf2021/multimedia); ICRC, "ARF 2021:

***4. How will the partnership materialize and impact the countries in the Sahel region? What value does this engagement with the ICRC add to the Bank's existing work?***

Considering the mutual interests and objectives of both institutions along the humanitarian–development nexus, the Bank and the ICRC have been setting the foundations for a much wider and stronger partnership. For example, let us look at the collaboration via the “Economic Empowerment of Vulnerable Women in the Sahel Region (Mali, Niger and Chad)” project to enhance development of remote conflict-affected communities and bridging the humanitarian–development gap.

Through this engagement, both institutions have gained better insights into each other's institutional and operational models to advance towards a more seamless and scaled-up collaboration in fragile settings. We all know that in these contexts, flexibility and speed of interventions are particularly crucial to deliver on the ground, as is the “do no harm” principle. This includes the Sahel, but also other countries/regions affected by complex and multi-dimensional drivers of fragility, such as the Lake Chad Basin, Horn of Africa, the Great Lakes and Central African regions, to mention a few. The strengthened partnership with the ICRC is core in this regard and we look forward to further expanding and fine-tuning it.

***5. How does the AfDB approach the peacebuilding agenda? If this has evolved over time, what are some of the lessons learned for the way forward, in general and vis-à-vis the Sahel specifically?***

The Bank was one of the first multilateral organizations to shape the concept of fragility and institutionalize the fragility and resilience agenda in its business model since 2001. The Bank is still a leader in this domain with its own dedicated internal unit, the RDTS, as well as a specific facility, the Transition Support Facility (TSF).

The RDTS facilitates the Bank-wide implementation of its Strategy for Addressing Fragility and Building Resilience in Africa. The 2014–2019 (extended until the end of 2021) strategy focused on (i) Strengthening state capacity and support for effective institutions; (ii) Promoting inclusiveness to build resilience; and (iii) Leading on policy dialogue, partnerships, and advocacy on issues of fragility in Africa. It is also important to highlight that in the 2014 Strategy, the Bank introduced a paradigm shift from “fragile states” to “fragile situations”. The current COVID-19 pandemic has shown how relevant this shift was, as every country faces pockets of fragility, with various levels of evolving capacities and pressures, and the regional dimensions thereof, i.e. fragility does not know



borders. The Bank also introduced several changes in its processes, financing modalities, and internal management. All these milestones allowed the Bank to respond to fragile and conflict-affected situations with adapted financial interventions, advocacy and awareness raising.

We are proud of the numerous concrete, tangible steps and results. For example, more than US\$5.2 billion have been mobilized through the dedicated facility, the TSF, since 2008.<sup>7</sup> The bulk of these resources was utilized to consolidate peace, build resilient institutions, stabilize economies, improve the lives of vulnerable populations, and lay the foundations for sustainable inclusive growth. For instance, these interventions secured electricity access to five million people and supplied improved water and sanitation to eight million women over the past decade. Moreover, the TSF continues to provide flexibility (including that, for example, resources from partners can be pooled for scaled-up and better coordinated interventions), allowing the Bank to deliver dedicated and tailored responses to help prevent and mitigate crisis situations.

However, of course, we know the magnitude of tasks ahead to achieve our High 5s, the African Union's Agenda 2063 and Silencing the Guns as well as the SDGs. So, we shall spare no efforts and our partnership with the ICRC is certainly also paramount in this regard to reach, empower and enhance resilience of communities affected by fragility, conflict, violence and climate change. ICRC President Maurer's video participation<sup>8</sup> in the Bank's ARF<sup>9</sup> in September 2021 and our joint COP26 side-event in November 2021 are just two recent examples of joint policy dialogues and advocacy. We look forward to many more.

***6. What are the cumulative impacts of conflict, climate change and the COVID-19 pandemic on women and girls, especially as seen in the Sahel region? And how does the AfDB intend to tackle these issues in order to seek to reverse the trends?***

The Bank's Africa Gender Index indicates that gender disparities in the Sahel region remain a significant challenge and grave concern. Indeed, the situation of the most vulnerable women and girls, particularly those in refugee camps and displaced settlements is alarming for the countries' stability and development outlook. This poses tremendous pressures on a region that faces many challenges—climate change, security threats, political instability, lack of social cohesion, scarce resources in some areas as well as insufficiently inclusive and sustainable natural resource management in areas where natural resources are abundant, to mention a few. In addition, the COVID-19 pandemic has exacerbated an already complex macroeconomic situation, leaving little fiscal space for gender issues and for providing adequate relief for the most vulnerable.

7 AfDB Group, "About the Facility", available at: <https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/fragility-resilience/about-the-facility>.

8 ICRC, above note 6.

9 AfDB Group, "Africa Resilience Forum (ARF2021)", above note 6.

Yet, evidence shows that fragile and conflict-affected situations affect the most disadvantaged groups the hardest, particularly women, and have negative impacts on their lives, dignity and livelihoods. In the Sahel in particular, many women are the sole breadwinners and caregivers of their families without adequate economic means or capabilities. They are also particularly exposed to the risks of physical and sexual violence, stigma and rejection by their communities of origin. The economic and structural crises of chronic poverty have often pushed women to engage in the informal economy (agro-pastoral production, processing of agricultural and livestock products, small trade, etc.) to ensure survival and cover the basic needs of their households. Unfortunately, the informal sector – the largest employer of women in the Sahel – was hit the hardest by the restrictions implemented to fight COVID-19, destroying livelihoods of entire households. This again makes it very clear how important investments in resilience are, at individual, household and community levels.

The region is also suffering from the impacts of climate change, which are limiting its development perspectives. Indeed, most Sahelian economies are essentially based on the primary sector (agriculture and livestock), which is dependent on increasingly erratic rainfall and on which more than 80% of the population depends. These climate shocks can have different impacts on women and men, depending on their social status, their ability to participate in decision making and their access to resources. Stunting also erodes the development potential of our youngest members of society. The traditional roles assigned to women exacerbate their vulnerability and precariousness in the face of the negative effects of climate change. All of these are unacceptable and collective efforts are required to get this right, urgently.

***7. How does the Bank plan to address the disproportionate impact of armed conflicts on women and girls and build their resilience, particularly in the Sahel region? How do you see the role of the ICRC in this regard?***

The Gender Strategy 2021–2025 lays the foundation for enhanced interventions in fragile contexts to support poverty reduction, and economic and social development in the least developed African countries, with women at the centre, on both policy and programmatic fronts.<sup>10</sup> Developed during an unprecedented time that is threatening the progress and gains of the gender equality agenda, the gender strategy is the blueprint for development interventions that address gender disparities and build a more equal, inclusive and resilient future. It includes empowering women through access to finance and markets, create decent jobs, employability and entrepreneurship opportunities for women and increasing their access to social services through infrastructure.

We know now more than ever that gender inequality does not only have a tremendous cost in Africa and even more so in situations of crisis, but also that

<sup>10</sup> AfDB Group, above note 2.

countries simply cannot afford to exclude women in their response if they want to rebuild better. In fact, how can recovery programmes that do not integrate specific needs of half of the population – one of the most affected groups during conflict – be part of the solution? Africa’s recovery strongly depends on solutions provided to women who, as farmers, market-sellers, traders, etc., keep our economies running.

The example of the Sahel region speaks volumes about the importance of women’s empowerment as a critical lever for action and the losses caused by gender disparities. In Burkina Faso, while 93% of economically active women work in rural areas, mainly in food production and are responsible for marketing 40% of agricultural products, only 14% of all women are landowners (compared with 32% of men). Even when they own lands, women’s decision-making power remains limited due to gender stereotypes and customary laws. In Chad, women represent only 3% of formal business owners, while the large majority operates in the informal sector with little to no access to bank accounts, credit and business development services.

To that effect, we have built a pipeline of innovative projects to expand development impact in the most remote and challenging areas. To accelerate the implementation of the gender transformational agenda in transition states (countries in fragile and conflict-affected situations), the Bank actively engages and builds alliances with stakeholders, development partners, the civil society and humanitarian actors with the aim to address the root causes of fragility, tackle the long-standing power imbalances and pave the way for sustainable and inclusive development.

It is in this spirit that the collaboration between the ICRC and the Bank emerged to pursue collaborative opportunities under the Affirmative Finance Action for Women in Africa programme, which responds to the fundamental need to unpack the entrepreneurial capacity of women, providing them the finance they need to develop and grow their businesses so that they can better support their family and transform our societies. The complementarity of our mandates will allow us to provide socio-economic opportunities to people living in places where only actors such as the ICRC are present due to security issues. As mentioned earlier, the joint project on “Economic Empowerment of Vulnerable Women in the Sahel” will provide income-generating activities to women at the bottom of the pyramid in areas such as Timbuktu in Mali, Diffa and Agadez in Niger and Kishira in Chad. This is a first pilot, with many more joint projects at scale planned down the road.

***8. The Bank puts particular emphasis on CSE. Why is there a need to work with civil society organizations in general, and towards addressing fragility and building resilience in the Sahel region in particular? How are projects with civil society organizations structured and implemented?***

CSE is absolutely critical in achieving inclusive growth that leaves no one behind. Working with civil society in fragile and conflict-affected contexts helps strengthen participation and ownership as well as improving transparency and accountability.

Moreover, active CSE can help prevent grievances and marginalization by integrating and applying risk mitigation measures throughout the design and implementation of Bank-funded projects. CSE, and the mentioned capacity development that needs to come with it, will also help the Bank to increase the pool of locally based implementing partners and third-party monitoring for projects in parts of the region that have limited accessibility due to insecurity.

Let us share a few examples. The Bank is actively pursuing CSE in knowledge generation, projects, programmes and policy dialogues. For public sector operations implemented by the government or third-party implementing partners such as the UN, involving civil society in the design and implementation, for example as local implementing partner, is already happening. But we would want to see much more of this. That is also why we are constantly expanding our Civil Society Database, including through close collaboration with partners such as the Lake Chad Basin Commission and many others, and we encourage civil society organizations to register and join online.<sup>11</sup>

For example, the “Desert to Power” initiative aims to develop and provide 10 GW of solar energy by 2025 and supply 250 million people with green electricity, including in some of the world’s poorest countries across the Sahel, the Lake Chad Basin and the Horn of Africa. At least ninety million people will be connected to electricity for the first time. Adequate and effective community involvement, mobilization, sensitization and participation are core here. Working with youth associations and organizations in the region, CSE is also important *vis-à-vis* the Bank’s Jobs for Youth in Africa Strategy implementation. This includes empowering youth in fragile contexts via enhanced hard and soft skills needed for local, regional and global labour markets, to expand employability and entrepreneurial potential. In turn, this helps boost livelihoods and resilience as pathways to peace and shared prosperity.

***9. The Bank has also been developing its 3rd Strategy for Addressing Fragility and Building Resilience in Africa (2022–2026). Building on the topics covered thus far, which additional points do you deem worth mentioning?***

Thank you, yes, as mentioned earlier, our 2nd Strategy (2014–2019, extended until the end of 2021) achieved many of its objectives. That said, and in line with the recommendations of an independent evaluation (by Independent Development Evaluation (BDEV) in 2020) and the policy commitments of the fifteenth replenishment of the African Development Fund (ADF-15), there is room for the Bank to scale up the implementation of its fragility and resilience agenda. The Bank’s interventions in fragile situations will need to evolve towards more integrated, structural and coordinated approaches while staying selective according to our comparative advantages and tailored to the context. This

11 AfDB Group, “Register on CSO Management System”, available at: <https://cso.afdb.org/en/user/register>.

includes continuing policy dialogues and capacity development to achieve peace, stability and prosperity for all on the African continent.

Responding to the various pressures and to harness the tremendous opportunities on the African continent, specifically in fragile and conflict-affected contexts, requires capacity, agile operational mechanisms, flexible financial instruments (such as but not limited to the TSF) and pro-active coordination with external partners in the development, humanitarian and peacebuilding realm.<sup>12</sup> Partnerships are key, especially where work is better done by specialized actors, such as in active conflict situations. This is particularly important from a prevention angle and as fragility is not confined within national borders (spillover effects), as the situation in Libya and developments in several parts of the Sahel have shown us. Building resilience of communities in rural and remote areas, but also in increasingly urban settings, is an important pathway to harnessing national as well as regional peace and stability.

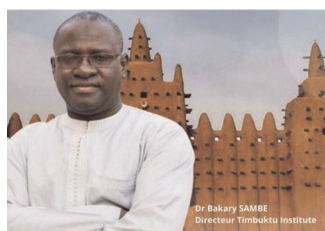
Building on opportunities and lessons learned from the 2014 Strategy, the 3rd Strategy for Addressing Fragility and Building Resilience in Africa (2022–2026) has been developed with very wide stakeholder consultation. The Strategy has been approved by the Bank's Board of Directors on 2 March 2022. The new Strategy puts a strong premium on the following adjustments: Promoting conflict-prevention in fragile situations; Renewing emphasis on building community resilience; Addressing regional fragility; Strengthening private sector development in fragile and conflict-affected situations as a driver for sustainable resilience; Increasing use of lending and non-lending tools applying selectivity principles; Scaling-up coordinated approaches with humanitarian, peace and development actors for resilience; among many other important developments.

We look forward to walking the talk together with the ICRC.

12 AfDB Group, above note 7.







## Interview with Bakary Sambe

Regional Director of the Timbuktu Institute\*

*Bakary Sambe is Regional Director of the Timbuktu African Institute for Peace Studies (Dakar, Niamey, Bamako). Founder of the Observatory of Religious Radicalism and Conflicts in Africa, Sambe is a teacher–researcher at Gaston Berger University in St Louis (Senegal).*

*Sambe’s current work focuses on endogenous strategies, cross-border dynamics and experimenting with agile approaches in crisis zones. An expert working with the United Nations, European Union, African Union, etc., he has notably designed and led advocacy for the establishment of the regional group for the prevention and fight against radicalization of the G5 Sahel (CELLARD), assisted in the process of developing national strategies in Niger, Burkina Faso and the Central African Republic, and produced the first manual of good resilience practices.*

*In addition to numerous articles, Sambe has published several books: Islam et diplomatie : la politique africaine du Maroc (2010–2011), Boko Haram : du problème nigérian à la menace régionale (2015) and Contestations islamisées : Le Sénégal entre diplomatie d’influence et islam politique (2018).*

**Keywords:** Sahel, Timbuktu Institute, non-State armed groups, terrorism, conflict resolution.

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### 1. What are the main interests and areas of work of the Timbuktu Institute?

The Timbuktu Institute is the offshoot of the Observatory of Religious Radicalism and Conflicts in Africa, which was founded in 2012 in response to the destruction of several mausoleums in Timbuktu. It was felt that certain movements that could develop radical ideologies were taking root in Sub-Saharan

\* This interview was conducted by Bruno Demeyere, Editor-in-Chief of the *International Review of the Red Cross*.

Africa – a region previously considered to be on the outskirts of the changes taking place within the Muslim world. The observatory operated until 2016, when the Timbuktu Institute was created as a place where knowledge could be produced and put into practice. It was a way to provide the region with local structures run by local people and to generate regional knowledge of our situation and views from our perspective to improve the analysis of them. The two main aims were to ensure that the Sahel had a credible voice that could speak out on all major global and regional issues and to change the conflicting perception that our international partners have of the conflicts in our region, thereby narrowing the gap between the international perception of the crises in the region, on the one hand, and local issues and perceptions, on the other.

While it is true that the Institute was created in response to the violent extremism in our region, much of our work focuses on conflict prevention, which we call preventive diplomacy, and on mediation, placing emphasis on educational aspects and, above all, on the need for inclusive dialogue. Our work is based on the idea that, in the history of humanity, a Kalashnikov has never eliminated an ideology and that education is the linchpin holding everything together. We focus on preventive work and, as part of this, have changed our name from the Timbuktu African Institute for Security Studies to the Timbuktu African Institute for Peace Studies. This is a really important distinction for us. We want to shift the focus away from military-only strategies, which have never been successful in resolving a conflict definitively.

## ***2. How would you analyse the dynamics of the current violence in the Sahel?***

I think you have to analyse the violence from a long-term perspective. We can only really understand what is happening in the Sahel now if we look at the socio-political situation dating back to the 1970s. In the late 1970s, the Sahel underwent a deep-rooted change that was not acknowledged by our Western partners. At the time, the Sahel was experiencing severe drought, but our partners in North America and Western Europe were unable to come to our aid because they were themselves in the midst of an oil and financial crisis. The countries that could help were the ones that controlled the oil supply, while Europe and the United States plunged into recession. The Gulf States therefore stepped in. Their intentions may have been good, but their approach had two dimensions: what we refer to as *dawah*, which is the call for people to embrace Islam, and *ighātha*, which is the Arabic word for relief. In other words, they used their humanitarian work to spread their religious message. At the time, African Islam was more traditional, tolerant and in harmony with local cultures. But when new ideologies were brought in by funded Islamic movements that preached their message through social work, the structure of and relationship between religion and society was altered.

In the 1970s, these organizations found a way to anchor themselves in our societies, shifting the dynamics between society and religion. Islam, which until then had provided structure and cohesion, became a way of dismantling views of the

world and pre-established religious practices, particularly with the arrival of Wahhabism and the Salafi movement.

Then in the 1980s and 1990s, the international community, not realizing that the situation had changed, made things worse. Sahel countries were required to implement structural adjustment programmes. They were told they had to invest as little as possible in welfare, health and education, the idea being that it was important to have a small yet strong State. Our countries were sold a model of liberal democracy, free markets and privatization, with the promise that democracy—even the appearance of democracy—would bring development. In the end, it brought neither development nor stability. During this time, the key component of society—the State—was weakened, stripped of its sovereign powers and often left with a deficit.

These same religious organizations that had already planted their seeds in the 1970s came back in full force in the form of large non-governmental organizations (NGOs) that gained stature by building schools and social centres, digging wells, delivering aid and providing people with the things that the State—weakened by the demands of the Bretton Woods institutions—was no longer capable of providing. The State was in crisis and rival entities emerged to take its place. The multi-party system, considered a basic indicator of democracy, became a political tool for promoting ethnic identities. So, when other destabilizing factors, such as the crisis in Libya and the arrival of terrorist movements from Algeria, were added to the mix, the ground was fertile. What drives violent extremism and terrorism is not the arrival of terrorists in a given place but the local incubators they find when they get there—the people who, because of such things as their grievances, their rejection of the State and poor governance, are more accepting of these terrorists than they are of the State, to the point that they are willing to take those terrorists in. It is up to the State to ensure that the terrorists cannot find the incubators they need. But even before the war on terrorism, the State had lost the battle for the hearts and minds of the people.

After that, the situation only worsened. From the outset, the focus was on military-only strategies, such as Operation Serval and Operation Barkhane. This created a conundrum, since these military interventions failed to achieve what they had set out to do, which was to get rid of the terrorist groups. Instead, those groups multiplied. This generated a complex security situation, as the States—already weakened by the structural adjustment programmes and by the surprise arrival of these terrorist groups—sought out other ways of managing security, setting up self-defence militia and even delegating security to other defence groups. This happened in Burkina Faso, with the Koglweogo self-defence groups, and in Mali, with militia such as the Ganda Koy and Ganda Izo groups. The situation worsened, creating a form of distrust between communities in the Sahel. In addition to the purely terrorist violence, there have also been outbreaks of communal violence. This type of violence is driven by the injustice people have experienced, by their frustration and by all the grievances caused by poor public governance and security management, especially since security is often delegated

to the communities themselves. This has created a cycle of violence that is a long way from being broken.

***3. Most of the countries in the region are experiencing poverty, youth unemployment, a collapse in ethnic relations and increasingly fierce competition for natural resources. Is this difficult socio-economic situation the main factor driving members of some communities to join these non-State armed groups?***

There are two types of factors that lead to radicalization: attracting factors and incentivizing factors. Incentivizing factors include grievances, frustrations, poor governance and poverty. Attracting factors are the pseudo answers to people's lost hopes, such as finding paradise, achieving justice and building a better life. When a young member of MOJWA<sup>1</sup> tells you, "I joined MOJWA because I believe in their system of justice", this is a perfect illustration of how the local justice system has failed.

I tend to group those who have been radicalized into two categories: some are looking for opportunity, while others are looking for meaning. Those who are looking for opportunity are driven by their social deprivation and extreme poverty. An example would be a young man who has no future prospects who joins Boko Haram because he has been promised a motorbike and 300,000 CFA francs. But I do not think that radicalization is about poverty alone. Otherwise, we would not have seen young westerners from middle-class backgrounds joining the Islamic State group in Syria. Those individuals were looking for meaning. This is a global phenomenon that Africa has not escaped from. I call it the "globalization of beliefs". Another global phenomenon is that Islam has become the cause that unites the lost souls of our planet. In the 1970s, those who wanted to stand up and fight against the neoliberal world and its way of working turned to left-leaning ideologies such as Communism and Trotskyism. But these ideologies have waned, and Islam has taken their place. I think this is a cross-cutting trend affecting both Sahel and Western societies, which are far from resolving this quest for meaning.

I think it is also important to look at how these global phenomena play out locally. The phenomena themselves may appear similar but the reasons behind them can be quite different, in Oudalan Province or Soum Province in Burkina Faso or in central Mali, for instance. And while similarities can always be found, it's important to analyse the situation based on the local expressions of these phenomena. Violent radicalization is born where there are socio-political grievances and frustrations generated by States' limited capacity to include certain communities and where there are also non-State armed groups able to take advantage of that situation.

***4. International partners were heavily involved, at various levels, in the fight against terrorism in the Sahel and the countries in the Lake Chad basin. We know that the security situation has deteriorated rapidly in these areas, so did their involvement produce the desired results?***

1 Movement for Oneness and Jihad in West Africa.

These international partners very quickly focused on fighting terrorism, which is different from preventing violent extremism. The fight against terrorism focuses on erasing the effect, which is terrorism, and entails eliminating targets that can be replaced. Preventing violent extremism, however, focuses on the structural causes. It involves non-military approaches, which means it requires time and has a broader target that covers education, awareness-raising and meeting basic needs. Both our international partners and our governments are less active in this area, which takes longer, is less visible and would perhaps require many more concessions. Instead, their approach quickly became military-only, until recently, that is, when attempts have been made to set out specific strategies for the Sahel region.

Yet these strategies are marred by coordination problems. Until very recently, international efforts were too dispersed. There were at least 20 different Sahel strategies, each drawn up outside the Sahel and without taking into account local perceptions. It is only recently that there has been a shift towards what is known as the Sahel Alliance. I think the international community has put in a lot of wasted effort along the way, through a lack of coordination. This has had two main impacts: work on the ground has been inefficient because of duplication, and the lack of coordination means that responsibility for these operations has been spread across organizations – the Economic Community of West African States (ECOWAS), for instance, has to some extent had its role in fighting terrorism reduced, with the G5 Sahel taking on this task instead. Excluding the Sahel from ECOWAS was also an error. This lack of international coordination has destabilized these regional groups. Also, Sahel countries no longer know which humanitarian player to turn to.

On top of that, the situation on the ground was never factored in. Instead, plans were drawn up elsewhere and imposed upon the Sahel without taking the local situation into consideration. This is what I call the conflicting perceptions of the Sahel conflict, that is, the difference between the international idea of the conflict and its dynamics, on the one hand, and local perceptions, on the other. As a result of this, countries that have paid heavily in terms of their military intervention and loss of life among their soldiers left only a mixed impression on local communities. This is because of a lack of communication with local players. Let me tell you a story that illustrates this well. In Diffa, in Niger's Lake Chad basin, people told me about a project they called the "dust project". I asked them why they called it that and they said, "We don't understand anything. But every morning we see a horde of four-by-fours with European flags. They say they're investing massively, but we don't know what they're doing. We've just got used to seeing them raising the dust each morning, so we call it the 'dust project'."

I think there needs to be more communication through traditional channels and with legitimate representatives who have credibility and are trusted by local communities. This has been missing from these interactions. Despite all the efforts made, all the money spent and all the resources used, the operations on the grounds have fallen short in terms of their efficiency and efficacy because they have not met people's actual needs and have failed to get local communities

onboard. I often say that the ideal way of carrying out humanitarian and cooperation work is to make the "beneficiary" a real co-operator, ensuring that local groups are involved in and onboard with the operations, from the design phase right through to implementation. This should be done as part of a strategy that takes into account local resources and people's real needs. By building strategies jointly, we will be able to find a way out of this crisis.

***5. Violence has become increasingly driven by communal tensions in many countries in the Sahel and West Africa, so what role does religion now play in regional dynamics?***

In the early stages, religion was perhaps overestimated or at least heavily weighted in these analyses. This is reflected in the terminology – the term most often used was "radicalization". However, we are increasingly referring to violent extremism instead. I'm not saying that religion is no longer a factor, although there is a developmentalist, economism-driven trend that completely casts aside religion and focuses on socio-economic factors instead. But I think that even though social and economic grievances are usually much more influential, both based on quantitative responses and in statistical terms, religion is still a contributing factor. As the Communists used to say in the 1970s, "We don't count but we carry weight." So even if, statistically speaking, religion is not a major factor, it still carries weight because of the meaning and imagination it can spur in people.

The issue of community has become more relevant, and that is reflected in the new strategies adopted by these groups. Knowing that they can no longer rely on large-scale coordination, as they did during the times of Al-Qaeda and Osama Bin Laden, they have developed new strategies that seek to trigger and revive ethnic tensions, which there is no shortage of, and present them as religious issues. This religious coating prompts military interventions by foreign powers, which, in turn, leads to more radicalization. These groups therefore do not need to recruit. This is why I am concerned that some countries in the Gulf of Guinea<sup>2</sup> have now adopted this military-only approach, with targeted search-and-sweep operations which, owing to the errors made and the stigma they bring, are sowing the seeds of future communal conflicts, much to the delight of the terrorist groups.

***6. Some people<sup>3</sup> have started to speak out, especially in Mali and Burkina Faso, and call for dialogue with the non-State armed groups. Could this bring long-lasting solutions that engage religious non-State armed groups (such as Nusrat al-Islam and the Islamic State in the Greater Sahara) in a political peacebuilding process to bring an end to their violence?***

2 See Bakary Sambe, "Les pays côtiers face à la menace terroriste : comment éviter les 'erreurs' du Sahel ?", Timbuktu Institute, 7 December 2021, available at: <https://timbuktu-institute.org/index.php/toutes-l-actualites/item/531-les-pays-cotiers-face-a-la-menace-terroriste-comment-eviter-les-erreurs-du-sahel> (all internet references were accessed in March 2022).

3 International Crisis Group, "The Niger–Mali Border: Subordinating Military Action to a Political Strategy", Report No. 261, 12 June 2018, available at: <https://www.crisisgroup.org/africa/west-africa/mali/261-frontiere-niger-mali-mettre-loutil-militaire-au-service-dune-approche-politique>.



Firstly, this is a strange debate because we are talking about something that has always been practised – there has always been both official and unofficial dialogue. Secondly, no war in the history of humanity has ever ended on the battlefield. Thirdly, in Mali, which is the country I know best, dialogue was one of the recommendations that came out of the consultations known as the "national inclusive dialogue". There is a social demand for dialogue – people see the members of the non-State armed groups as children of Mali, so we still need to talk with them even if they have lost their way. Let me give you some examples from other contexts: Spain fostered a dialogue with ETA (Euskadi Ta Askatasuna); France is not at all-out war with Corsican separatists; and in Northern Ireland and other regions there was no fully fledged war. Instead, depending on the balance of power, one of two paths was taken: there was a move towards dialogue in order to bring an end to the fighting and hostilities or alternative processes were sought out.

It is true that there is some fear about where this dialogue might lead – could it give the terrorist groups too much power and cause them to multiply? All experiences of dialogue in the region have shown that once the process is underway, everyone wants a seat at the table. So, could that mean that there will be too many interlocutors?

There is also the issue of what the dialogue should cover. This is a fundamental issue that is currently a topic of discussion within Mali's political class. Should the dialogue be about the State's republican form? Should it be about justice? Should platforms be created at the local level, as the Algiers Agreement<sup>4</sup> attempted to do, although implementation has been slow? All of these questions are being asked about the dialogue. Nevertheless, examples from history justify the principle of dialogue. On top of that, it is the wish of the people of Mali for there to be an inclusive dialogue with all the children of Mali, even the ones who have lost their way. Anyway, I do not see how Mali could credibly oppose dialogue with the country's terrorist groups when it recently sent representatives to meet the Taliban in Doha out of diplomatic pragmatism.

***7. It is often said that nomadic communities, which were previously on the fringes of the changes taking place within the State, have used the violence in the Sahel to express their frustrations and address their grievances against governments. Is this premise founded? According to Boubacar Ba, a researcher at the centre for the analysis of governance and security in the Sahel, "The Fulani community finally stood up against its marginalization from production systems, governance and access to justice. Their anger was not just aimed at the State, in terms of justice and political representation. It was also aimed at some aristocratic Fulani families, that in complicity with the State, used their position to weaken the herders and undermine their social status."***<sup>5</sup>

4 The Agreement for Peace and Reconciliation in Mali (Algiers Agreement) was signed in Bamako on 15 May and 20 June 2015 by the Republic of Mali and the Coordination of Azawad Movements (CMA).

5 Nathalie Prevost, "Les accords se multiplient entre les Djihadistes peuls et les autres ethnies", *Mondafrique*, 29 April 2021, available at: <https://mondafrique.com/les-accords-entre-les-peuls-et-les-djihadistes-pourraient-embraser-le-mali/>.

Throughout history, nomadic and sedentary groups have always been pitted against each other. Also, the same dynamics can be found in communal conflicts, particularly when it comes to resources, livestock breeders and farmers. The State now needs to look at how it can develop and rebuild in a viable way while also accepting the specificities of certain communities. Is it only nomadic communities that feel discriminated against and marginalized? Or will other types of grievances emerge as well? As you can see, this requires a central State whose viability is based on that centrality and its prerogative to govern but also on its ability to manage specificities within communities. I think points of convergence can be found, with regard to both nomadic communities and all other groups with cultural specificities that need to be respected.

The fundamental question at the moment is that of the Fulani community, and it is one that has remained extremely taboo and that is not spoken about enough. When I've travelled across the Sahel, Fulani communities in both Burkina Faso and Mali often tell me that they are not treated in the same way as certain other groups, such as the Tuaregs. Some Fulani communities think that the Tuaregs were given a chance at dialogue, that spaces were created for them to express their views, that they had the Algiers Agreements, etc. It would seem, according to some people I spoke to, that the Fulani community has inherited a reputation from colonial times: there is this idea that the Fulani community wants to resist the State and mirror the way that Seku Amadu and other historical Fulani figures went to war against the French colonial empire. Modern States have inherited this unfavourable view of the Fulani people, which has created stigma.

Opening the door to nomadic communities can be a useful approach if it is a generic one. The door must be opened not just to Tuaregs but also to other communities that have certain frustrations that could be eased if their cultural specificities were recognized. This must be achieved while also ensuring the unity of the nation and integrating these communities into the State as a whole. Unlike the Dawsahak people and other communities, massive numbers of young Fulani joined the Islamic State group in the Tillabéri Region, a sign of their accumulated frustrations.

***8. What, in your opinion, are the ongoing impacts of the situation in Libya on the violence in the Sahel?***

The instability in Libya is still seen as a factor that could cause disruption in the Sahel, especially in neighbouring Chad, which has experienced political instability recently, and in Niger. The widespread instability in the Sahel can be traced back to Libya. Particular attention should be paid to this, because we cannot hope to stabilize the Sahel until Libya is stabilized. Today, we have to make sure that there is not a second wave of crisis-inducing factors from Libya that could cause instability in neighbouring countries.

**9. What are the strengths, weaknesses and challenges of impartial and neutral humanitarian action in the Sahel? Do you think that States and armed groups are committed to humanitarian principles, including the Fundamental Principles of the International Red Cross and Red Crescent Movement? Have you observed any changes in the humanitarian work carried out in the Sahel in recent years?**

Since 2015, I have noticed that certain humanitarian organizations are much more willing to better integrate local cultural resources into their work and to gain a better understanding of local dynamics. Humanitarian principles, particularly neutrality, are all the more important in a context where there is widespread distrust between political players, between communities and between States and the international community. Humanitarian operations are useful, provided that, based on this principle of objective neutrality, aid can be delivered in a way that is distanced from other players and those involved in the conflict. But I think – and maybe humanitarian workers will tell me that it is not their role – that humanitarian organizations should be involved in providing solutions, given their deep knowledge of the contexts and the wealth of information that they gather in the field on a daily basis (unlike other NGOs). By that, I don't mean that they should share confidential information, but rather that they should help to inform political decision-making. There would be less distrust between some States and humanitarian organizations if they worked together, with each one drawing on their strengths while also exchanging information, provided this is in the interests of the population, of course. In this way, humanitarian organizations would have a better grasp of the structural needs of the population rather than trying to address fundamental issues and needs in a localized and fragmented manner. Also, States would be able to better take into account local dynamics, as recorded and analysed by these humanitarian organizations, who are on the front line and at the heart of the action.

**10. Given how the geopolitical situation is evolving in the Sahel, how do you think things will stand in 10 years' time? What guidance would you give to local, national and international decision-makers based on that?**

When you look at the dynamics in the Sahel, there are some signs of hope. But a cold, hard look at the situation also sparks fear about other factors that could soon bring about further crises. In addition to armed groups, self-defence militia and terrorist groups generating instability both within countries and across the region, the Sahel has now become the arena for a larger game between superpowers. These superpowers have carried out uncoordinated operations on the ground and are now also competing against each other. It is not another cold war in the strictest sense of the term, but they are competing on deployment. This has two quite negative effects: it makes the fight against terrorism less credible in the eyes of local communities, and it adds more layers to the crisis in the Sahel – States are trying to resolve the initial crisis, but other layers are being added as international powers seek to strengthen their positions and vie with

each other in terms of deployment. This does not bode well for a quick end to the crisis in the Sahel. This war of influence will lead to more inconsistencies in the West's position. Fears of increased Chinese and Russian influence will push Western powers to take an increasingly pragmatic approach to diplomacy. The sacred principles that set Western powers apart from what are known as the "authoritarian donors" will increasingly be set aside in favour of immediate strategic interests. And that's a real shame.

On a more positive note, local players are now increasingly taking their problems and situations into their own hands. The younger generation—using the power of digital technologies—has managed to narrow the gap relative to Western countries, mainly thanks to the unprecedented democratization of knowledge access that the digital era has brought and to the increased awareness that this access has brought within civil society.

In addition, what I find somewhat reassuring about the dynamics of the current power struggle is that those stronger countries care greatly about their interests and image, and that has actually empowered weaker groups. As such, a new international civil society has emerged. Another potentially positive aspect is that we have (unfortunately) all become in some way part of the same international community—the international community of the vulnerable. This international community no longer looks solely to the five most powerful members of the United Nations Security Council. Our shared vulnerability and equal exposure to terrorism—be it in Bamako, Gao, Berlin, Paris or London—might make people realize that we need to build solutions together. We are bound by the lasting constraints of collective security.



## Interview with Lazare W. Zoungrana

Secretary-general of the  
Burkinabe Red Cross Society\*

*Lazare W. Zoungrana has been doing humanitarian work for the Burkinabe Red Cross Society for more than twenty years and has been its secretary-general since 2010.*

*Trained in sociology, with a research master's degree in information and communication science, Mr Zoungrana has brought his skills to a range of humanitarian activities, from development and emergency programmes to the organizational development and capacity-building of the Burkinabe Red Cross. He is specialized in project management, gender and education, international humanitarian law and training trainers in various aspects of humanitarian action.*

*Mr Zoungrana has coordinated several operations led by the Burkinabe Red Cross, including: providing assistance to victims of the Ouagadougou floods in 2009, victims of terrorist attacks in Ouagadougou, Malian refugees and people affected by armed violence in the country; and carrying out activities in response to meningitis epidemics and, most recently, the COVID-19 pandemic.*

*At the international level, Mr Zoungrana has sat as a committee chairman or a panellist on various round tables. He was a member of the multinational team charged with assessing and coordinating the humanitarian response to the earthquake in Haiti and has been a member of several multinational working groups, including one tasked with developing the restoring family links strategy for the International Red Cross and Red Crescent Movement.*

**Keywords:** Sahel, Burkinabe Red Cross Society, Burkina Faso, humanitarian assistance, refugees, COVID-19 pandemic.

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\* This interview was conducted by Bruno Demeyere, Editor-in-Chief of the *International Review of the Red Cross*. In March 2022, after the conclusion and publication of this interview, Mr. Zoungrana was appointed as Minister of Humanitarian Affairs and National Solidarity of Burkina Faso.

***What are the Burkinabe Red Cross's priorities and objectives?***

On 31 July 2021, we celebrated our sixtieth anniversary. It was an emotional opportunity for our members, volunteers and staff to reaffirm their commitment to the Movement's humanitarian values and ideals. The vision, objectives and priorities of our National Society were given a special mention at a round table organized with our partners, where we presented our new strategic plan for 2021–2030.

In terms of priorities, our ambition is to set the standard for others to reach in terms of our capacity to deliver services to victims and the most vulnerable at all times and in all circumstances. It's this vision that led us to set protecting human beings and their environment as the main objective. The priorities that arise from that revolve around safeguarding human dignity despite the lack of security, ensuring access to education and raising awareness among the population of their duty to come to other people's aid by mobilizing the power of humanity to fight against social isolation and marginalization, to improve the living conditions of the most vulnerable in society, to safeguard people's lives and health, to combat the effects of climate change, and to promote humanitarian values and the Fundamental Principles. In short, those are the objectives and priorities that we have set out in our strategic plan for the next ten years.

***On 30 December 2020, the Burkinabe Red Cross was awarded the Medal of Honour for Health and Social Affairs for its "selfless service in the fulfilment of its mission". What does this medal mean for you and your organization?***

It's a great honour and a recognition not only for our but also for our partner's humanitarian work—we don't act on our own, after all, but as members of the International Red Cross and Red Crescent Movement. It's the result of the efforts of *all* the actors mobilized around implementing the Burkinabe Red Cross's action plan to combat the COVID-19 pandemic. This award reaffirms the inclusive approach that the various components of the Movement has been following for at least two years now in Burkina Faso. It also demonstrates the Movement's Fundamental Principle of unity and the geographical reach of one National Society across its country's territory. It is, after all, thanks to our volunteers in their various branches that we've been able to fulfil our auxiliary role to the public authorities during this health crisis. Finally, the award also symbolizes how well our National Society and the government work together.

***The Burkinabe Red Cross has traditionally carried out its activities in times of peace. But Burkina Faso has been a theatre of conflict and violence for the past few years and has seen massive movements of people fleeing in search of safety. How has your National Society adapted to the new context? What have been the difficulties that you have encountered in adapting your work to the new security situation?***

Before I answer those two questions in detail, it's important to say that Burkina Faso has gone through other difficult times since its creation, ranging from armed conflicts



via natural disasters to military regimes. Our National Society has toughened up as a result of having to deal with these crises. But in the last six years, the lack of security – with all that that brings in humanitarian terms – has become part of people’s lives. Managing to adapt to the new context is not a foregone conclusion, despite the Movement’s principles and values. At the start of the crisis, for instance, our staff were victims of security incidents – kidnappings and car-jackings.

Adapting to the context is always based on our operating procedures, which have to be grounded in safe access to victims in two ways. First, we strengthen our presence among the community, which gives us the advantage of ensuring that humanitarian assistance reaches people in unsafe areas. With our solid presence among communities in the country’s forty-five administrative provinces and our network of volunteers, we can operate effectively in even the most difficult-to-reach places. This is one of the ways in which the Burkinabe Red Cross brings added value and it enables us to be closer to those people who are in need of humanitarian assistance. Second, there’s the use of digital tools for assessment and assistance, such as ODK (Open Data Kit), which means that we don’t have to expose ourselves to danger by going on risky journeys to the field.

We can say that the organization, structure and the network of volunteers of our National Society constitute this added value in the current context. It enables us to continue providing assistance, despite the difficulties with access because of the violence. But there are still supply issues with aid, when we can’t get certain items for places where we’re operating. There are armed escorts, but you know yourself that the Red Cross, in line with its principles, can’t have an escort. Given this problem, we have increased our communication efforts to provide more information on our humanitarian values and principles, so that we can gain the trust of all actors in the field.

There are other difficulties that I could mention that concern the incomprehension of some of the main actors about protecting beneficiaries’ individual data. This is something we take very seriously, in line with the Fundamental Principles. But we are often confronted with people asking, or demanding, transparency in this regard and the centralization of lists to ensure different actors can work together to provide a coordinated response. From the point of view of transparency that sounds good, but it is nevertheless true that we have to protect beneficiaries’ data from any use that could cast a shadow over the Movement’s Fundamental Principles of neutrality and impartiality.

In any case, adapting has not been too difficult for the Burkinabe Red Cross. Given that we were already present at the heart of communities – our volunteers come from these communities and know what their daily reality is really like – we simply needed to implement our contingency plan to provide assistance.

***How do you see the humanitarian situation in Burkina Faso at the moment? What in your opinion are the main challenges facing people in the country? How could people build up their resilience in the face of these challenges?***

Burkina Faso is in the grip of a complex crisis. On top of the usual crises – floods, drought, food shortages – the country is facing a security crisis and a health crisis

on account of the coronavirus pandemic. The latest figures provided by our National Committee for Emergency Relief and Reconstruction show that, as of November 2021, there were more than 1.5 million internally displaced people. Neighbouring countries have started to record the presence of Burkinabe refugees, which hadn't been the case till recently. The lack of security linked to the armed violence is causing other kinds of insecurities, such as economic, health and food insecurity, and making life even more precarious for the poorest sections of the population. We are seeing growing issues for protection and education. That's what people are going through at the moment in Burkina Faso. I have to say that the humanitarian situation does not look bright and we don't know when these things will come to an end. The challenges are about the sustainability – the long term – of humanitarian action. At all levels, there's a loss of impetus. Victims are totally immersed in their pain and stress and humanitarian actors must, despite all they've already done, do more. At this time of food and health challenges, the biggest challenge remains protecting people and ensuring their survival when no one knows what the next day will bring.

In terms of resilience, first what is needed is psychosocial support for people that is permanently available, given that the crisis is in fact permanent. There is no time to recover. The pressure and stress are constantly there. Second, we need to bolster our efforts on behalf of young people and women, who are the largest section of the population and the most vulnerable. Most armed groups see youth as fertile soil from which they can pluck fresh recruits. Our young people are unemployed and face a lot of hardships. The population pyramid for Africa has a very wide base because our population is very young overall. But young people and women, who are the most vulnerable members of society, are also the most effective because, if they manage to get assistance adapted to their needs, they are able to move mountains to overcome the challenges facing them and foster resilience among their groups and in the general population.

***What concrete measures or action has the Burkinabe Red Cross carried out to help people to overcome some of the main challenges that you've mentioned? What difficulties and challenges has the Burkinabe Red Cross come up against in this respect, and how have you gone about overcoming them?***

With regard to the national humanitarian context, we have become a "universal receiver". The Burkinabe Red Cross and our partners have taken part in several areas of humanitarian action. For example, we are working in education and awareness-raising to change mentalities. It's a common problem that humanitarian work is not understood or taken onboard by the communities affected. This means that, over time, what we may take for granted can be called back into question by communities and the other actors who have not managed to take charge of the assistance we provide. That's why it's so important to work on behaviour change. Whether it's to do with development or emergency situations, we try to accompany every operation we carry out with awareness-raising, education for the communities with which we work to change behaviour,

so as to lock in our gains for the long term, to get them to truly get involved in implementing the activities.

In the area of development, the Burkinabe Red Cross is carrying out actions centred on model committees that are focused on bottom-up solutions. This is humanitarian assistance that is close to those it serves, accompanied often by small gestures that make a big difference in improving living conditions for the most vulnerable people. For example, we support small groups of women who gather and process shea nuts. Some of these groups now fund themselves, thanks to the processing and sale of their local produce.

In emergency situations, our work goes beyond handing out bread and water, providing medical care and shelter – we get the communities involved in finding solutions to their problems. We also take into account what affected people think about their situation by giving them ways to express their views. We need to change the way we work together; no longer can we be satisfied with carrying out surveys only for their immediate needs – we have to encourage people to express their views on how we should manage and overcome the crisis.

So, in sum, that's what we do for affected people and the difficulties we face and are working to overcome. Because it's when times are hard that the meaning of the Movement's mission is deepest. It's during the most dangerous assignments that we can show how important the Movement's vision and philosophy truly are. When no one is by the side of people who are suffering, the Red Cross must bring them comfort and assistance that will enable them to stand on their own two feet. Simply put, we give them the support they need to uphold their own dignity.

***In the Sahel, the COVID-19 pandemic has had an impact on the health and socio-economic situation of people who were already struggling because of the lack of security. How has the health crisis exacerbated the vulnerability of people living there?***

The impact was worse the further you went down the social scale. People who were already only just getting by were hit hard by the protective measures. Taxi drivers in Burkina, night workers, hosts for social events, to name just a few, couldn't do their jobs because of the curfews and lockdowns. As the situation disrupted their jobs, they fell further down the social scale. And behind those people were others who relied on their wages to get by. As you know, in Burkina a person's wages doesn't provide for only the nuclear family but for the wider family too, in the African sense, and for their loved ones.

In addition to the loss of earnings, the cost of living went up. People were already organizing demonstrations to try to get the government to bring down rises in staple goods, but the pandemic and, at one point closed borders, meant that a lot of goods could no longer be sent to the field. And this was in a country where we consume a lot more produce that comes from abroad than from within the country.

So, we can see that vulnerable people have been made even more so. And what's to become of displaced people, who have lost everything and find themselves in need of assistance?

***As of 20 June 2021, Burkina Faso had recorded 13,469 confirmed cases of COVID-19 and 167 deaths.<sup>1</sup> What role has the Burkinabe Red Cross played in the country's fight against the virus? What impact has the efforts to limit the spread of the disease had on the security and humanitarian situation in Burkina Faso?***

First, before I go into more detail, I must underline that our National Society again took on the auxiliary role to the authorities to help manage this crisis. From the start, the health ministry called on us and brought us into all the meetings to set up a significant COVID-19 response plan. We were involved in monitoring, preventing the spread of and testing for the virus in the communities. The Burkinabe Red Cross is an organization that is based in the communities. It went without saying that this was the added value that we brought to our government in this crisis. More specifically, we helped strengthen capacity in the health ministry, in particular in their decentralized technical services. We worked on the response plan so that as an organization, we could be in a position to pass on information to these services.

As part of the COVID-19 response, we carried out a range of activities, with the support of our partners both inside and outside the Movement, such as the European Union. For example, we organized sessions on how to prevent the spread of the disease. In Burkina Faso, you have to work with those who are actually there with the people, since travelling to certain areas is difficult. But the Red Cross, given its roots in the communities, was able to call up its volunteers in the forty-five provinces, that is across the whole country, in coordination with the health ministry to ensure that the risks related to the disease were successfully communicated and to get people to take the protective measures seriously to reduce the spread.

We were also fairly involved in disinfecting the homes of suspected and confirmed cases of COVID-19, and in managing call centres. There, we played a very important role because, in the beginning, people didn't have enough information about the pandemic and how they could access treatment. So, our volunteers were mobilized very quickly to staff the centre for coordinating operations, which we call the CORUS. It was our volunteers who answered the calls of people who suspected they had caught the disease and told them where to go and how to get treated quickly. They were also involved in contact tracing.

We were also involved from the beginning in using our expertise in dead body management. There was a lot of fear around that issue. As the Red Cross already had people who had experience in training and people who had experience of dealing with people who had died of Ebola, it was obvious that the ministry would see what we could do in this situation. So, we managed the very first case of someone dying from COVID-19, in collaboration with the health ministry.

1 Africa Centres for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): Latest Updates on the COVID-19 Crisis from Africa* CDC, available at: <https://africacdc.org/covid-19> (all internet references were accessed in February 2022).

On top of that, we gave psychosocial support to many people who were stressed out by the situation and didn't know who to turn to. We contributed towards the national communication set-up for managing misinformation. We already had the know-how and a department that was up and running, which we used to respond to misinformation, adapting our messages to raise awareness of the disease. There were even some people who were saying that the disease didn't exist. So, we needed a system of communication to respond to such rumours, which we ran with the health ministry. We aimed to make everyone aware of the disease and how everyone could help limit its spread.

Nevertheless, everything didn't go perfectly smoothly. The lack of security considerably reduced the ability of humanitarian actors to travel around the country. Also, from the start, some towns were put in quarantine, which prevented Red Cross monitoring teams from going there. You needed to have the authorization before you could go into certain towns. Our volunteers at the community level had difficulty in accessing certain areas to raise awareness. For instance, in a province affected by insecurity, volunteers could go to the capital but there would be certain areas that were completely inaccessible but with people living there. We also faced the problem of how to pass on information to our volunteers on the ground without being able to travel there. At times it all came down to telephone calls, where we explained to them what key messages we wanted them to pass on.

Elsewhere, in places where displaced people lived, they were too close together, which wasn't in line with the protective measures. They are people who are already living in stressful conditions on account of their status as displaced people and who can't easily meet their basic needs. So in such places, it's hard to just calmly carry on with your job.

***Getting access to water in the Sahel is a colossal challenge at the moment, in particular in large parts of Burkina Faso. What are the most important effects in humanitarian terms on the limited access to water and sanitation and on how that is stoking tensions and conflict in the country? In your opinion, what could be done to reduce these effects and hence to help limit the impact of waterborne diseases?***

As you know, water is a rare resource in the Sahel and hence in Burkina, which is why there has been a lot of work in this regard. But access to water remains a major concern. And this concern is one of the priorities set out in the Burkinabe Red Cross's strategic plans. In the part of the Sahel that is in Burkina, the lack of rainfall means that water tables are not being replenished. Every year, it's the same. There are water-supply points but they don't provide enough water and the maintenance teams can't get to certain areas because of the security situation. Maintenance is no longer being carried out. Some areas have been deserted by the local population, so much so that the few boreholes that were there no longer function.

Women and girls who go to fetch water – it’s usually women who do this in rural areas and in towns – now have to walk for long distances to get it, which eats into the time they would give to their families. Women are also caught up in the violence in these areas. On several occasions, the Burkinabe media have spoken about women who have been killed by landmines while looking for firewood or fetching water for their families.<sup>2</sup>

I was speaking about displacement, which is caused by the violence, but that has also made water even more scarce in the areas hosting displaced people. More people and animals mean that pressure has built up around the rare water-supply points that there are. Burkina is for the most part a country of arable farmers and livestock breeders. So when people move from A to B because of the violence, their livestock may be moved to places that are already suffering from a lack of water. It’s a major humanitarian concern. This has exacerbated the tensions that already existed between farmers and breeders. Nowadays people are squabbling over the few water-supply points there, while needing water for their animals too.

Furthermore, when surface water is available, in winter for instance, it’s not drinking water. When people come together in large groups, it’s not always hygienic. Waterborne and diarrhoeal diseases can spread. There are efforts that are often made by the users themselves. I mean the populations themselves, who make the effort to ration and reduce their water usage. But other solutions are needed in Burkina.

We aren’t water specialists, but as humanitarian actors, we try to see how the situation can be improved – by our experience, by our proximity to the local population. We often hear suggestions from local people about how to improve their living conditions; for example, by increasing access to water by drilling more boreholes in safe areas or setting up more places to host displaced people. But at the moment, because of the lack of security, the government’s policy is to avoid multiplying the number of host sites, above all on the outskirts of large urban areas. In reality though, people who have fled their homes settle in the first place they come to where they feel safe. But these places are often pretty vulnerable from the point of view of water scarcity.

The idea is to spread displaced people out across several host sites to reduce the pressure on the few water-supply points, and so to reduce as much as possible these people’s exposure to waterborne and other diseases linked to a build-up of humans living too closely together. Spreading displaced people out geographically to reduce the pressure on the rural areas that are accessible and that host displaced people who have fled their homes because of violence is one possible solution. In any case, the best solution remains a return to peace and with that people’s ability to live normal lives again where they come from. These people had their own way of life and had improved their living conditions. Unfortunately, by fleeing, they find themselves in difficult situations and with the status of internally displaced people. This is why the ultimate solution has to be a

2 International Committee of the Red Cross (ICRC), “Burkina Faso: When Water Scarcity Meets Conflict”, 16 June 2021, available at <https://www.icrc.org/en/document/burkina-faso-water-scarcity-conflict>.



return to peace and to accompany these people back to where they came from so that they can continue to develop favourable and necessary living conditions for themselves.

***How can raising awareness of humanitarian values and principles help prevent and reduce the suffering of people affected by the ongoing armed conflicts in the Sahel, including in Burkina Faso? In your opinion, how can we build up knowledge and respect for these values and principles, in particular in Burkina Faso?***

Before becoming secretary-general, I was in charge of promoting humanitarian values and principles within the Burkinabe Red Cross. The Fundamental Principles were chosen to facilitate the Movement's humanitarian action at all times and in all circumstances. Each of the Fundamental Principles, irrespective of the wording, encapsulates a certain number of values that, if they are understood and applied, will boost the efficiency and effectiveness of humanitarian assistance and action. When we look at the Fundamental Principles, beyond the commitment we make, we need to see what sort of behaviour they encourage in actors within the Movement and in the actors outside the Movement with whom we work. Above all, it enables us to have beneficiaries' trust in what we do and also the other actors who have to be able to facilitate our activities in the field.

Take the example of humanity, which stands for friendship among different peoples. It's no more than prevention. If friendship becomes a habit for individuals and peoples, the world of peace that is so often called for in speeches will become a reality. Also, showing solidarity towards your neighbour, towards someone like you who is facing hardship—because someone else has created that situation of instability, insecurity or difficulty—leads you to stop thinking of another human being as your enemy. You are faced with a situation of vulnerability created by one human being and another human being brings you a solution. In some way, that puts your position into perspective, in the sense that you were in a position of wanting vengeance against human beings in general. Then you realize that there are people who can create terrible situations, but there are other people who can bring solutions to the situations that you find yourself in. It was in that respect that, with the International Committee of the Red Cross (ICRC), we produced a music album in 2002 called *L'Homme est un remède pour l'Homme*<sup>3</sup> (Man is a remedy to man) rather than *l'Homme est un loup pour l'Homme* (Man is a wolf to man).

Humanitarian values and principles, while protecting people by inviting others to uphold humanitarian norms, enables us to have easier access to victims and to deliver aid. Assistance activities are based on a solid understanding and application of these Fundamental Principles. Imagine for a moment that these

3 ICRC, "Abidjan - projet musical: L'homme, un remède pour l'homme (in French)", 26 August 2002, available at: <https://www.icrc.org/fr/doc/resources/documents/misc/cote-d-ivoire-pm-2002-130404.htm>.

people received no assistance—what would such a world be like? What would become of it? Spreading awareness of these principles is in a way laying out a red carpet, no matter the location, that enables us to relieve human suffering and people to have confidence in themselves, to have confidence in life again and to continue to fight for a better world. In a word, the Fundamental Principles are there so that we have a more human and flourishing world.

***What are relations like between the Burkinabe Red Cross and the ICRC? In light of the humanitarian situation in Burkina Faso, what are the main issues at stake in terms of communication and collaboration between the ICRC and your National Society?***

The ICRC and the Burkinabe Red Cross have worked together as partners without a break since 1986. So it's a long-lasting relationship of friendship and collaboration that covers the areas of: communication; promoting humanitarian values and principles; restoring family links; access to water, hygiene and sanitation; community health; humanitarian diplomacy; and capacity-building in our National Society, i.e. institutional support. This partnership has been built up slowly, brick by brick, to enable us to say today that we have a high-quality partnership with the ICRC that is only growing stronger every year.

Nowadays, we plan joint activities and have an inclusive mindset, thinking in terms of how we can complement each other effectively. Given the context and the humanitarian duty that the ICRC and the Burkinabe Red Cross have towards people in need, the communication between our two organizations tends to concern internal coordination and coordination with other actors. Coming from the same family, everyone should do everything they can to make sure they are not just talking to themselves and hindering the work of other Movement components. This is why it's important to have the framework agreements on cooperation between Movement components in Burkina and for us to have weekly discussions on issues of common interest with the ICRC's delegation here.

We also communicate through how we act; that's a way of practising what we've been working on for a while. We mustn't speak publicly in a way that would contradict what we do in practice. We make what we say something practical and that helps us to organize joint sessions with the authorities and other actors to speak with one voice as a Movement. That's often had quite positive repercussions in our work with the ICRC. We have the same mission, we're in the same country, we're experiencing the same harsh realities, we have a common objective, which is to make sure that the mission of the Red Cross in Burkina Faso is achieved and for us to be benchmark organizations in the sectors in which we are experts. At this level, we manage to get our messages across to the public quite clearly in general, including in the interior of the country, which really helps our work in the field and our image in general. If one link in the Movement chain—which constitutes a system—isn't working well, the whole system takes a hit. So, we make sure that through our communications, all the

links in the chain fit together so that the system is in good health and our humanitarian action is effective nationwide.

***We often talk about how the Burkinabe Red Cross is grounded in the community. What does that mean exactly and what effect does that have in operational terms?***

Being part of the community means getting our mission, principles and values adopted by the communities and building a network of volunteers that come from and are supported by these communities. This network is made up of people who have experienced the same hardships, who share the same culture, the same reality, and who go through the same ups and downs.

We use that same mindset to get communities involved in carrying out our various activities—because it’s not enough to say that you are at the heart of the community while carrying out activities on the side that don’t involve them. We work so that it is the communities themselves who support the Red Cross’s activities. That means setting up National Society branches within these communities. You can’t be present at the level of the community without being linked to a system, and in this case, that system is the nationwide structure of the Burkinabe Red Cross, right down to the level of the community. So, there are sector committees, communal committees, which are operational, that enable all members of a community involved to express themselves through highly experienced institutional and organizational support.

We try to create humanitarian reflexes in people’s minds, and that also helps large-scale humanitarian operations during emergency situations. We say “Slow but steady wins the race” and “If you can do something complicated, you can do something simple”. So the more that we do the simple things, the more we’ll be able to do the complicated things too. That’s why, setting aside crisis situations, our volunteers live real lives. They need to develop community activities that help build up people’s resilience, so that when a crisis strikes, we can carry out operations in the most effective way possible.

The Red Cross has also set up a freephone number for complaints. The platform is open to the communities (beneficiaries and hosts) and any witnesses if they have a complaint about our work. The idea is that we can receive and treat complaints and suggestions so as to improve how communities are involved and the quality of the assistance they receive. The line is open 24 hours a day.

***The humanitarian environment has changed a lot in Burkina Faso over the last two or three years as the situation has worsened. What are the main issues at stake in terms of coordination between the other humanitarian actors? Has their presence influenced, in one way or another, positively or negatively, relations between the authorities and your National Society (and your role as auxiliary to the authorities)?***

We have a very good relationship with other humanitarian actors and above all with our government. There’s even a line ministry that is responsible for humanitarian

action in Burkina. I'm not telling you anything new when I say that a National Red Cross or Red Crescent Society is created in a country to support the state in the area of humanitarian work. We have projects that we run in collaboration with other humanitarian actors and that shows that we work well together. And we're delighted that other actors are doing the same things as us, because the aim is to come to the aid of the most vulnerable people in the country. With the authorities and the line ministry, we're looking at how we could have contracts with set objectives that would not only make a few things easier for how our government supports us but would also enable us to be able to work closely with professional humanitarian agencies. It's one of the projects that we're really interested in pursuing and we aim to make it operational with our government.

With regard to influences, all human relationships have their influences, whether it's because we don't share the same operational strategies or we aren't at the same level of preparation to act. At times, that can create certain obstacles, but we always manage to overcome them. Because at the same time as we are trying to collaborate, each organization keeps its principles and plan of action. The crucial thing is to make sure that the principle of complementarity can be the order of the day.

We enjoy the support of our government, above all a yearly subsidy which enables us to show how much store the government sets by its commitments. The government is a party to the Geneva Conventions, helped to set up the National Society and gives us not only financial support but also a lot of exemptions. This allows us to buy more relief supplies at affordable prices and to increase the number of beneficiaries who receive assistance in the field.

***How do you see the humanitarian situation in Burkina Faso in five years' time?***

I'll be brief here because the facts speak for themselves. Our expectations of what the humanitarian situation will be like have already been set out in our ten-year strategic plan (2021–2030). The situation will not be better, given current events and their immediate effects, in the medium or long term. The future does not for the moment look bright. In addition, there are unforeseeable situations—such as the health crisis we're going through now—that can arise at any moment and rip up even the most talented planners' forecasts. In the next five years, I don't think we can exclude the chance of other unforeseen situations arising. At the moment we're talking of new variants, etc., and every time there's this type of situation, it only exacerbates humanitarian problems.

In Burkina, where there is so much violence, there will be internally displaced people; parts of the country will be deserted by farmers and breeders; there will be a lack of agricultural production, hence the destruction of people's means of survival. Even if the violence came to an end in the short term, the humanitarian consequences that it has already made will be with us for a long time. What the future holds in the next five years, from my point of view, is bleak.

In the past, we were used to crises like floods, drought, meningitis. But today, there are crises that come out of nowhere like COVID-19 and its many

variants. Our mindset, in the Burkinabe Red Cross, is to better prepare and equip ourselves to face any kind of crisis that may one day arise.

***Do you have any final thoughts for our readers?***

I would like to invite all your readers to keep feeling compassion for the most vulnerable people. No one's position in this world is guaranteed for life. From one day to the next, we can go from being comfortable to being vulnerable. The situations we see have proven that. So, it is by developing the practice of solidarity, developing humanitarian reflexes to come to the aid of those in difficulty, that everyone may benefit in their turn. We must come together, therefore, and remain committed to helping people in need.







## Interview with Dr Gilles Yabi

Founder and president of WATHI\*

*Gilles Yabi is the founder and executive director of West Africa Think Tank (WATHI). He guides and supervises the activities of the think tank, whose permanent team is based in Dakar, Senegal. WATHI is an open platform for the production and dissemination of knowledge and proposals on all issues crucial to the present and future of West Africa and other regions of the continent. Mr Yabi is regularly invited to share his thoughts on political, economic, educational and security issues with various African and international organizations. He also has a long experience of interacting with the media, and has been publishing columns on African political and economic issues for the past fifteen years. He hosts the weekly column “Ça fait débat avec WATHI” on Radio France Internationale.*

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### ***What issues does WATHI focus on, and what are its main aims?***

WATHI is a laboratory of ideas with its own position on issues—we consider ourselves a citizen think tank for West Africa. WATHI is based on the idea that, in all countries in the West African region, we need more and more men and women to be aware of the most critical issues, both current and future, for the region. So WATHI is first and foremost a forum for sharing ideas, proposals and analyses on all the dynamics that we consider most important and that are shaping this region’s future. That said, our perspective goes beyond West Africa to recognize the continent’s extreme diversity and the need to promote a form of pan-Africanism that is both realistic and pragmatic.

\* This interview was conducted by Bruno Demeyere, Editor-in-Chief of the *Review*.

One thing that is unique to WATHI is our generalist dimension. Rather than working on issues of politics, security, education or economics in isolation, we consider all of these aspects together, including the ways in which they are connected. The other thing that sets us apart is that we also decided to be a citizen think tank with an activist approach. We don't hide the fact that we want to change the trajectory of countries in this region, knowing of course that this is a long-term undertaking. So we put out proposals in all these areas, animated by the sense of responsibility that we feel as citizens.

***What's your analysis of the current dynamics underpinning the violence in the Sahel?***

The first point I would make is that the current situation is extremely worrying. Just ten years ago, no one in this region would have imagined us being in the situation that we now find ourselves in, and by that I mean the level of risk, the absence of even short-term visibility on the future, but also political instability given the series of coups d'état that have taken place in Mali since 2012, for example. I lived in Mali in 2009 and 2010, and there may have been some hostage-taking and other recurrent security incidents in the north, but no one would have guessed that less than two years later such a complex crisis would emerge. The same could be said of Burkina Faso. Six years ago, no one would have thought that the country would find itself in such a fraught security situation, with repeated and very lethal attacks in regions in the north and east, and 1.5 million displaced people.

But what I'm more worried about is the fact that we cannot look to the future with confidence. When considered separately, each country seems to be bogged down in the crisis-exit process, and it's hard to be optimistic. One last observation: we mustn't just look at what's happening now, but at what that means down the road. That's what's going to enable us to move past this crisis and create the necessary conditions to prevent worse crises from happening in the future. In responding to the risks and the violence, we need to consider the potential consequences from the start, particularly in terms of education: what it means that schools are closed, what it means to have such a challenging humanitarian situation. With these things in mind, we will be able to create the right strategies and undertake the necessary actions.

***Most countries in the region are experiencing poverty, high unemployment among young people, the unravelling of intercommunity relations and growing competition for natural resources. Are these social challenges the main reason why non-State armed groups [NSAGs] are able to recruit members from certain communities?***

When people analyze the reasons why young people join NSAGs, it seems to me that they often make the mistake of attempting to identify two or three factors and separate them from the overall context, thus overlooking the full complexity of

the situation in which armed groups form and grow. I often draw a parallel with the sort of conflict analysis that we used to apply to rebel groups, which existed long before what are now known as jihadi or terrorist groups. Before terrorism took hold in this region, there were major armed conflicts in Liberia, Sierra Leone and Côte d'Ivoire, in the 1990s and 2000s.

I always look at three dimensions when analyzing armed conflicts: people, means and context. Analyzing the people involved means forming hypotheses about their motivations, and then distinguishing their motivations from their message—which never fully reveals their real motivations. Then it's necessary to examine the means that they have access to, as this is crucial to understanding how an armed rebellion takes place and how long it lasts. The other important dimension is the political, economic and social context in which a conflict breaks out and evolves. It's in this part of the analysis that we see the impact of such things as poverty level, lack of economic opportunities, and unemployment. Armed rebel groups are more likely to form, and armed conflict is more likely to occur, in certain situations, but circumstances aren't everything. The emergence of an NSAG depends on the presence of a certain number of people with their motivations and interests, the means available to those people, and a propitious context. If we fail to broaden our perspective, we tend to focus on only some of these factors.

What's more, people often forget the importance of means—unemployment and marginalization alone aren't enough for a significant and organized armed group to take shape. Substantial means and a particular set of power relations between the government and non-State entities are also required for such entities to risk taking up arms. This is not to say that factors of marginalization are not important, but you must not think that just because a group is frustrated, this will lead to armed conflict. When an organized armed group reaches a village where the government is absent and there are no security forces capable of fending it off, people don't necessarily need to buy into the group's message in order to find common ground with it.

We need to ascertain the real reasons why young people join armed groups, jihadi or not. Some join because they believe the message delivered by these groups, while others don't have a choice, since it's the only group around and is powerful. The leaders of these groups also know how to use the prevailing circumstances to tailor their message and boost the recruitment of combatants. But I again emphasize the fact that it's a convergence of factors—the fact that groups with the means to cause violence exist, and the fact that governments are absent, incompetent or not looking out for their people—that increases the risk of violence in the region.

***International partners have provided extensive and various forms of support in the fight against terrorism in the Sahel and in countries in the Lake Chad Basin. Has this produced the expected outcome, in view of the rapidly deteriorating security situation in these areas?***

First of all, I would say that you just need to look at the current security situation in its various forms in the Sahel, and you'll clearly see that the involvement of various

international partners has not been enough to restore security since 2012 – and this includes France’s intervention in 2013. When we consider how the situation has evolved, it’s clear that the forms of violence and risk have changed, and the area affected has expanded from Mali’s north towards the centre and then towards neighbouring countries.

Secondly, from an analytical perspective, we must be honest and admit that we cannot simply compare the before and after. We must take into account the idea that we don’t know what would have happened in the absence of this international effort. The situation could very well have got worse without it. We must keep that in mind when discussing the impact of international involvement.

And when it comes to outside intervention – without looking at each instance in detail – it’s important to underscore the fact that a lack of clear objectives combined with the involvement of numerous entities with sometimes diverging agendas adds a layer of difficulty to the challenges facing these countries. Not only is there a need for coordination, but the partners that intervene in the region must come to a very clear agreement on objectives that dovetail with those of the countries of the region and, especially, the people. This sort of political groundwork is key to ensuring that international involvement is not perceived by the people of the Sahel as adding to their problems, but rather is seen as part of the solution. There is much work to be done in this area, to clarify objectives and interests on all sides.

***The violence being committed in various countries of the Sahel and West Africa is increasingly factional in nature. What is the role of religion in this regional dynamic?***

I would reiterate the need to avoid analyses that focus on individual factors while ignoring others, as this obfuscates the link between the situation resulting from medium- and long-term changes on the one hand and short-term triggering factors on the other. The religious factor is important in the Sahel’s political dynamics, but it is not necessarily the most important one and is certainly not the only one. The current situation in the Sahel countries is the result of what was done for twenty, thirty or more years in each of these countries.

What we observe today, particularly in terms of the weakening of States, is a relatively long-term process: governments are not physically present in communities, including those farthest from the capitals, and they have failed to develop educational policies that could cover a larger proportion of the population and enable more people to take part in public policies and politics.

These dynamics have evolved in tandem and under outside influences – including religious ones. If we look at the countries of the Sahel, we are well aware that radical religious currents that diverged from those already present in the region have gained in influence over the past twenty years. Over time, this has led to conflicts between people who practice traditional Islam and the new currents, whose imams are trained differently – in some cases in Gulf countries. The religious factor mustn’t be underestimated, and it plays a role in how Sahel

countries have changed over the past two decades. The success of jihadi groups is linked to what is happening in neighbouring countries, how society has changed, and the weakening of the State. If you don't clearly recognize the fact that the number of religious groups has expanded as the State—and its ability to educate people—has weakened, then you can't fully understand the religious dynamic that has led to the current situation.

Community-related factors and relations between ethnic groups in the Sahel also call for an analysis of the situation on the ground, including long-term changes in how governments function. Countries of the Sahel, like most African countries, are extremely diverse in terms of ethnicity, religion and culture. One of the dimensions of State collapse or, to be more precise, the failure of States to consolidate their strength in recent years can be traced to the failure to build political models that are able to accommodate this diversity and manage it effectively. This has created a lack of both cohesion and support for a vision of government that promotes unity and that respects and values internal diversity. I largely ascribe the changing situation in the region to what was not done at the political level in terms of building governments that are in step with people's needs and able to manage the complexity of Sahel societies.

***The level of violence against civilians appears to have been heightened by the rivalry between the Group for the Support of Islam and Muslims [GSIM] and the Islamic State in the Greater Sahara [IS-GS], on one side, and Islamic State's West Africa Province [ISWAP] and the group commonly known as Boko Haram, on the other. Is this a sign that violence is now the only possible manifestation of the power relationship between these two sides in the Sahel and Lake Chad regions?***

It's very clear that there is a difference in how these groups operate. There's probably also a difference in their deep-seated motivations—although we can only speculate about those. I think that the ways in which an armed group operates provide key insights into the nature of the group and how we should handle it. Dealing with an armed group that considers it legitimate to attack civilians is very different from dealing with one that believes that only soldiers and government officials should be targeted. Violence is not justified in either case, but the choice of targets and the methods used say something about the people we are dealing with and how we can go about resolving the conflict.

There is a growing number of groups undermining the security situation in the Sahel region and the Lake Chad Basin, and this is adding to the violence. Not only do these groups view the government and its outside partners as adversaries, but we also see that these groups are competing with each other for control over territory, which leads to more violence. The rising number of armed groups, along with their rivalry with each other—particularly GSIM and IS-GS—is only exacerbating the violence and making things harder for civilians. I also think that Boko Haram's splintering is linked to what is now happening in the Lake Chad Basin.

What's more, the fact that ISWAP – which is very well equipped and much better organized than Boko Haram was under Abubakar Shekau – is now ascendant in Nigeria clearly shows the dynamic at work: the strongest armed groups, which are usually those with the most military resources, often win. This brings us back to the question of means and of the importance of maintaining a power advantage over these armed groups, especially those that go after civilians.

Another point, when we discuss violence against civilians, is that in many cases in Burkina Faso and Mali we have seen massacres of civilians perpetrated by community-based militias. This means, once again, that instead of focusing solely on designated terrorist groups, we have to look at every group that subverts the security situation. Regardless of who carries them out, civilian massacres in particular must be met with an extremely firm response, otherwise the message that is sent out encourages further attacks.

***Some people, particularly in Mali and Burkina Faso, have spoken out in favour of entering into dialogue with NSAGs.<sup>1</sup> Would engaging religious-based NSAGs – GSIM, IS-GS and others – in a peaceful political process that ended their use of violence be a potential long-term solution?***

The question of how to respond to the current risk situation is one of the most difficult ones. I would say that there's a pragmatic dimension first. The fact that people are talking a lot about the dialogue option is because we've seen that the situation has not improved despite the military interventions. The idea is that maybe we should try something else, such as a political approach based on dialogue. In this sense, it's a default option. There is some logic to it, since the security situation in which we find ourselves has a growing cost for civilians and for these governments, especially since the crisis in the Sahel has already dragged on for ten years. And things could very easily continue this way for another ten years. This is why we need alternative approaches.

But whether or not we should enter into a dialogue with non-State entities is not just a question of principle. It's also about how to do it, with whom, and what will be discussed. And the potential for dialogue must not suggest that there will be no parallel military response; to my mind, the two are not mutually exclusive. Yet I would also point to the differences among NSAGs. There is less of a desire to sit down with armed groups that are prepared to massacre civilians than with groups that place certain limits on the use of violence. And even if we talk, we won't necessarily come to an agreement.

Using dialogue doesn't mean that we renounce the use of force, however, so I'm in favour of dialogue as one more option, in addition to those that have been used so far, and even as a necessary option given the precarious security situation, but I think it would be a mistake to think that all these armed groups

1 International Crisis Group, *Frontière Niger-Mali: Mettre l'outil militaire au service d'une approche politique*, Africa Report No. 261, Brussels, 12 June 2018, available at: [www.crisisgroup.org/fr/africa/west-africa/mali/261-frontiere-niger-mali-mettre-loutil-militaire-au-service-dune-proche-politique](http://www.crisisgroup.org/fr/africa/west-africa/mali/261-frontiere-niger-mali-mettre-loutil-militaire-au-service-dune-proche-politique) (all internet references were accessed in May 2022).



have only a political agenda and that States which are very weak militarily are in a position to negotiate agreements that will result in lasting peace in the region.

I think that dialogue with armed groups can lead to short-term results, but we mustn't ever forget the medium and long term. So we have to be very careful about what is put on the table when negotiating with armed groups. If it's going to permanently weaken the government or restrict freedoms in part of the country, we need to be very careful about the medium- and long-term effects. The dialogue must take place within a framework, with limits set on what is negotiable and what isn't.

*There is an assumption that nomadic communities, which do not benefit from government programmes, are expressing their frustrations and grievances with governments by participating in the current spate of violence in the Sahel. Is there something to this? Boubacar Ba, a researcher at the Centre for Governance and Security Analysis in the Sahel, notes: "The Peul community finally rebelled against their exclusion from production systems, governance and justice. Their anger was directed not just against the government, for reasons of justice and political representation. They were also focusing their attention on various aristocratic Peul families, which used their position, in collusion with the government, to weaken herders and reduce their status to that of social juniors."*<sup>2</sup>

More broadly, there are a number of communities that, in many countries in the region, have had the feeling of being marginalized. It's true, nomads—the region's livestock breeders—often feel that they are left out, and at times feel humiliated and repressed, particularly by government officials. When there are communities that feel that government officials don't recognize them, don't respect them, and maybe don't consider them full citizens, and when there is no connection between government officials and these communities and individuals, it's clear that violence may be one way of getting revenge and turning the power relationship on its head.

With regard to what's happening in the centre of Mali, researchers have published numerous studies showing the extent to which the frustrations of Peul herders have aided the rise in armed groups whose message stands in stark contrast to the government's practices in the area of justice. It's very clear that the sense of injustice is a very strong incentive pushing people to commit violence—that's true all over the world. Historically, the sense of injustice has been a powerful factor spurring communities to action, even to the point of taking up arms to defend themselves and upend power relations.

Here I would like to refer back to the idea of frustration combined with the means to commit violence. There's a big difference between a community that is

2 Nathalie Prevost, "Les accords se multiplient entre les djihadistes peulhs et les autres ethnies", *Mondafrique*, 29 April 2021, available at: <https://mondafrique.com/les-accords-entre-les-peuls-et-les-djihadistes-pourraient-embraser-le-mali/>.

discontented, frustrated and marginalized, but which doesn't really have access to significant means of violence – maybe they can only get their hands on traditional weapons, as there have indeed always been minor conflicts in the region – and the same type of community equipped with weapons of war. I think that not enough attention is paid to that difference.

When, in a region or country, there's an abundance of weapons of war and armed groups arriving with combatants at a given point in time, existing frustrations are likely to take on a violent dimension simply because now there are substantial means of violence at hand. This also highlights the need to focus more on the proliferation of weapons of war and on ways of reducing armed violence, but also, once again, to be careful not to think that all NSAGs necessarily represent the communities they claim as their own or that they have taken up arms to safeguard these communities' well-being.

***In your view, how is the situation in Libya continuing to affect the spiral of violence in the Sahel?***

Libya has obviously been one of the most important external factors affecting the security situation in the Sahel since the crisis broke out in 2011–12. The events in Libya resulted in that country's political destabilization. The country was under the highly personalized and authoritarian rule of Muammar Gaddafi, although there was some control over the State apparatus, borders and the spread of weapons. Gaddafi's removal by the Western forces of NATO and the demise of his regime, which was not very institutionalized, led to the country's collapse several months later. Then came chaos, during which the country's entire security system was dismantled and its store of weapons was widely plundered – it was a massive inventory, given the country's oil wealth and the fact that Gaddafi spent lavishly on weapons, including the most recent ones.

This initial impact wore on, as the weapons that were removed didn't make their way back. These weapons now circulating in the region only added to those left over from past armed rebellions on the continent and to those that came from the national armies – we mustn't forget that much of the weaponry of NSAGs was acquired during attacks on the regular armed forces and in some cases came from corrupt members of the defence and security forces. The spread of weapons is the most salient impact of the events in Libya.

But there is also a political effect that should not be downplayed. Gaddafi had an important role in managing the political situation in the Sahel – regardless of what one may think of his effectiveness – as he invested huge amounts, had connections with heads of State and was able to influence armed groups one way or the other thanks to his financial resources.

I would also mention the fact that little is said of other possible influences apart from Libya. It's important to look at the map and reflect upon all the countries in the Sahel neighbourhood that play an important role. When Libya stopped wielding influence, the geopolitical landscape in this part of the continent was reshuffled in a way that clearly did not promote stability in the Sahel.

***In what way do the events that took place in Mali since August 2020 and in Chad in spring 2021 represent another factor of destabilization for the Sahel? Could the death of President Idriss Déby herald a change in how the political and military strategies employed in the Sahel and Lake Chad Basin are designed and implemented?***

The events in Chad and Mali have changed the security and political scenario to an extent. Mostly, they point to the limits, however obvious, of the personalization of power. Knowing the internal situation in Chad, which has always been very fragile in terms of security, but also in terms of economics, politics and governance, it was very clear from the start that someone like President Déby could not be counted on to play a major role in the Sahel over the long run. A president, who is human like all of us, can suddenly die, and we quickly see the impact on the country, both domestically and in its external relations. Déby's death showed that security responses by a regime dependent on one man are extremely weak.

The coup d'état in Mali highlights the paramount importance of domestic political groundwork. Malian leaders will have to agree on at least a minimum set of issues in order to preserve the country's unity. Mali remains at an impasse to this day, with sharp divisions over fundamental questions within the political class and within society itself. Recurrent instability at the political level obviously makes it impossible to produce sustainable responses to the security situation.

Political developments in Chad and Mali thus add a further layer of uncertainty. Both countries are experiencing a transition, and no one knows how these processes will play out politically, and this translates into uncertainty for the entire region. In the Sahel, if Mali's political situation does not stabilize, the whole region will continue to be extremely vulnerable. So it's very important for the transition in Mali to receive the support needed to ensure it produces a satisfactory result that opens the way to the necessary institutional, political and security-related reforms.

***What are the strengths and weaknesses of neutral and impartial humanitarian work in the Sahel, and what challenges do humanitarian organizations face? Do you think that States and armed groups there support humanitarian principles, including the Fundamental Principles of the International Red Cross and Red Crescent Movement? Have you seen any changes in how humanitarian work is carried out in the Sahel in recent years?***

It's important that the humanitarian principles you mention be absolutely maintained and defended, regardless of the security risks in the region. It's clear that when you're dealing with NSAGs, including groups that use terrorist methods, it's more difficult to get people to comply with these principles. Humanitarian organizations are used to operating in various types of high-risk situations and armed conflicts, but they may have less experience in situations where armed groups employ terrorist methods and where it is impossible, or at

least very difficult, to engage with armed groups and get them to comply with humanitarian principles and allow humanitarian work to be carried out.

As to whether things have changed, humanitarian work has been made more difficult by the presence of a wide range of NSAGs that operate differently and use violence in different ways, such as in their choice of targets. In recent years, many attacks and hostage-taking attempts have been perpetrated directly against humanitarian organizations. This clearly shows that it is even more difficult now than it was before to completely safeguard humanitarian work. These humanitarian organizations must therefore adapt, and they are doing so quite well.

Their humanitarian work is clearly indispensable, given, for example, the large numbers of displaced people today in Burkina Faso. But I would also point out that it's important for the region's citizens and governments to set a goal of making this humanitarian work less and less necessary. Countries in this region need to develop the capacity to respond to situations of humanitarian distress. This means strengthening the region's own humanitarian structures, ensuring that States and regional organizations like the Economic Community of West African States assume greater responsibility in the humanitarian realm. Africa's youth also support such an increase in autonomy. And this is an important issue when it comes to moving things forward, so that in ten or fifteen years we're not having the same conversation about increasing humanitarian needs.

***In view of current geopolitical trends in the Sahel, what is your outlook ten years from now, and how does it affect the advice you would give local, national and international decision-makers?***

There are two ways of looking at the Sahel ten years from now. The first is to simply take the current situation and extrapolate. In this case, it's very difficult to be optimistic, since there's very little visibility and a lot of uncertainty, including in the area of security. Despite all the talk of the "double nexus"—security and development, or humanitarian work and development—or the "triple nexus"—security, development and humanitarian work—depending on who is talking, the current security situation is a real obstacle to major economic and social progress and to the redeployment of the State. In Mali, as is true elsewhere in the Sahel, there is a lot of talk about redeploying the State so that it has a greater presence in remote regions. But for this to be more than a slogan, the security situation will have to improve. Otherwise we will never be able to have doctors, teachers, nurses and government officials who stay where they are assigned, if the risks they face are very steep.

The second way of looking ten years down the road is to ask what choices have to be made in view of the current situation, the region's resources and international involvement. For me, these choices must address the need to restore a base level of security; the need to bolster local economies and create opportunities, particularly for young people; and the need to substantially

overhaul political governance in the region. Lastly, and especially, what's most important in the medium term is education.

The response we provide today must also encompass factors that will safeguard the future, especially investment in education, in the broadest sense of that term. That's what's going to define the Sahel in the future, so it's important not to forgo this investment. We will have to be much more innovative so that we can keep passing along our values, knowledge and expertise, including to young people and children who are in unsafe regions or who have fled their region. This will close the gap between the short-term response and the possibility of a better future for the region in the next ten years.

Lastly, the economic aspect is also often overlooked. The Sahel is a region with numerous major gold-producing countries, and we are aware that much of this resource leaves the region illegally. So we really cannot talk about the State, about redeploying the State, about government's ability to deliver education and health care, and so on, unless we talk about the economy and the need to come to grips with the economic system and how it really works, including at the international level. The current system does not always favour local production and value creation, yet these are critical for employing young people. The proper response, when we envision the future, is thus not to look only at the most obvious concerns, like security, but also to look at both education and economics, which supply – and will need to continue supplying – resources to the State and the human societies in question.

***Keeping in mind the citizen dimension of your think tank, how would you suggest that young people respond to these challenges?***

I believe strongly in the importance of knowledge and of investing in culture and education. That's really the core of what we do at WATHI. That's why we publish reports on our website, share our work over social media and organize a growing number of online talks. Young people have an important role to play, but they need to be as well equipped as possible. We need to understand the situation in which we live and act and the extreme complexity and difficulty of the current situation, and, based on that, each of us must choose how we can help improve both individual and the collective well-being. I'm firmly convinced that we need to highlight the common good and explain to young people that working for the common good does not preclude pursuing their individual interests. What young people can do is continue to be curious, to read, to know what's going on and to keep learning in any way possible. That will equip them to serve as engaged citizens at the local, national and regional levels.





# To respect and ensure respect for IHL: Interview with representatives of the French Ministry for the Armed Forces and Ministry of Europe and Foreign Affairs

## Abstract

*On 29 June 2021, the Review talked to representatives of the French Ministry for the Armed Forces and Ministry of Europe and Foreign Affairs about France's involvement in Mali and the Sahel region.\* From the Ministry for the Armed Forces, the Review spoke to Claire Legras, Director of Legal Affairs, Camille Faure, Deputy Director of Legal Affairs, and Philippe Lejeune, Head of the Operational Legal Unit of the Armed Forces Staff. From the Ministry of Europe and Foreign Affairs, the interviewees were François Alabrune, Director of Legal Affairs, and Sandrine Barbier, Deputy Director of Legal Affairs.*

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***Can you remind our readers of the reasons why France became involved in Mali in 2013, and the form your involvement has taken?***

**Claire Legras:** As you know, the situation in Mali at that time was critical and deteriorating sharply, especially in the north of the country. It was in response to an

\* This interview was conducted by Ghislaine Doucet, Bruno Demeyere and Julie Boulmier.

express request from the president of Mali that the president of France decided, in January 2013, to intervene in Mali. This decision led to the deployment of forces on the ground in just a few days. The mobilization of the French armed forces was therefore extremely rapid, and they were part of the operation that was baptized Operation Serval. This first operation mobilized up to 4,500 French soldiers. Operation Barkhane, which succeeded it as of 1 August 2014, mobilized even more troops.

From a legal point of view, the basis of these operations is quite clear and in fact it is both plural and complementary. In terms of *jus ad bellum*, these operations are based, first and foremost, on the request for assistance that was addressed to the president of France by the interim president of Mali, Dioncounda Traoré, which took the form of an exchange of letters between them. This exchange was then taken up by Mr Traoré's successor, President Ibrahim Boubacar Keïta. This is therefore a "classic" basis for military intervention, following a request from Mali to France to intervene on its territory. The legal basis for Operation Serval lies in the resolution adopted by the United Nations [UN] Security Council, under Chapter VII of the UN Charter – Resolution 2100 of 25 April 2013.<sup>1</sup> This resolution, which has since been extended each year, authorizes French forces to use "all necessary means", within its capacities and areas of deployment, to support MINUSMA<sup>2</sup> if elements of that force are exposed to serious and imminent danger. I will not talk further about MINUSMA and the exceptional nature of this UN mission, in terms of the number of troops it has mobilized, the particularly dangerous nature of the mandate it has assumed, and the duration of its presence in Mali.

It should also be recalled that UN Security Council Resolution 2085 of 20 December 2012<sup>3</sup> had also reaffirmed more generally the need for all UN member States – including France – to support Mali in its efforts to restore peace and security, given the dangers to that State and more broadly to regional peace.

Operation Serval began in January 2013. It achieved conclusive results very quickly, in that it put a stop to the actions of armed groups, notably by recapturing the city of Timbuktu. The operation also made it possible to liberate all the towns in the Niger loop that were under the control of organized armed groups and to push them back into their refuge areas. This was indeed the mission of Operation Serval; it was not intended to eradicate these organized armed groups or completely end their activities. They therefore continued to thrive in a habitat and terrain that offered a foothold for their activities and an opportunity to carry them out. As time went on, it became clear that these groups were organizing rear bases in a certain number of neighbouring States, using cross-border logistics.

This prompted the general staff of the French Army – in close collaboration with its Malian counterpart – to reorganize and restructure its operations

1 UNSC Res. 2100, 25 April 2013, available at: [https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=S/RES/2100\(2013\)&Lang=E](https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=S/RES/2100(2013)&Lang=E).

2 MINUSMA is the UN Multidimensional Integrated Stabilization Mission in Mali. For further information, see the MINUSMA website, available at: <https://minusma.unmissions.org>.

3 UNSC Res. 2085, 20 December 2012, available at: [https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=S/RES/2085\(2012\)&Lang=E](https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=S/RES/2085(2012)&Lang=E).

throughout the Sahel-Sahara region. In early August 2014, a new operation named Operation Barkhane succeeded Operation Serval. This operation was structured differently and placed more emphasis on sharing resources between the coalition forces. In fact, this operation merged Operation Serval in Mali and the resources of Operation Épervier in Chad. It is important to point out that Operation Barkhane is taking place within the framework of the status of forces agreement [SOFA]<sup>4</sup> that we concluded with the Malian authorities, which stipulates that a detachment of French soldiers will intervene in support of the forces of the Republic of Mali to restore peace and security on its territory. This operation immediately became part of a partnership with the main States of the Sahel-Sahara region: Burkina Faso, Chad, Mali, Mauritania and Niger.

The aim of Operation Barkhane was both to carry out autonomous operations within the framework authorized by the Malian authorities and, from the outset, to provide combat support to the Malian armed forces, while also providing broader support to the other forces engaged in Mali as part of a stabilization mission: MINUSMA, EUTM Mali<sup>5</sup> and the forces of other partner States fighting against organized armed groups that use terrorist methods. Then, starting in February 2014, France encouraged and supported the grouping of forces from five major partners in the Sahel-Sahara region within the G5 Sahel. The joint force was launched in February 2014 and reached full operational capability in late 2017. Such a process was quite unprecedented, and took time. France's objective is not to be alone on the front line, but to promote and support a coordinated, combined regional response by all the forces of these sovereign States and to help them meet the immense challenge they are facing.

Operation Barkhane has remained a combination of an autonomous operation and a support mission. On 11 June 2021, President Macron announced a major change to France's military posture in the Sahel. The final step in that process was to implement the president's announcement by conducting final planning exercises, in very close cooperation with the local partners of Operation Barkhane. This is both a change and a deepening of a certain number of what have been the operation's main features for a number of years: internationalization, action and cooperation, followed by Europeanization of the fight against organized armed groups in the Sahel that use terrorist methods. In reality, this is a variation, or a deepening, of the guidelines that were decided upon with the Sahelian partners about a year and a half ago at the Pau Summit.<sup>6</sup>

4 Agreement between the Governments of France and Mali in the Form of an Exchange of Letters Defining the Status of the Serval Force, signed in Bamako on 7 March 2013 and in Koulouba on 8 March 2013 (Serval SOFA), available at: [www.legifrance.gouv.fr/jorf/id/JORFTEXT000027376103](http://www.legifrance.gouv.fr/jorf/id/JORFTEXT000027376103).

5 EUTM Mali is the European Union Training Mission in Mali. See the EUTM Mali fact sheet, available at: [https://eutmmali.eu/wp-content/uploads/2022/01/20220113\\_Fact-Sheet-EUTM-sans-elections-22FEB\\_ENG.pdf](https://eutmmali.eu/wp-content/uploads/2022/01/20220113_Fact-Sheet-EUTM-sans-elections-22FEB_ENG.pdf) (earlier version available in French at: [https://eeas.europa.eu/archives/docs/csdp/missions-and-operations/eutm-mali/pdf/factsheet\\_eutm\\_mali\\_fr.pdf](https://eeas.europa.eu/archives/docs/csdp/missions-and-operations/eutm-mali/pdf/factsheet_eutm_mali_fr.pdf)).

6 The Pau Summit took place in January 2020. See "G5 Sahel: Conférence de presse des Chefs d'État à l'issue du Sommet de Pau", *Elysee.fr*, 13 January 2020, available at: [www.elysee.fr/emmanuel-macron/2020/01/13/sommet-de-pau-declaration-conjointe-des-chefs-detat](http://www.elysee.fr/emmanuel-macron/2020/01/13/sommet-de-pau-declaration-conjointe-des-chefs-detat).

***How is the partnership with the various national, regional and international armed forces organized? Will changes to the system have consequences, for example with regard to the monitoring of detainees?***

**Philippe Lejeune:** France maintains close relations with its partner armed forces to ensure that they are adequately trained, resilient, effective and capable of carrying out the missions entrusted to them.

France's partnership with these armed forces has three major components: structural cooperation, which includes a network of personnel seconded to the armies of partner States; operational cooperation, which involves training partner armed forces; and combat support, which is more specifically the task of foreign armed forces. Before the French authorities decided to suspend cooperation between the Barkhane force and the Malian armed forces, following the second coup d'état in Mali in May 2021, most of France's operations in the Sahel took the form of a combat partnership, in which the French armed forces operated mainly alongside the armed forces of Mali and Niger.

In practice, this partnership consisted of seconding French personnel to strategic, operational and tactical headquarters. One example is the international humanitarian law [IHL] training that the Barkhane force's legal advisers provided to nearly 60 Malian soldiers stationed in Gao, as part of Operation Bourrasque, at the end of 2020. The main objective was to strengthen our partners' training in IHL and their monitoring of its operational implementation, to ensure that operations remained lawful, despite breaches of IHL by armed terrorist groups.

**Claire Legras:** Even if there are elements of continuity within the changes to the operational mechanism in relation to all that has already been stated since the Pau Summit, it is true that we are moving towards a different mechanism, with more cooperation, priority for combat support and increasing activation of the Takuba Task Force, for which a number of partners – and others who will join us over time – are sending equipment and personnel (mainly special forces detachments) to provide combat support under French military command for partner armed forces in the region.

These changes therefore form part of a continuum, and from a legal point of view, continuity obviously prevails. The legal basis for our intervention in these States remains the same. It is part of our response to a request for assistance, and President Macron is therefore currently engaged in discussions with representatives of the Malian State and with the president of Niger.

What also remains unchanged is the very act of intervening. We have numerous and regular exchanges with the International Committee of the Red Cross [ICRC] on this matter, because we are in a situation that qualifies as a non-international armed conflict. The legal framework for this new phase of the operation will be as before: IHL will apply, and France will abide by it and ensure respect for it. It should also be pointed out that the existence of rear bases for organized armed groups led France, in close discussion with all its partners, but also with the ICRC, to take the view that a non-international

armed conflict was in progress, and was being exported to Mali's neighbours. A number of factors prompted this conclusion. The armed groups that were operating in Mali were also active in neighbouring countries; there was an operational continuum, in that they were using these rear bases to participate in combat within Mali. We therefore considered that they should be fought within the framework of an exported non-international armed conflict, and that IHL should be applied to the entire operation, both in Mali and in neighbouring countries that were serving as zones of refuge. It is within this legal framework that the French military detachment is operating and will continue to operate.

**Camille Faure:** The president's words must be understood as referring to a fight against organized armed groups that use terrorist methods. IHL remains the legal cornerstone of France's operations. France and its partners in the Takuba Task Force are operating under IHL, as are all the international forces.<sup>7</sup>

Our commitments are also part of a continuum. The Serval SOFA remains applicable to Operation Barkhane. We have also concluded agreements with Niger and Burkina Faso that cover the right to capture and detain and which specify the framework for the handing over of detainees to the territorially competent authorities. These authorities may or may not agree to receive those persons, but under these agreements, which remain in force, they are obliged to apply both IHL and international human rights law to them. This allows us to operate in these theatres in accordance with our European and international commitments. From our point of view, as time goes by and as things change – Serval yesterday, Barkhane today, and another operation tomorrow – the monitoring of these people remains a legal imperative at the domestic, European and international levels.

***Can you tell us what practices and mechanisms have been put in place regarding capture, detention, transfer and non-refoulement?***

**Camille Faure:** Under IHL, it is legal to detain people for compelling security reasons related to the conflict, if they represent a serious threat to the security of the force or the civilian population. We are basing ourselves on IHL and on the resolutions of the 32nd International Conference of the Red Cross and Red Crescent.<sup>8</sup> This right to detain is also reaffirmed in agreements with

7 The participation of operational partners under French command is based on two grounds. With regard to *jus ad bellum*, each partner in the operation was invited by the president of Mali to intervene on its territory in order to fight organized armed groups carrying out terrorist-type activities. With regard to *jus in bello*, the detachments of the operational partners integrated by France into the Takuba Task Force have the mission of conducting operations in Mali to support the Malian armed forces in their fight against organized armed groups carrying out terrorist activities in Africa. The status of the military detachment of each operational partner is identical. It is governed by Articles 1 to 11 of the Serval SOFA, above note 4, and extended to those partners that have expressly agreed to it.

8 See 32nd International Conference of the Red Cross and Red Crescent, "Resolution 1: Strengthening International Humanitarian Law Protecting Persons Deprived of their Liberty Geneva", 8–10

governments – for example, Article 10 of the Serval SOFA – but it is also set out in agreements with other partners that are not public. In addition, we have robust procedures from capture to handover and follow-up, so that there is double monitoring – by the French force under its obligations, and by the ICRC as a neutral intermediary – and there is also follow-up on the host State's obligations.

Individuals benefit from two types of guarantee: material and procedural. Material guarantees mean that when a person is captured, she or he is treated as well as a member of the French forces, especially in terms of food and access to health care. In addition, we must take into account vulnerable persons, the right to worship, the protection of their physical well-being, etc. This is the first set of guarantees, about which we are particularly vigilant and which are reflected in the medical examination and information procedures and in the capture files that trace the treatment of captured persons from the first moment they are in the hands of the French forces.

As far as procedural guarantees are concerned, the length of time for which the forces can hold captured persons for imperative reasons of security is, of course, a key element. This must be reviewed at intervals. If detention needs to be extended to protect the force or the population, the level of decision is graded so that such a decision is not taken lightly and is monitored. This procedure is rigorous and controlled, and the aim is that the person be detained for as short a time as possible. Once a person no longer poses a threat, they are released. When there are grounds for handover – i.e., when it is considered that the person should be prosecuted by the competent local authorities – then, on the basis of the agreements that we have concluded with Burkina Faso, Mali and Niger, handover is subject to compliance by the territorially competent State with our constitutional obligations, as under the French Constitution, the death penalty is prohibited.<sup>9</sup> Furthermore, handover is subordinated to our conventional obligations, as we are a State party to the protocols of the European Convention on Human Rights [ECHR], on the prohibition of the death penalty,<sup>10</sup> and on the prohibition of inhuman and degrading treatment;<sup>11</sup> and, more generally, to our obligations under international human rights law, including the prohibition against exposing a person to any violation of their fundamental rights.<sup>12</sup> These guarantees are quite demanding and must be respected at all times. To ensure

December 2015, available at: [http://rcrcconference.org/wp-content/uploads/2015/04/32IC-AR-Persons-deprived-of-liberty\\_EN.pdf](http://rcrcconference.org/wp-content/uploads/2015/04/32IC-AR-Persons-deprived-of-liberty_EN.pdf).

9 French Constitution, 4 October 1958, Art. 66-1. Law No. 81-908 of 9 October 1981 abolishing the death penalty was incorporated into the French Constitution in 2007 by Constitutional Law No. 2007-239 of 23 February 2007.

10 See European Convention on Human Rights, 4 November 1950, Art. 2, available at: [www.echr.coe.int/pages/home.aspx?p=basictexts&c=](http://www.echr.coe.int/pages/home.aspx?p=basictexts&c=).

11 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984 (entered into force 26 June 1987), available at: [www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading](http://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading).

12 See Claire Landais and Léa Bass, "Reconciling the Rules of International Humanitarian Law with the Rules of European Human Rights Law", *International Review of the Red Cross*, Vol. 97, No. 900, 2015, available at: <https://international-review.icrc.org/articles/reconciling-rules-international-humanitarian-law-rules-european-human-rights-law>.



that they are respected, there is a mechanism for regular visits to detainees by the operational legal adviser [LEGAD] of Operation Barkhane, accompanied by doctors. Furthermore, the ICRC has the unconditional right to make unannounced visits. The most important thing is to make the action sustainable, because from our point of view – although we have not found a clear answer in the jurisprudence of the ECHR – we are required to continue these visits until the person has completed his/her sentence, or has been definitively convicted.

***More broadly, how does France understand its obligations under Article 1 common to the Geneva Conventions?***

**François Alabrune and Sandrine Barbier:** To respect is an obligation on oneself, an obligation that could be described as internal. A State, especially a State Party, must do everything possible to ensure that its own entities (armed forces, civil authorities, military authorities) and all persons under its control comply with the above-mentioned obligations. “Respecting” IHL implies taking all necessary measures to ensure that France’s actions are in conformity with its obligations.

In a non-international armed conflict, this obligation may have an effect on organized armed groups. The obligation to respect is an obligation of means and of results, implying that those responsible can be held legally liable. This is perhaps the least complicated obligation.

The obligation to “ensure respect for” is more complex because it is an obligation vis-à-vis others, an external obligation, and implies that third States which are not parties to a conflict are obliged to take steps to ensure that the parties to the conflict respect their obligations under IHL. This obligation is contained in the Geneva Conventions and in Additional Protocol I [AP I]. It also appears in the jurisprudence of the International Court of Justice [ICJ], in particular in the case of *Nicaragua v. United States*,<sup>13</sup> where the Court ruled that the United States had “the obligation to respect and ensure respect for these conventions” in all circumstances. The obligation to ensure respect can be seen as having two dimensions. On the one hand, there is a negative obligation to do nothing that might encourage or even facilitate breaches of IHL. On the other hand, there is a positive obligation to take appropriate measures to put an end to breaches of the Conventions and to bring a party to the conflict that is in breach of its obligations back into compliance.

In other words, it is a matter both of abstaining and of acting. Training is essential to ensure that parties to a conflict comply with their IHL obligations. We believe that IHL will only be respected when there is acculturation and improved knowledge and awareness of the fundamental nature of IHL, vis-à-vis others and oneself. Ultimately, it is a pact. This work of training and dissemination of IHL,

<sup>13</sup> ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment, 27 June 1986, *ICJ Reports* 1986, available at: [www.icj-cij.org/en/case/70/judgments](http://www.icj-cij.org/en/case/70/judgments).

in which France is particularly involved – especially in the G5 – is particularly important.

This leads to a question: is it an obligation of means or of result? Can someone who has an obligation to ensure respect be held responsible for someone else's failure to fulfil their obligations?

What is clear to us is that States which have this obligation to ensure respect have an obligation of diligence, the intensity of which depends on the influence they have. They must take all possible measures and use all lawful means at their disposal to try to ensure that other States comply with the rules of international law. It is interesting to note that the ICJ jurisprudence on genocide in *Bosnia and Herzegovina v. Serbia and Montenegro*<sup>14</sup> affirmed that the legal obligation to prevent genocide enshrined in Article 1 of the Genocide Convention was an obligation of due diligence. The Court added that due diligence can only be assessed *in concreto* – i.e., according to the circumstances. We believe that both the assessment and the scope of this reasoning are important.

Several means can be used to ensure respect for IHL: diplomatic pressure, legal assistance, coercive measures or measures involving international cooperation.

Everything we do to encourage third States or third parties to the conflict to respect their obligations is ultimately part of prevention.

***How have the French armed forces operationalized the obligation contained in common Article 1 and in AP I to “respect and ensure respect for” IHL?***

**Claire Legras:** Our position remains the same on this point. Over the years, we have had in-depth discussions on this obligation, which is a major one for a State like France. We fully agree with this interpretation of Article 1; it is an obligation of means and not an obligation of result.

In addition, in our discussions with the ICRC, we have emphasized the need to meet this obligation under the real-life conditions that apply in theatres of operation. To say this is not to minimize our responsibility – it is simply a matter of facing the conditions in which we operate. The situation is not the same in every theatre. As we are providing support, the Malian theatre gives us the opportunity – first through Operation Serval, then through Operation Barkhane, and tomorrow within the new Takuba Task Force – to exercise not a form of control, but a form of awareness-raising that can go a long way, because it involves concrete activities such as delivering operational briefings or producing rules of engagement for such operations. All military commanders agree that the most important thing on the ground is the example set by partner forces. When you operate under the gaze of these forces and you see how they behave, that is probably the best way to ensure respect for common Article 1.

14 ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 26 February 2007, ICJ Reports 2007, available at: [www.icj-cij.org/public/files/case-related/91/091-20070226-JUD-01-00-EN.pdf](http://www.icj-cij.org/public/files/case-related/91/091-20070226-JUD-01-00-EN.pdf).

On the ground, in an operation like Barkhane – in other words, when we have a large number of men on the ground – this involves a series of very concrete actions. Moreover, in a theatre like Mali, complementary activities are undertaken at all levels. If an act is considered to be inconsistent with our vision of the application of IHL, we always intervene. Our representations, even if they are not made public, are made at the level of the military commander or force commander. The minister of the armed forces and all French ministers, in all the bilateral contacts they have with the authorities in the region, make respect for IHL one of the first topics of their discussions.

The situation is quite different in a theatre like the Middle East, where we have no men on the ground. That is not the same thing at all. We bear a very intense responsibility and experience it as such. This is something I have heard from several military commanders; we must not delude ourselves that in other theatres, where we are not on the ground, we could supervise our partners, when we are simply doing upstream training. This does not mean that we cannot do anything at all, but what we do is limited by the reality of the different theatres.

***What has France been doing in the Sahel to encourage and ensure respect for IHL by partner armed forces, both State and non-State?***

**Philippe Lejeune:** The French authorities are aware that under common Article 1,<sup>15</sup> France is required, to the extent of its means and capabilities, to exert influence on its Sahelian partners to ensure that the provisions of the Geneva Conventions and their Additional Protocols<sup>16</sup> are complied with. Since the beginning of Operation Serval in 2013, France has had occasion to remind the Malian side, in particular, of its obligations and commitments, through diplomatic notes and other actions. For instance, the force commander has expressed this concern in his discussions with his counterparts and with the political authorities of the Sahelian States.

Article 10 of the Serval SOFA<sup>17</sup> is also an example of the implementation of common Article 1 through the guarantees that France obtained from the Malian authorities concerning the detention of persons handed over to them by the Operation Barkhane force.

In recent months, France has committed itself – together with the European Union – to developing the training of Malian provost units and to systematizing their integration into the Malian armed forces with a view to improving compliance with the law on the conduct of hostilities. At a more tactical level, the French armed forces are also participating in the dissemination of IHL. In the Sahel, for instance, where French forces are stationed with allied troops, IHL training is conducted as needed. In the event of joint deployment with the Barkhane force, the tactical command of the partner armed forces is

15 Common Article 1 is available at: <https://tinyurl.com/2p94kvsu>.

16 Additional Protocols I and II are available at: <https://ihl-databases.icrc.org/ihl/INTRO/470> and <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/475>.

17 Serval SOFA, above note 4, Art. 10.

always briefed in order to prevent the commission of abuses. Our impression is that the commanders of the partner armed forces are very sensitive to these issues, which affect the reputation of their armed forces and more broadly of their State. Today, the focus is on training the armed forces of the G5 Sahel joint force. A French LEGAD is assisting the force's legal adviser, particularly in drafting operational procedures and developing a soldiers' manual.

In 2018, legal advisers to Operation Barkhane provided IHL training to members of the Movement for the Salvation of Azawad and the Tuareg self-defence group Imghad and its allies. These groups, which are recognized by the Malian government, cooperate with the State and have undertaken to comply with IHL. Our legal advisers have also developed a combatants' booklet, which has been translated into eight languages and distributed to the organized armed groups that the French armed forces may encounter during their operations. This booklet contains very simple explanations and illustrations together with some very basic rules, with the aim of promoting compliance with IHL.

**Claire Legras:** The action of the LEGADs on joint deployments, plus the people we second to the G5 Sahel command, mean that the French army is making a real long-term investment, in order to conduct these training courses as close to the field as possible. We are also promoters, partners and supporters of many other activities, some of which are carried out jointly with the ICRC,<sup>18</sup> including the training courses at the San Remo Institute,<sup>19</sup> which are financed by the European Union, Switzerland and the Office of the UN High Commissioner for Refugees. The last session was held in Bamako, at the beginning of December 2021.

These initiatives are consolidated because they are long-term. Their durability is quite reassuring.

### *Did this training cover topics such as sexual violence?*

**Camille Faure:** Sexual violence has been the subject of training for our own soldiers and for our partners. It is a question of setting an example, and it also shows the ability of the French forces to adapt to a new issue that was not necessarily on our radar before.

**Claire Legras:** A number of activities are also being carried out by non-governmental organizations [NGOs], notably CIVIC,<sup>20</sup> which the ICRC knows well. Those NGOs pay particular attention to the issues of sexual violence and

18 See, for example, IHL in Action, "Mali, IHL Training for Organised Armed Groups and Malian Armed Forces", available at: <https://ihl-in-action.icrc.org/case-study/mali-ihl-training-organised-armed-groups-and-malian-armed-forces>.

19 See, for example, International Institute of Humanitarian Law, "175th International Military Course on LOAC (French)", 23 May 2018, available at: <https://iihl.org/event/cours-militaire-international-sur-le-dih/>.

20 CIVIC is the Center for Civilians in Conflict. For further information, see the CIVIC website, available at: <https://civiliansinconflict.org>.

gender issues. Partner forces – especially INTM – are undertaking other activities.<sup>21</sup> This makes up a rich bouquet of actors and I believe that this is commensurate with the stakes involved. While France sees this dissemination of law by means of theoretical and practical tools as a real mission, it cannot carry out that mission alone, because we are talking about a vast territory the size of Europe, where these questions are major issues. What is important is that this joint action be sustained over time.

***Have you conducted any specific awareness-raising regarding the protection of cultural property in armed conflict?***

**Philippe Lejeune:** The protection of cultural property is a subject that cannot be ignored when running general IHL training courses, just like the protection of the civilian population.

**Camille Faure:** The protection of cultural property has always been an integral part of the French forces' operations. We have simply formalized it further following France's ratification of the Second Protocol to the Hague Convention for the Protection of Cultural Property.<sup>22</sup> We needed a mapping of the sites and have been working with the UN Educational, Scientific and Cultural Organization [UNESCO] to ensure that the LEGAD has a precise and detailed overview of sites that are protected as world heritage. Over time, work in this area has become more formalized and precise. The army drafted a manual, in conjunction with the Directorate of Legal Affairs, and this was then taken up and distributed by UNESCO.<sup>23</sup> So this is not a new issue, but our approach to the subject has been enhanced by the availability of a more detailed catalogue of the sites to be protected. There is also the "no strike list". These are lists of sites that must not be subjected to strikes, in accordance with the provisions of the Hague Conventions and Additional Protocol II (AP II).<sup>24</sup>

**Sandrine Barbier:** The Geneva Conventions stipulate that cultural property must be protected, and this has always been a concern. But following the decision to ratify the Second Protocol of the Hague Convention, this protection has been improved.

21 For further information, see the INTM Group website, available at: <https://intm.com/en/about-us/>.

22 See Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, 26 March 1999 (entered into force 9 March 2004), available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/590>.

23 See: Roger O'Keefe *et al.*, *Protection of Cultural Property: Military Manual*, UNESCO, Paris, 2016, available at: <https://unesdoc.unesco.org/ark:/48223/pf0000246633>. Secretariat of the 1954 Hague Convention and Its Two (1954 and 1999) Protocols, *List of Cultural Property under Enhanced Protection*, available at: [www.unesco.org/culture/1954convention/pdf/Enhanced-Protection-List-2017\\_EN.pdf](http://www.unesco.org/culture/1954convention/pdf/Enhanced-Protection-List-2017_EN.pdf).

24 See AP II, Art. 16, available at: <https://tinyurl.com/39988jrh>.

***You spoke of “non-State armed groups that use terrorist methods”. What is your position on the tendency to designate certain armed groups as “terrorists”?***

**Claire Legras:** There is no ambiguity on that. We must distinguish between communication and a certain number of simplifications on the one hand, and on the other hand, the vision – which is very clear – that both the minister of the armed forces and the French armed forces have of the framework in which their actions take place. The entire operational chain of the Ministry of the Armed Forces is part of a framework that it masters and applies. These armed forces are intervening in a situation of armed conflict and are confronting structured armed groups with a high degree of organization and military objectives. We are very careful how we interpret the concept of “direct participation in hostilities”. This is not only the framework of thought of the French armed forces, but also the framework of their action. Terrorism is a method of action. Our intervention in Mali is not intended to make us the auxiliaries of criminal investigators who go after terrorists with a view to prosecuting them.

**Camille Faure:** To complete the picture: this also makes it possible to territorialize the armed conflict. This is not a war without borders, simply because non-State armed groups are resorting to terrorist modes of action. Rather, it is a non-international armed conflict, identified as such after a detailed legal assessment of hostilities with non-State armed groups, within a given country, or several countries in the case of an exported armed conflict – a categorization that presupposes the agreement of the territorially competent State to the use of force by a foreign army such as that of France, and an operational continuum of hostilities within borders. This is fundamental.

**Claire Legras:** As far as the non-international armed conflict against the so-called Islamic State group in the region is concerned, I think our logic of exported non-international armed conflict is even more rigorous in terms of territorialization of action, which is also very important.

***France is very committed to the fight against impunity. When you see breaches of IHL, within your forces or those of your partners – State or non-State – what happens? Are there specific mechanisms in place?***

**Philippe Lejeune:** As far as the French armed forces are concerned, there are mechanisms for holding military personnel individually responsible, at both the disciplinary and criminal levels. Conduct constituting a war crime is also a crime under French criminal law.<sup>25</sup> French criminal law gives French courts jurisdiction to deal with such offences, whether committed in France or elsewhere.

<sup>25</sup> See France, Code Pénal, Livre IV bis, “Des crimes et des délits de guerre”, Chap. I, “Des différents crimes et délits de guerre (Articles 461-1 à 461-31)”, available at: <https://tinyurl.com/ywa8wh9t>.



The French Code of Military Justice<sup>26</sup> also sets out a specific criminal liability regime for members of the French armed forces. Under this system, any member of the French army or person under the authority of the French army who commits an offence of any kind outside France is subject to the ordinary courts specializing in military matters.<sup>27</sup> This is also an important point to note, because it means that any member of the French armed forces who commits an offence of any kind while abroad is liable to prosecution.

In addition, in order to help establish the truth, Article 40 of the French Code of Criminal Procedure<sup>28</sup> requires any constituted authority, public officer or civil servant who acquires knowledge of a crime or misdemeanour in the performance of their duties to inform the public prosecutor without delay. Under this provision, the military authorities are required to report to the judicial authorities any offences of which they may become aware in the performance of their duties, in order to facilitate their prosecution.

Compliance with legal standards is very much a factor in the planning and conduct of operations. We have operational legal advisers at all levels of command, to ensure that the law applicable to operations is taken into account. When a military commander is vested with the authority to use force or coercion, the headquarters of the armed forces appoints an operational legal adviser to advise them on the application of IHL, in accordance with Article 82 of AP I.<sup>29</sup>

Finally, we have provost marshal detachments deployed to the chain of command at the operational level, in particular to record offences, gather evidence and search for perpetrators. The provost marshals act independently, under the direction of the judicial authorities. In parallel, commanders may initiate a command investigation, which is also independent and is conducted whenever there is credible information regarding a violation of IHL.

I believe that this comprehensive system allows for an effective response to any violation of either the norms of international law or the specific instructions and directives that commanders issue to military personnel.

26 France, Code de Justice Militaire, last updated 1 January 2021, available at: [www.legifrance.gouv.fr/codes/id/LEGITEXT000006071360/](http://www.legifrance.gouv.fr/codes/id/LEGITEXT000006071360/).

27 *Ibid.*, Art. L 121-1: "Outside the territory of the Republic and subject to international commitments, the Paris courts specializing in military matters hear offences of any kind committed by members of the armed forces or persons attached to the army by virtue of an authorization" (*Review's* translation).

28 See the French Code of Criminal Procedure, Article 40, which states: "If the public prosecutor considers that the facts brought to his attention in application of the provisions of Article 40 constitute an offence committed by a person whose identity and domicile are known and for whom no legal provision prevents the initiation of public action, he shall decide whether it is appropriate to: 1. Initiate proceedings. 2. Implement an alternative procedure to prosecution in application of the provisions of article 41-1, 41-1-2 or 41-2. 3. Close the case without further action if the particular circumstances related to the commission of the facts justify such action" (*Review's* translation).

29 See Article 82 of Additional Protocol I, concerning legal advisers in the armed forces. See also Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: Rules, Cambridge University Press, Cambridge, 2005, Rule 141, available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1\\_rul\\_rule141](https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1_rul_rule141).

**Camille Faure:** To complete the picture, the SOFAs that govern the status of military personnel in these operations generally provide for the status of “experts on mission” in accordance with the 1946 UN Convention on the Privileges and Immunities of the Specialized Agencies,<sup>30</sup> ensuring that they enjoy immunity from prosecution. However, they are not exempt from the jurisdiction of the French judicial authorities. What this arrangement means is that they can only be prosecuted by the French authorities.

Our response to violations of IHL by our partners is very discreet, by definition. The commander of the French force will speak to his counterparts, requesting that these actions cease. Such incidents may also be the subject of local diplomatic representations, or exchanges between ministers, to emphasize that such violations are unacceptable and must cease immediately, and that the perpetrators must be prosecuted. In other words, our reactions to violations take more than one form. The French forces have very clear instructions to report any abuses or violations, and to react themselves. Such behaviour may result in our terminating cooperation, for instance.

**Philippe Lejeune:** When joint military operations take place that involve the French armed forces and partner armed forces, the French armed forces have precise instructions for responding to any abuses they may witness. If it discovers material evidence of abuses or corroborating testimony regarding the commission of abuses, the Barkhane force is also required to inform the local and national authorities of the State concerned and the UN human rights observers. Here again, it seems to me that the armed forces are taking a very active approach to ending breaches of IHL and ensuring that the perpetrators are punished.

*If violations are committed, whether by partner State forces or by allied non-State armed groups, could this lead to criminal liability for the French armed forces?*

**Camille Faure:** In order to address this issue, we need to examine the authority of French forces over these forces. In reality, although these operations may well be planned jointly, no French commander ever has authority over these forces. There is therefore no chain of criminal responsibility such as exists in the relationship between a commander and a subordinate. This being so, it would be difficult to attach criminal responsibility under French law. I think that the main point, to quote General Bontégeat’s words at the Directorate of Legal Affairs’ 20th anniversary symposium,<sup>31</sup> is that the French soldier’s backpack contains many things, and one of those things is a set of legal armour. This means that he

30 Convention on the Privileges and Immunities of the Specialized Agencies, 21 November 1947 (entered into force 2 December 1948), available at: [https://treaties.un.org/doc/Treaties/1946/12/19461214%2010-17%20PM/Ch\\_III\\_1p.pdf](https://treaties.un.org/doc/Treaties/1946/12/19461214%2010-17%20PM/Ch_III_1p.pdf).

31 General Henri Bontégeat, former Chief of Staff of the French armed forces, “Droit et excellence de l’armée française”, presentation given at “Le droit et les armées: Glaive, bouclier ou entrave”, colloquium on the

is required to comply with international law, and this is one of the means of action of the force – it is what gives it its legitimacy, and it contributes to the success of operations. It is an integral part of the culture of the French armed forces, and something to which we pay careful attention.

**Philippe Lejeune:** This is a factor in all our planning and operations. It is not simply an effect to be achieved, but a framework within which commanders plan their operations.

*How do you view cooperation with the ICRC in the field? How do you see its action?*

**Claire Legras:** We see the ICRC as a privileged interlocutor. We maintain a dialogue with the ICRC, at both the local and central levels, in a continuous and complementary manner. The French armed forces and their commanders are very grateful for the work of the ICRC. Military leaders know the ICRC, know that it is a reliable and demanding body, and are familiar with its work in the field. As you know, the armed forces are constantly reflecting on the meaning of their action and seek demanding partners who can provide them with additional insights. For them, this dialogue is always fruitful and it forces them to excellence.

In the field, relationships remain very strong despite changes in personnel, both in Mali and in other theatres. At the central level, at our level and at that of the minister, the same applies. For us, the humanitarian work the ICRC carries out (in accordance with its mandate) is essential. That is why we have given the ICRC broad access to those individuals currently held by the Barkhane force. We have negotiated with our partners in the region, in published and unpublished documents, the ICRC's right of access to captured and transferred persons as a precondition for the deployment of a French operational military detachment. This is part of the French system and is an essential back-up.

**Philippe Lejeune:** Military leaders completely accept the role of the ICRC as guardian of the Geneva Conventions, to the point that we almost always ask the ICRC's opinion regarding the procedures implemented by the French armed forces. When local representatives of the ICRC come to discuss the appropriateness or absence of certain material or procedural safeguards that the French armed forces grant to persons they detain, their observations are carefully examined and taken into account.

***What are the main consequences of the disengagement of French forces in Mali with regard to the implementation of and respect for IHL? For example, with regard to the treatment of detainees?***<sup>32</sup>

The disengagement of France and its operational partners from Mali is in principle intended to take place within the framework of the SOFAs for Operation Serval and the Takuba Task Force.<sup>33</sup>

The additional protocol to the Serval SOFA, defining the status of the non-French detachments of the Takuba Task Force, in the form of an exchange of letters signed on 6 and 10 March 2020 between the governments of France and of Mali, includes similar stipulations for the benefit of our operational partners, since it “will produce its effects until the end of the missions of the Takuba Task Force and its complete and permanent departure from the territory of the Republic of Mali”.<sup>34</sup>

An intensive dialogue must therefore be maintained with the Malian authorities and all our operational partners in order to guarantee the coherence of the disengagement of all Barkhane forces, including those of the Takuba Task Force.

Furthermore, the preservation of the robust legal framework, established in light of the lessons learned from operations in Afghanistan and the jurisprudence of the European Court of Human Rights, relating to the conditions of transfer, guarantee of rights and follow-up of captured persons, is a point that will receive careful attention after the departure of the French detachment.

In our analysis, the commitments to respect IHL and international human rights law made by the Malian side concerning all persons transferred to it under the Serval SOFA are also based on the universal international instruments to which it is a party independently of the Serval SOFA. Our objective will also be to reiterate that the death penalty will not be applied and that no one will be extradited without our agreement, and to secure and organize the continuation of visits of persons handed over to the Malian authorities, respecting the role of the ICRC under common Article 3.

32 This question was added in February 2022 to reflect current events.

33 Under the terms of the 4th paragraph of the preamble and Article 12 of the Serval SOFA, above note 4, its stipulations are applicable “for the duration of [the] deployment [of the French detachment] on the territory of the Republic of Mali”, and are effective “until the end of the missions of the French detachment and its complete and final return to the territory of the French Republic” (*Review’s* translation).

34 *Review’s* translation.

# Challenges to implementation of humanitarian access norms in the Sahel

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## Abstract

*While the rules of international humanitarian law (IHL) on humanitarian access are clear, implementing them at the national level can become challenging. To ensure full respect for those rules, States must strike a balance between preserving the security of the civilian population and humanitarian organizations and ensuring that people have access to goods and services that enable the full enjoyment of their rights. This article seeks to show how the IHL rules governing humanitarian access apply in the context of the Sahel region of Africa. First, it describes the multiplicity of armed actors that are present in the Sahel and the humanitarian situation in this region. Next, it addresses the legal framework applicable to humanitarian access under IHL applicable in non-international armed conflicts. The article then examines the measures that have been taken by the States of the Sahel to protect the civilian population and humanitarian organizations, such as the resort to declaration of states of emergency and to armed escorts. It is shown that these measures can hinder the delivery of impartial humanitarian assistance. Finally, the article describes some creative solutions that have been put forward by Sahelian States to facilitate humanitarian access. Examples of these include the creation of coordination mechanisms to foster dialogue on humanitarian access where all concerned actors are invited to participate; the adoption of domestic legal*

\* The views expressed in this article do not necessarily reflect the point of view of the ICRC. The author would like to thank Jelena Nikolic, Nour Zaynab Assaf and Nicolas Von Arx for their valuable comments. This article was written when the author was Operational Legal Adviser at the Delegation of the ICRC in Niger. In memoriam Tanguy De Blauwe.

*frameworks related to humanitarian access through which this access is proclaimed and its violation sanctioned; and the recognition of humanitarian exemptions in counterterrorism laws.*

**Keywords:** humanitarian access, the Sahel, international humanitarian law, Kampala Convention, internally displaced persons, state of emergency, armed escorts, international human rights law, humanitarian assistance, humanitarian exemptions.

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## Introduction

From the objective and purpose of international humanitarian law (IHL), one may deduce that all parties to an armed conflict are under an obligation to ensure that the essential needs of the population in areas under their control are met.<sup>1</sup> Currently, it is particularly difficult to achieve this in the Sahel region of Africa, on account of factors that include a worsening of the humanitarian consequences of the armed conflicts in the region, the financial limitations of the region's countries, and logistical and geographical constraints. Climate change—the effects of which are being acutely felt in the Sahel—and the COVID-19 pandemic are exacerbating these difficulties.

States and armed groups must therefore allow neutral and impartial humanitarian actors to access areas where people are in need. However, the deteriorating security situation in the Sahel, together with the presence of large numbers of armed actors (State and non-State), is having a negative effect on basic public services for civilians, aid provision by humanitarian organizations, and the access and security of those organizations' staff.

The presence of multiple armed actors has saturated the Sahel and poses a real challenge for States and humanitarians aiming to help the civilian population deal with the consequences of armed conflict in the region—the exponential increase in the number of internally displaced persons (IDPs) and refugees being the most glaring example. The needs of the population are growing, and yet the humanitarian space seems to be shrinking.

This situation has led States to take measures to protect their territories, people and property, such as declaring a state of emergency or requiring humanitarian organizations to accept armed escorts. These measures have made it more difficult to apply the rules of IHL relating to humanitarian access—namely, the obligation to protect and respect personnel and objects used in humanitarian relief operations, access by victims of armed conflict to such relief, and the freedom of movement of humanitarian personnel.

1 International Committee of the Red Cross (ICRC), *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Geneva, 31 October 2015, p. 27, available at: [www.icrc.org/en/document/international-humanitarian-law-and-challenges-contemporary-armed-conflicts](http://www.icrc.org/en/document/international-humanitarian-law-and-challenges-contemporary-armed-conflicts) (all internet references were accessed in March 2022).



States in the Sahel region must therefore strike a balance between ensuring the protection of all those on their territory, on the one hand, and allowing free access for humanitarian aid, on the other. There is a need for pragmatic solutions that reconcile these two objectives.

This article seeks to show how the IHL rules governing humanitarian access apply in the context of the Sahel. From a description of the actors involved, we will see that there are a myriad of parties active in the region, including armed and security forces, non-State armed groups, and humanitarian and development agencies. This poses particular challenges regarding coordination between States and humanitarian organizations. We shall then describe the humanitarian situation in the region and review the legal regime relating to humanitarian access. Finally, we shall see that the legal responses of States can sometimes impede access and sometimes facilitate it, thus demonstrating the tensions and dilemmas that must be resolved regarding the preservation of security and the provision of humanitarian assistance to everyone in need.

## The multiplicity of armed actors in the Sahel

States have reacted to the proliferation of armed groups<sup>2</sup> in the Sahel<sup>3</sup> over the past decade by setting up military groupings to pool their forces and respond to the new security threat. The two main military groupings are the Multinational Joint Task Force, based on the armed forces of the States bordering the Lake Chad Basin,<sup>4</sup> and the G5 Sahel Joint Force,<sup>5</sup> composed of five Sahelian States. France has launched Operation Barkhane, with the aim of supporting the armed forces of the countries of the Sahel-Saharan strip and strengthening the coordination of international military resources.<sup>6</sup> Operation Barkhane and the G5 Sahel Joint

2 According to the European Council on Foreign Relations, there were sixteen armed groups in Mali in 2019. See Andrew Lebovich, “Mapping Armed Groups in the Sahel and Mali”, European Council on Foreign Relations, available at: [https://ecfr.eu/special/sahel\\_mapping#introduction](https://ecfr.eu/special/sahel_mapping#introduction). Some of these groups had the capacity to operate on the territory of several States at once, particularly in the tri-border region between Burkina Faso, Mali and Niger. A similar situation exists in the Lake Chad Basin region, where some armed groups have the capacity to conduct military operations on the territories of several States in the region, including Chad, Niger and Nigeria, plus Cameroon.

3 The “Sahel”, in the geographical sense, includes all the territory of the States that are crossed by the Sahel-Saharan strip, from Senegal to Eritrea. This article only examines humanitarian access in the Central Sahel zone, which covers parts of Burkina Faso, Mali and Niger, plus the Lake Chad Basin region, Chad and Nigeria.

4 Cameroon, Chad, Niger and Nigeria. This force was created by the member States of the Lake Chad Basin Commission. Benin is also contributing troops. The mandate of this force is authorized and renewed by the Peace and Security Council of the African Union. That mandate was renewed until 31 January 2022 by a communiqué of the Peace and Security Council of the African Union dated 18 January 2021 (Communiqué PSC/PR/COMM.(CMLXXIII)).

5 The G5 member States are Burkina Faso, Chad, Mauritania, Niger and Nigeria. The G5 Sahel was established by the Convention Establishing the G5 Sahel, signed in Nouakchott on 19 December 2014. The G5 Sahel Joint Force was established in 2017.

6 Operation Barkhane was launched on 1 August 2014. It covers all the member States of the G5 Sahel, but France has announced that it will withdraw progressively from the territory of Mali in 2022. See Ministère

Force have set up a joint command centre to further the latter aim.<sup>7</sup> In a political declaration dated 27 March 2020, a number of European States created the Takuba Task Force, composed of special forces personnel, which was to be placed under the command of the operational commander of Operation Barkhane.<sup>8</sup> This increased European military presence and closer coordination with the G5 Sahel Joint Force was decided at the Pau Summit,<sup>9</sup> held on 13 January 2020, which brought together the heads of State of the G5 Sahel member countries plus France. This summit also led to the establishment of the Sahel Coalition, which aims to strengthen strategic and political cooperation in the region between all European Union (EU) member States and those of the G5 Sahel.<sup>10</sup> Other political alliances have emerged to contribute to the stabilization and development of the Sahel region, including the Sahel Alliance and the Security and Stability Partnership in the Sahel.<sup>11</sup>

The United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), established by United Nations (UN) Security Council Resolution 2100, has been operating in the country since 2013.<sup>12</sup> MINUSMA is supporting the G5 Sahel Joint Force by providing logistical and financial support in several areas.<sup>13</sup> European States and the United States also have national contingents in the Sahelian States; the role of these contingents is to provide training and equipment to the defence and security forces of the region's

des Armées, "Opération Barkhane", available at: [www.defense.gouv.fr/operations/bande-sahelo-saharienne/operation-barkhane](http://www.defense.gouv.fr/operations/bande-sahelo-saharienne/operation-barkhane).

- 7 État-Major des Armées, "Barkhane: Le Mécanisme de Commandement Conjoint, pierre angulaire de la coordination entre la force conjointe du G5 Sahel et la force Barkhane", 4 June 2020, available at: <https://archives.defense.gouv.fr/operations/afrique/bande-sahelo-saharienne/operation-barkhane/breves/barkhane-le-mecanisme-de-commandement-conjoint-pierre-angulaire-de-la-coordination-entre-la-force-conjointe-du-g5-sahel-et-la-force-barkhane>.
- 8 Government of Sweden *et al.*, "Task Force *Takuba*: Political Statement by the Governments of Belgium, the Czech Republic, Denmark, Estonia, France, Germany, Mali, Niger, the Netherlands, Norway, Portugal, Sweden and the United Kingdom", available at: [www.government.se/495ef1/globalassets/government/dokument/forsvarsdepartementet/2020/political-statement-task-force-takuba.pdf](http://www.government.se/495ef1/globalassets/government/dokument/forsvarsdepartementet/2020/political-statement-task-force-takuba.pdf).
- 9 Pau Summit, "Déclaration conjointe des Chefs d'État", 13 January 2020, available at: [www.elysee.fr/emmanuel-macron/2020/01/13/sommet-de-pau-declaration-conjointe-des-chefs-detat](http://www.elysee.fr/emmanuel-macron/2020/01/13/sommet-de-pau-declaration-conjointe-des-chefs-detat). The Pau Summit was followed by the Nouakchott Summit of 30 June 2020, at which the six heads of State met to take stock of the roadmap agreed upon at the Pau Summit. Nouakchott Summit, "Communiqué final du sommet de Nouakchott pour le suivi de la feuille de route du sommet de Pau", 30 June 2020, available at: [www.g5sahel.org/communiqué-final-du-sommet-de-nouakchott-pour-le-suivi-de-la-feuille-de-route-du-sommet-de-pau/](http://www.g5sahel.org/communiqué-final-du-sommet-de-nouakchott-pour-le-suivi-de-la-feuille-de-route-du-sommet-de-pau/).
- 10 The Sahel Coalition aims to combat armed terrorist groups, strengthen the capacity of the armed forces of the States in the region, support the return of the State and administrations to the territory, and assist in development. See European Council, "Joint Declaration of the Members of the European Council with the Member States of the G5 Sahel", 28 April 2020, available at: [www.consilium.europa.eu/en/press/press-releases/2020/04/28/joint-declaration-of-the-members-of-the-european-council-with-the-member-states-of-the-g5-sahel/](http://www.consilium.europa.eu/en/press/press-releases/2020/04/28/joint-declaration-of-the-members-of-the-european-council-with-the-member-states-of-the-g5-sahel/).
- 11 European Council, "Sahel Partnership Action Plan", 2019, available at: [www.consilium.europa.eu/media/40533/sahel-partnership-action-plan.pdf](http://www.consilium.europa.eu/media/40533/sahel-partnership-action-plan.pdf).
- 12 UNSC Res. 2100, 25 April 2013, available at: <http://unscr.com/en/resolutions/2100>.
- 13 *Joint Force of the Group of Five for the Sahel: Report of the Secretary-General*, UN Doc. S/2020/1074, 2 November 2020, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/286/22/pdf/N2028622.pdf>.

countries.<sup>14</sup> The EU has three military and security cooperation missions, two in Mali and one in Niger.<sup>15</sup> Their mandate is to enhance the capacity of the armed and security forces of these two countries and the G5 Sahel Joint Force. Some authors have used the expression “security bottleneck”<sup>16</sup> to describe the proliferation of foreign armed and security forces in the Sahel. In 2019 there were 35,823 military, police and civilian personnel participating in national and multinational external and counterterrorism operations in the Sahel and Lake Chad region, according to the Stockholm International Peace Research Institute (SIPRI).<sup>17</sup> At the end of 2020, the possibility of deploying the Economic Community of West African States (ECOWAS) Stand-By Force to the Sahel had been under consideration for several months.<sup>18</sup>

The proliferation of armed groups in the Sahel is linked to several factors, such as the struggles of independence movements in northern Mali and the situation in Libya. But there is also the interaction between these factors and other complex phenomena such as tensions between nomadic herding communities and sedentary farmers, particularly in the tri-border region between Burkina Faso, Mali and Niger.<sup>19</sup> Some of these groups are calling for an independent Tuareg State in northern Mali, while others are more influenced by pan-Islamic movements and claim to be part of either Al-Qaeda or the so-called Islamic State group.<sup>20</sup> Such

14 According to the Belgian Ministry of Defence, there was a contingent of about 100 Belgian soldiers in Niger in 2020, whose mission was to train the defence and security forces of Niger. See Belgian Ministry of Defence, “Notre mission: Niger”, available at: [www.mil.be/fr/nos-missions/niger/](http://www.mil.be/fr/nos-missions/niger/). Italy has also set up a military mission to support the armed and security forces in Niger (MISIN), and Germany was present in several Sahelian countries. See Bernardo Venturi and Nana Alassane Toure, *Out of the Security Deadlock: Challenges and Choices in the Sahel*, 8 June 2020, pp. 24–25, available at: [www.iai.it/en/publicazioni/out-security-deadlock-challenges-and-choices-sahel](http://www.iai.it/en/publicazioni/out-security-deadlock-challenges-and-choices-sahel). The United States completed construction of an air base in Agadez, Niger, in 2020.

15 The European Union Training Mission in Mali (EUTM) is a training mission for the Malian armed forces, established in 2013 as part of the EU’s Common Security and Defence Policy. See EUTM, “Factsheet”, available at: <https://eutmmali.eu/factsheet/>. The European Union Capacity Mission (EUCAP) Sahel Mali is a civilian mission of the EU that was launched in 2015 to support the Malian security forces (police, gendarmerie and national guard). See EUCAP Sahel Mali, “About EUCAP Sahel Mali”, available at: [www.eeas.europa.eu/node/410662\\_fr?s=331#10107](http://www.eeas.europa.eu/node/410662_fr?s=331#10107). EUCAP Sahel Niger is an EU civilian mission created in 2012 to support Niger in the fight against terrorism and organized crime. See EUCAP Sahel Niger, “Partnership for Security in the Sahel”, fact sheet, available at: <https://eucap-sahel.eu/wp-content/uploads/2020/10/EUCAP-Sahel-Niger-Factsheet-EN-low-resolution.pdf>.

16 International Crisis Group, *Finding the Right Role for the G5 Sahel Joint Force*, Africa Report No. 258, 12 December 2017, available at: [www.crisisgroup.org/africa/west-africa/burkina-faso/258-force-du-g5-sahel-trouver-sa-place-dans-lembouteillage-securitaire](http://www.crisisgroup.org/africa/west-africa/burkina-faso/258-force-du-g5-sahel-trouver-sa-place-dans-lembouteillage-securitaire).

17 SIPRI, *SIPRI Yearbook 2020: Armaments, Disarmament and International Security*, 2020.

18 ECOWAS, “Communiqué final de la session extraordinaire de la Conférence des Chefs d’État et de Gouvernement sur le Terrorisme”, Ouagadougou, 14 September 2019, available at: <https://ecowas.int/communique-final-de-la-session-extraordinaire-de-la-conference-des-chefs-detat-et-de-gouvernement-de-la-communaute-economique-des-etats-de-lafrique-de-louest-cedeao-sur-le/?lang=fr>.

19 On the historical evolution of the various rebellions in Mali and Niger and the peace initiatives that are under way, see Yvan Guichaoua and Matthieu Pellerin, *Making Peace, Building the State: Relations between Central Government and the Sahelian Peripheries in Niger and Mali*, Études de l’IRSEM No. 51, March 2018, available at: [www.irsem.fr/data/files/irsem/documents/document/file/2442/Etude\\_IRSEM\\_n51\\_2018.pdf](http://www.irsem.fr/data/files/irsem/documents/document/file/2442/Etude_IRSEM_n51_2018.pdf).

20 On the various alliances between these groups and their affiliation with Al-Qaeda or the Islamic State group, see Matthieu Pellerin, *Armed Violence in the Sahara: Are We Moving From Jihadism to*

groups include the National Movement for the Liberation of Azawad, the Movement for the Salvation of Azawad, the Imghad Tuareg Self-Defence Group and Allies, the Movement for Oneness and Jihad in West Africa, Ansar Dine, the Support Group for Islam and Muslims, Al-Qaeda in the Islamic Maghreb, Islamic State in the Greater Sahara, and Ansar ul Islam.<sup>21</sup> Various splinter groups from the Group of the People of Sunnah for Preaching and Jihad<sup>22</sup> are operating or exercising an influence in the Sahelian part of the Lake Chad Basin region.

Armed conflicts in the central Sahel and the Sahelian part of the Lake Chad region involve protracted fighting between States and armed groups and are usually regional.<sup>23</sup> These conflicts are taking place on the territories of multiple States, which are fighting those groups—generally together.<sup>24</sup> Some armed conflicts involve armed groups fighting each other. These armed groups may also join forces to fight against certain States or other armed groups and hence satisfy the criteria for non-international armed conflicts regarding intensity of violence.<sup>25</sup> Such groups have demonstrated their ability to organize themselves and to conduct military operations on the territories of several States at once. Thus, these conflicts all meet the criteria set out in international law for non-international armed conflicts—that armed groups be sufficiently organized and that they engage in protracted confrontations that reach a minimum threshold of intensity, either against States or among themselves.<sup>26</sup>

*Insurgency?*, Études de l'IFRI, November 2019, available at: [www.ifri.org/en/publications/etudes-de-lifri/armed-violence-sahara-are-we-moving-jihadism-insurgency](http://www.ifri.org/en/publications/etudes-de-lifri/armed-violence-sahara-are-we-moving-jihadism-insurgency).

- 21 On the emergence of these groups in Mali and the expansion of their actions to the Liptako Gourma region, see International Crisis Group, *The Niger-Mali Border: Subordinating Military Action to a Political Strategy*, Africa Report No. 261, 12 June 2018, available at: [www.crisisgroup.org/africa/west-africa/mali/261-frontiere-niger-mali-mettre-loutil-militaire-au-service-dune-approche-politique](http://www.crisisgroup.org/africa/west-africa/mali/261-frontiere-niger-mali-mettre-loutil-militaire-au-service-dune-approche-politique).
- 22 This is a translation of the Arabic name of the group Jama'atu Ahlis-Sunnah'awati Wal Jihad, also commonly known as Boko Haram—a name rejected by the group itself. On the emergence of this group, see Marc-Antoine Pérouse de Montclos, *L'Afrique: Nouvelle frontière du djihad?*, La Découverte, Paris, 2018.
- 23 The existence of armed conflict in the Sahel has been affirmed in several recent UN reports: *Children and Armed Conflict: Report of the Secretary-General*, UN Doc. A/74/845–S/2020/525, 9 June 2020, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/117/04/pdf/N2011704.pdf>; *Children and Armed Conflict in Mali: Report of the Secretary-General*, UN Doc. S/2020/1105, 11 November 2020, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/307/85/pdf/N2030785.pdf>. The Geneva Academy of International Humanitarian Law and Human Rights has set up a portal to provide an independent and impartial classification of armed conflicts in the world. See its evaluation of the situations of violence in Burkina Faso, Chad, Mali and Niger, available at: [www.rulac.org](http://www.rulac.org).
- 24 The UN Secretary-General noted in his report on children in armed conflict in Nigeria that “[r]egions in countries bordering north-east Nigeria, namely the Far North Region of Cameroon, the Diffa Region of the Niger and the Lac Province of Chad, were also affected by persistent armed assaults by the armed group” see *Children and Armed Conflict in Nigeria: Report of the Secretary-General*, UN Doc. S/2020/652, 6 July 2020, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/172/67/pdf/N2017267.pdf>.
- 25 According to a recent interpretation, military action by multiple armed groups fighting together against a common adversary can be aggregated and thus reach the threshold of intensity required to classify a situation of violence as a non-international armed conflict. See Jelena Nikolic, Thomas de Saint Maurice and Tristan Ferraro, “Aggregated Intensity: Classifying Coalitions of Non-State Armed Groups”, *Humanitarian Law and Policy Blog*, 7 October 2020, available at: <https://blogs.icrc.org/law-and-policy/2020/10/07/aggregated-intensity-classifying-coalitions-non-state-armed-groups/>.
- 26 The ICRC defines non-international armed conflict as follows: “Non-international armed conflicts are protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State [party to the Geneva

The participation of State and non-State actors in acts of collective violence, or their mere presence in the Sahel, does not automatically make them a party to an armed conflict. To conclude that a non-international armed conflict exists, one must verify in each case that the above two conditions posed by IHL are satisfied. The International Committee of the Red Cross (ICRC) carries out this exercise, analyzing each situation of violence on a case-by-case basis. This allows it to identify the legal basis on which it will base its efforts to protect and assist those in need of its humanitarian action. The ICRC communicates its assessment of the situation bilaterally and confidentially to the parties to the conflict, but it may also decide not to do so, if that would be in the interests of the victims of a conflict.<sup>27</sup> Finally, the organization may decide to communicate publicly on a particular situation.<sup>28</sup>

## The humanitarian situation in the Sahel

Armed conflicts have severely affected civilians in certain countries of the Sahel. A Ministerial Roundtable on the Central Sahel, held in Copenhagen on 20 October 2020 and organized by Denmark, Germany, the EU and the UN, concluded that

Africa's Central Sahel is among the world's fastest growing humanitarian crises. The scale and severity of humanitarian needs in the three countries are unprecedented, with 13.4 million people affected by forced displacement, food insecurity and reduced access to essential basic services.<sup>29</sup>

The UN Office for the Coordination of Humanitarian Affairs (OCHA) estimated that the number of IDPs in the Central Sahel region rose from 70,000 to 1.6 million between 2018 and 2020.<sup>30</sup> Food insecurity was affecting 7.4 million.<sup>31</sup> The worsening situation of the civilian population was also having a major impact in

Conventions]. This armed confrontation must reach a minimum level of *intensity* and the parties involved in the conflict must show a *minimum of organisation* ". See ICRC, *How Is the Term "Armed Conflict" Defined in International Humanitarian Law?*, Geneva, 17 March 2008, available at: [www.icrc.org/en/doc/resources/documents/article/other/armed-conflict-article-170308.htm](http://www.icrc.org/en/doc/resources/documents/article/other/armed-conflict-article-170308.htm) (emphasis in original).

27 Sylvain Vit , "Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations", *International Review of the Red Cross*, Vol. 91, No. 876, 2009, available at: <https://international-review.icrc.org/articles/typology-armed-conflicts-international-humanitarian-law-legal-concepts-and-actual>. See also ICRC, "Internal Conflicts or Other Situations of Violence – What is the Difference for Victims?", 10 December 2012, available at: [www.icrc.org/en/doc/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm](http://www.icrc.org/en/doc/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm).

28 For a recent example, see ICRC, "Colombia: Five Armed Conflicts – What's Happening?", 30 January 2019, available at: [www.icrc.org/en/document/colombia-five-armed-conflicts-whats-happening](http://www.icrc.org/en/document/colombia-five-armed-conflicts-whats-happening).

29 The three countries concerned are Burkina Faso, Mali and Niger. UN Office for the Coordination of Humanitarian Affairs (OCHA), "Virtual Ministerial Roundtable on the Humanitarian Crisis in the Central Sahel: Co-Chairs' Summary", available at: [www.unocha.org/sites/unocha/files/Central%20Sahel%20Ministerial%20Round%20Table%20-%20Co-chairs%20summary\\_Final.pdf](http://www.unocha.org/sites/unocha/files/Central%20Sahel%20Ministerial%20Round%20Table%20-%20Co-chairs%20summary_Final.pdf).

30 OCHA, "Central Sahel Crisis: Key Figures as of 15 October 2020", 15 October 2020, available at: [www.unocha.org/sites/unocha/files/Central%20Sahel%20facts\\_figures\\_20201015.pdf](http://www.unocha.org/sites/unocha/files/Central%20Sahel%20facts_figures_20201015.pdf).

31 See the document prepared by OCHA for the ministerial round table on the Central Sahel: OCHA, *Central Sahel: Revised Needs and Requirement Overview*, October 2020, available at: [www.unocha.org/sites/unocha/files/RNRO%20CentralSahel%20Oct%202020\\_EN%20Web.pdf](http://www.unocha.org/sites/unocha/files/RNRO%20CentralSahel%20Oct%202020_EN%20Web.pdf).

the Sahelian part of the Lake Chad Basin region, where some 2.7 million people had fled their homes, including 2.4 million IDPs and 292,000 Nigerian refugees.<sup>32</sup> These population displacements were closely linked to increased hostilities between armed groups and between armed groups and State armed and security forces. These armed conflicts are said to have claimed the lives of several thousand people among the defence and security forces, armed groups and the civilian population.<sup>33</sup> According to the UN Office for West Africa and the Sahel, more than 4,000 deaths from violence were reported in 2019, up from 770 deaths in 2016.<sup>34</sup> At least 4,660 people died in the Central Sahel during the first half of 2020, according to an estimate by the Armed Conflict Location and Event Data Project.<sup>35</sup>

One of the many consequences of the increase in violence is that access to education for children has been severely affected. For example, attacks on schools and teachers are reported to have resulted in the closure of more than 4,000 schools in the Central Sahel between 2016 and 2020.<sup>36</sup> Children are also subject to recruitment by armed actors.<sup>37</sup>

In addition to the humanitarian consequences of armed conflict, the Sahel is experiencing the effects of climate change, forming what the ICRC has described as an “explosive mix”.<sup>38</sup> In a 2020 report addressing the combined effects of armed conflict, climate and environmental crisis, the ICRC concluded that “[c]ountries in situations of armed conflict are disproportionately affected by climate variability and extremes. This is in part because of their geographical location, but mostly because conflicts and their consequences limit the adaptive capacity of people, systems and institutions.”<sup>39</sup>

The civilian populations of the Sahel region are suffering from the consequences and cumulative effects of armed conflict and climate change, the

32 *Activities of the United Nations Office for West Africa and the Sahel: Report of the Secretary-General*, UN Doc. S/2020/585, 24 June 2020, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/151/70/pdf/N2015170.pdf?OpenElement>.

33 The UN Secretary-General noted in a report to the Security Council that armed groups had attacked the armed and security forces in Burkina Faso, Chad, Mali and Niger. See *Joint Force of the Group of Five for the Sahel: Report of the Secretary-General*, UN Doc. S/2020/373, 8 May 2020, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/107/01/pdf/N2010701.pdf>.

34 “‘Unprecedented Terrorist Violence’ in West Africa, Sahel Region”, *UN News*, 8 January 2020, available at: <https://news.un.org/en/story/2020/01/1054981>.

35 ICRC, “Central Sahel: Spike in Violence Leads to Higher Deaths, More than 1 Million Fleeing Homes”, 14 September 2020, available at: [www.icrc.org/en/document/central-sahel-spike-violence-leads-higher-deaths-more-1-million-fleeing-homes](http://www.icrc.org/en/document/central-sahel-spike-violence-leads-higher-deaths-more-1-million-fleeing-homes).

36 UNICEF, *The Crisis in Central Sahel: Advocacy Brief*, October 2020, available at: [www.unicef.org/wca/reports/central-sahel-crisis](http://www.unicef.org/wca/reports/central-sahel-crisis).

37 *Children and Armed Conflict in Mali*, above note 23. Another report by the Secretary-General mentions recruitment of children by armed groups in Cameroon, Chad, Nigeria and Niger. See *Children and Armed Conflict in Nigeria*, above note 24.

38 ICRC, “Mali-Niger: Climate Change and Conflict Make an Explosive Mix in the Sahel”, 22 January 2019, available at: [www.icrc.org/en/document/mali-niger-climate-change-and-conflict-make-explosive-mix-sahel](http://www.icrc.org/en/document/mali-niger-climate-change-and-conflict-make-explosive-mix-sahel).

39 ICRC, *When Rain Turns to Dust: Understanding and Responding to the Combined Impact of Armed Conflicts and the Climate and Environment Crisis on People’s Lives*, Geneva, 2020, p. 8, available at: <https://shop.icrc.org/when-rain-turns-to-dust-pdf-en.html>.



latter being particularly pronounced in that region, with temperatures rising one and a half times faster than in the rest of the world.<sup>40</sup> Apart from the direct links between climate change and armed conflict, other forms of confrontation also have an impact on the natural environment. Tensions have been noted in the Sahel between different communities, especially sedentary farmers and nomadic herders, regarding the use of land.<sup>41</sup> The arrival of the COVID-19 pandemic in March 2020 exacerbated this already very difficult situation, resulting in a “triple crisis”.<sup>42</sup>

## The legal framework applicable to humanitarian access in non-international armed conflicts

The above description of the effects of non-international armed conflicts in the Sahel shows the need to provide humanitarian aid for the victims of these conflicts and for the civilian population in general.<sup>43</sup> The rules of IHL relating to humanitarian assistance and humanitarian access in this type of armed conflict are therefore applicable. Although IHL contains no explicit, specific provisions regarding the obligation to ensure the well-being of the population, except in situations of occupation,<sup>44</sup> the ICRC considers that the obligation to meet the basic needs of the population can be inferred from the object and purpose of IHL.<sup>45</sup> In addition, many treaty and customary provisions refer to specific obligations on all parties to a conflict – both States and armed groups – to respond to the need for humanitarian assistance and to provide relief to the victims of such conflicts, including the wounded, the sick, detainees and the affected population in general.<sup>46</sup> If parties to an armed conflict are materially

40 As early as 2010, the Organisation for Economic Co-operation and Development predicted that the Sahel would experience a very significant rise in temperature of between 3 and 4 degrees depending on the region: “the greatest warming (~4 degrees) occurs over land and in particular in the western side of the Sahel”. Philipp Heinrigs, *Security Implications of Climate Change in the Sahel Region: Policy Considerations*, Sahel and West Africa Club Secretariat, 2010, p. 13, available at: [www.oecd.org/swac/publications/swacpublicationsanddocumentsbytopic.htm](http://www.oecd.org/swac/publications/swacpublicationsanddocumentsbytopic.htm).

41 International Crisis Group, *The Central Sahel: Scene of New Climate Wars?*, Africa Briefing No. 154, 24 April 2020, available at: [www.crisisgroup.org/africa/sahel/b154-le-sahel-central-theatre-des-nouvelles-guerres-climatiques](http://www.crisisgroup.org/africa/sahel/b154-le-sahel-central-theatre-des-nouvelles-guerres-climatiques).

42 ICRC, “Niger: Vivre entre insécurité, changement climatique et Covid-19”, 10 September 2020, available at: [www.icrc.org/fr/document/niger-vivre-entre-insecurite-changement-climatique-et-covid-19](http://www.icrc.org/fr/document/niger-vivre-entre-insecurite-changement-climatique-et-covid-19).

43 Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul). For a detailed description of the regime applicable to humanitarian assistance and humanitarian access, see Felix Schwendimann, “The Legal Framework of Humanitarian Access in Armed Conflict”, *International Review of the Red Cross*, Vol. 92, No. 884, 2011, available at: <https://international-review.icrc.org/articles/legal-framework-humanitarian-access-armed-conflict>.

44 Tristan Ferraro, *Relief Schemes and the Delivery of Humanitarian Activities in Situations of AC: The ICRC’s Perspective*, San Remo Round Table, 2017, p. 2, available at: [www.iuhl.org/wp-content/uploads/2018/03/RT-2017-FERRARO.pdf](http://www.iuhl.org/wp-content/uploads/2018/03/RT-2017-FERRARO.pdf).

45 ICRC, above note 1, p. 27.

46 See Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) (GC IV), Art. 23 on the sending of food and medicine, Art. 55 on the provision of food and medical supplies to the population, and Art. 81 on the

unable to provide the required assistance, then they must consider in good faith offers of services made by impartial humanitarian organizations and allow those organizations access to the persons concerned.<sup>47</sup>

In non-international armed conflicts, Article 3 common to the four Geneva Conventions provides that “an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict”. According to the ICRC’s 2016 Commentary on common Article 3, an organization qualifies as impartial if it offers humanitarian services without adverse distinction based on gender, race, nationality, religion or opinion. The only possible distinction is that of giving priority to the most urgent cases of distress.<sup>48</sup> The humanitarian services in question include protection and assistance activities that seek to “preserve the life, security, dignity and physical and mental well-being of persons affected by the conflict, or that seek to restore that well-being if it has been infringed upon”.<sup>49</sup> Apart from impartiality, which is specifically mentioned in common Article 3, the ICRC attaches great importance to its action being guided by the principles of humanity, neutrality and independence, which are at the heart of its mission<sup>50</sup> and are among the

maintenance of civilian internees. Regarding the evacuation of the wounded, sick, shipwrecked and dead, see Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950), Art. 15(1); Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950), Art. 18(1); and GC IV, Art. 16(2). Regarding detained persons, see Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950), Arts 25–32, 125. Rule 118 of the ICRC Customary Law Study, above note 43, on the provision of basic necessities to persons deprived of their liberty, states that “[p]ersons deprived of their liberty must be provided with adequate food, water, clothing, shelter and medical attention”. Rule 131 on the treatment of displaced persons states that “[i]n case of displacement, all possible measures must be taken in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated”.

47 The ICRC has produced a Q&A and glossary summarizing the rules that apply to humanitarian access in all armed conflicts, whether international or non-international. It identifies the following six main rules: “1. Each party to an armed conflict bears the primary obligation to meet the needs of the population under its control. 2. Impartial humanitarian organizations have a right to offer their services in order to carry out humanitarian activities, in particular when the needs of the population affected by the armed conflict are not fulfilled. 3. Impartial humanitarian activities undertaken in situations of armed conflict are subject to the consent of the parties to the conflict concerned. Under IHL, parties to the conflict must consent to such activities when the needs of the population under their control are not met. 4. Once impartial humanitarian relief operations have been agreed to, the parties to the armed conflict as well as States which are not a party to the armed conflict must allow and facilitate the rapid and unimpeded passage of these relief schemes, subject to their right of control. 5. The parties to the conflict must ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions. Only in cases of imperative military necessity may their movements be temporarily restricted. 6. Humanitarian relief personnel, and objects used for humanitarian relief operations, must be respected and protected.” ICRC, “ICRC Q&A and Lexicon on Humanitarian Access”, *International Review of the Red Cross*, Vol. 96, No. 893, 2015, available at: <https://international-review.icrc.org/articles/icrc-qa-and-lexicon-humanitarian-access>.

48 ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd ed., Geneva, 2016 (ICRC Commentary on GC I), para. 794, available at: <https://ihl-databases.icrc.org/ihl/full/GCI-commentary>.

49 *Ibid.*, para. 812.

50 The ICRC defines its mission as follows: “The International Committee of the Red Cross ... is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them

Fundamental Principles of the International Red Cross and Red Crescent Movement (the Movement).<sup>51</sup>

Examining an offer of services in good faith implies that a State may not refuse consent on arbitrary grounds. A refusal of services would be arbitrary if the State concerned were unwilling or unable to address basic humanitarian needs.<sup>52</sup> This is a major development in the right to humanitarian assistance, reflected in the new Commentaries on the Geneva Conventions.<sup>53</sup>

Once an offer of services has been accepted, States must facilitate the passage of humanitarian personnel and relief goods, and the freedom of movement of humanitarian workers, while retaining a right of control and the possibility of restricting such passage in cases of imperative military necessity.<sup>54</sup> Taking account of imperative military necessity implies that relief operations should not interfere with military operations, “lest the safety of humanitarian relief personnel be endangered”.<sup>55</sup> However, any restriction based on military necessity can only be limited and temporary.<sup>56</sup>

Other obligations related to respect for international human rights law underpin the right to humanitarian assistance and the correlative obligation of States to undertake concrete responses. This is the case with regard to the right to

with assistance.” ICRC, *The ICRC: Its Mission and Work*, Geneva, March 2009, p. 4, available at: <https://shop.icrc.org/the-icrc-its-mission-and-work-pdf-en.html>.

51 The Statutes of the International Red Cross and Red Crescent Movement, adopted in 1986 at the 25th International Conference of the Red Cross and Red Crescent in Geneva, set out in their preamble the seven Fundamental Principles of the Movement, namely humanity, impartiality, neutrality, independence, voluntary service, unity and universality.

52 ICRC Commentary on GC I, above note 48, para. 834.

53 Lindsey Cameron, Eve La Haye, Heike Niebergall-Lackner, Bruno Demeyere and Jean-Marie Henckaerts, “The Updated Commentary on the First Geneva Convention – a New Tool for Generating Respect for International Humanitarian Law”, *International Review of the Red Cross*, Vol. 97, No. 900, 2016, p. 1219, available at: <https://international-review.icrc.org/articles/updated-commentary-first-geneva-convention-new-tool-generating-respect-international>.

54 For a more in-depth study of the rules on humanitarian access and assistance, see Ruth Abril Stoffels, “Legal Regulation of Humanitarian Assistance in Armed Conflict: Achievements and Gaps”, *International Review of the Red Cross*, Vol. 86, No. 855, 2004; available at: [www.icrc.org/en/doc/assets/files/other/irrc\\_855\\_stoffels.pdf](http://www.icrc.org/en/doc/assets/files/other/irrc_855_stoffels.pdf); Emanuela-Chiara Gillard, “The Law Regulating Cross-Border Relief Operations”, *International Review of the Red Cross*, Vol. 95, No. 890, 2013, available at: <https://international-review.icrc.org/articles/law-regulating-cross-border-relief-operations>; Françoise Bouchet-Saulnier, “Consent to Humanitarian Access: An Obligation Triggered by Territorial Control, not States’ Rights”, *International Review of the Red Cross*, Vol. 96, No. 893, 2015, available at: <https://international-review.icrc.org/articles/consent-humanitarian-access-obligation-triggered-territorial-control-not-states-rights>; Dapo Akande and Emanuela-Chiara Gillard, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict*, OCHA and Oxford Institute for Ethics, Law and Armed Conflicts, 26 October 2016, available at: [www.unocha.org/publication/oxford-guidance-law-relating-humanitarian-relief-operations-situations-armed-conflict](http://www.unocha.org/publication/oxford-guidance-law-relating-humanitarian-relief-operations-situations-armed-conflict).

55 See the exception included in Rule 56 of the ICRC Customary Law Study, above note 43, relating to freedom of movement of humanitarian relief personnel. The concept of imperative military necessity was introduced in Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978), in connection with the tasks performed by civilian civil defence organizations (Art. 62) and personnel participating in relief actions (Art. 71). In both cases, duties, activities and travel may be restricted only for reasons of imperative military necessity. According to Article 71, such restrictions may only be temporary.

56 *Ibid.*

life, which is not subject to any derogation, even in times of armed conflict,<sup>57</sup> and which includes “the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity”.<sup>58</sup> States are even subject to a “heightened duty” to protect the right to life in liberty-restricting State-run facilities, including refugee and IDP camps.<sup>59</sup> They must make every effort to ensure that the basic needs of affected people are met, including the right to adequate food.<sup>60</sup> The Committee on Economic, Social and Cultural Rights has stated that “[v]iolations of the right to food can occur through the direct action of States or other entities insufficiently regulated by States. These include ... the prevention of access to humanitarian food aid in internal conflicts or other emergency situations.”<sup>61</sup> It has been recognized that “forcibly displaced persons need access to water and sanitation ... for their survival, but also to be able to live in dignity”.<sup>62</sup> The right to health care is also protected by both IHL and international human rights law, in a complementary manner.<sup>63</sup>

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) sets out the scope of humanitarian assistance.<sup>64</sup> Such assistance must include water, shelter, medical care, sanitation, education and any other necessary social services. The Convention specifies that this assistance may be extended to local and host communities.<sup>65</sup> It also makes specific provisions for assistance to be provided to people with special needs, including separated and unaccompanied children, women, the elderly, people with disabilities and those with communicable diseases.<sup>66</sup> States Parties must also take special measures to address the reproductive and sexual health of displaced women and provide appropriate psychosocial support to victims of sexual abuse.<sup>67</sup> To facilitate implementation of

57 Human Rights Committee, General Comment No. 36, “Article 6: Right to Life”, UN Doc. CCPR/C/GC/36, 3 September 2019, para. 2, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/261/15/pdf/G1926115.pdf>.

58 *Ibid.*, para. 3.

59 *Ibid.*, para. 25.

60 Committee on Economic, Social and Cultural Rights, General Comment No. 12, “The Right to Adequate Food (Art. 11)”, UN Doc. E/C.12/1999/5, 12 May 1999, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G99/420/12/pdf/G9942012.pdf>.

61 *Ibid.*, para. 19.

62 *Report of the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation: Note by the Secretariat*, UN Doc. A/HRC/39/55, 3 August 2018, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/239/64/pdf/G1823964.pdf>.

63 Alexander Breitegger, “The Legal Framework Applicable to Insecurity and Violence Affecting the Delivery of Health Care in Armed Conflicts and Other Emergencies”, *International Review of the Red Cross*, Vol. 95, No. 889, 2013, available at: <https://international-review.icrc.org/articles/legal-framework-applicable-insecurity-and-violence-affecting-delivery-health-care-armed>.

64 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 23 October 2009 (entered into force 6 December 2012), available at: <https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa>.

65 *Ibid.*, Art. 9(2)(b).

66 *Ibid.*, Art. 9(2)(c).

67 *Ibid.*, Art. 9(2)(d).

the Convention, the African Union has adopted a model law that specifies the scope of States' obligations regarding humanitarian assistance.<sup>68</sup>

However, State services responsible for humanitarian aid, local administrations and humanitarian organizations operating in the Sahel are encountering difficulties in carrying out their activities in accordance with the rules on humanitarian access outlined above. These difficulties stem from the many obstacles and challenges in the region. The areas where people in need are located are often difficult to reach because of their remoteness, the quality of the roads, the climatic conditions or the lack of security. Furthermore, the States of the Sahel region are in a situation of development and poverty that limits their ability to provide sufficient humanitarian aid to these populations, which are in dire need.<sup>69</sup>

## State measures that may impede access to humanitarian assistance in the Sahel

One of the greatest dilemmas facing States in the Sahel region today is how to ensure the security of their territory and the people within it, while at the same time guaranteeing access to the national and international humanitarian organizations which they have authorized to operate there. State authorities must also protect those organizations. States are required to respond to the needs of affected populations but do not always have the means to do so. Furthermore, they must protect organizations bringing relief to these populations<sup>70</sup> while at the same time facilitating their access to the areas where the civilian population is located.<sup>71</sup>

Resolving this dilemma is not easy, as both government aid agencies and humanitarian organizations have been subject to attacks that have endangered their operations in the Sahel region or rendered those operations impossible. In Mali, for example, MINUSMA reported that the number of attacks on

68 Model Law for the Implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa, 2018, available at: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=5aeb398e4>.

69 The Sahel countries occupied the following places in the Human Development Index (covering 189 countries and published by the United Nations Development Programme (UNDP)) as of 2020: Burkina Faso: 182; Chad: 187; Mali: 184; Niger: 189. See UNDP, *Human Development Report 2020: The Next Frontier: Human Development and the Anthropocene*, New York, 2020, available at: <http://hdr.undp.org/sites/default/files/hdr2020.pdf>.

70 Rule 31 of the ICRC Customary Law Study, above note 43, on the safety of medical relief personnel, states that "humanitarian relief personnel must be respected and protected". This protection also covers relief goods. Rule 32, on humanitarian relief objects, states that "objects used for humanitarian relief operations must be respected and protected".

71 Rule 55 of the ICRC Customary Law Study, above note 43, on access to humanitarian relief for civilians in need, states: "The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control." Rule 56, on freedom of movement of humanitarian relief personnel, states: "The parties to the conflict must ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions. Only in case of imperative military necessity may their movements be temporarily restricted."

humanitarian organizations has increased exponentially, making the delivery of humanitarian assistance difficult.<sup>72</sup> In other countries in the region, members of humanitarian organizations have been abducted or murdered,<sup>73</sup> while these organizations' facilities have also been attacked<sup>74</sup> and their vehicles seized, with the risk of armed actors using them for military purposes.<sup>75</sup>

Faced with the worsening security situation in the Sahel, States have taken a number of steps to try to mitigate the situation. We shall examine two of these here: the declaration of a state of emergency and the imposition of armed escorts on humanitarian missions. These measures are relevant to the present analysis as they may restrict the access of the civilian population to humanitarian assistance and the ability of humanitarian organizations to provide it.

## State of emergency

One way to limit the risks to the population is to declare a state of emergency in certain areas. By declaring a state of emergency, States limit the exercise of freedoms and give themselves greater powers of control. Certain States have also recently declared a state of emergency with the aim of limiting the spread of COVID-19. Security and health factors therefore overlap and can make it more difficult for the people affected to obtain goods and services.

For example, certain Sahelian countries have had to declare a state of emergency in the regions most affected by armed conflicts, which then allows them to take concrete measures that restrict the freedom of movement of people and goods.<sup>76</sup> Restrictions on freedom of movement have the most direct impact on humanitarian assistance, as they may put large areas out of reach of humanitarian agencies and government services. For instance, prohibiting the use

72 MINUSMA, *Note on Trends of Human Rights Violations and Abuses in Mali, 1 April–30 June 2020*, 30 August 2020, p. 4, para. 8, available at: [www.ohchr.org/Documents/Countries/ML/quaterly\\_note\\_on\\_human\\_rights\\_trends\\_april-june\\_2020\\_EN.pdf](http://www.ohchr.org/Documents/Countries/ML/quaterly_note_on_human_rights_trends_april-june_2020_EN.pdf).

73 “Cinq humanitaires enlevés et assassinés par des djihadistes au Nigeria”, *Le Temps*, 23 July 2020, available at: [www.letemps.ch/monde/cinq-humanitaires-enleves-assassines-djihadistes-nigeria](http://www.letemps.ch/monde/cinq-humanitaires-enleves-assassines-djihadistes-nigeria); ICRC, “Nigeria: ICRC Condemns Midwife’s Murder, Appeals to Abductors to Spare 2 Other Health Care Workers”, 17 September 2018, available at: [www.icrc.org/en/document/nigeria-icrc-condemns-midwives-murder-appeals-abductors-spare-two-other-healthcare-workers](http://www.icrc.org/en/document/nigeria-icrc-condemns-midwives-murder-appeals-abductors-spare-two-other-healthcare-workers).

74 Médecins Sans Frontières (MSF), “MSF Teams Forced to Leave Mainé Soroa after Two Years”, 9 August 2019, available at: [www.msf.org/msf-teams-forced-leave-mainé-soroa-after-two-years-niger](http://www.msf.org/msf-teams-forced-leave-mainé-soroa-after-two-years-niger).

75 Government of Niger, “Communiqué du Ministère de l’Intérieur relatif à l’attaque de la prison de haute sécurité de Koutoukalé”, 15 May 2019, available at: [www.gouv.ne/index.php/1154-communique-du-ministere-de-l-interieur-relatif-a-l-attaque-de-la-prison-de-haute-securite-de-koutoukale](http://www.gouv.ne/index.php/1154-communique-du-ministere-de-l-interieur-relatif-a-l-attaque-de-la-prison-de-haute-securite-de-koutoukale).

76 On 14 May 2019, the Burkina Faso National Assembly adopted Law No. 023-2019/AN Regulating the State of Siege and the State of Emergency in Burkina Faso. That law makes it possible to “prohibit the movement of persons or vehicles throughout [Burkina Faso’s] territorial jurisdiction or in specific places and at times set by order” (Art. 13, author’s translation). In Niger, the state of emergency has regularly been extended since 2015 on the basis of Law No. 98-24 of 11 August 1998, which stipulates the state of emergency’s conditions. A state of emergency was first declared in the Diffa region by Decree No. 2015 073/PRN/PN/MDN/MISPD/ACR/MJ of 10 February 2015, and was later extended to the Tillabéry and Tahoua regions. The state of emergency also makes it possible to prohibit travel in any vehicle. In Mali, the state of emergency has regularly been extended under Law No. 2017-055 on the State of Siege and the State of Emergency, 6 November 2017.



of motorcycles – which are often the only means of transport – can make it very difficult to obtain basic necessities, sell agricultural products on markets or obtain health care. This measure has been taken to reduce the operational capacity of armed groups that use motorcycle attacks, especially in border areas. Other examples include closing markets or prohibiting the sale of certain products, such as fish or chili peppers, as armed groups are using the profits from these ventures to fund their activities.<sup>77</sup>

The UN Human Rights Committee and the UN Committee Against Torture have highlighted the negative effects of prolonged movement restrictions in the Sahel.<sup>78</sup> The COVID-19 pandemic has forced Sahelian States to impose additional restrictions on movement, making it even more difficult to provide basic services. However, these States have made exceptions for the activities of humanitarian organizations.<sup>79</sup> States of emergency and exceptional measures related to the fight against COVID-19 that restrict certain rights, such as the right to freedom of movement, must not endanger the full application of IHL or the right to humanitarian access in order to bring relief to the victims of armed conflict.<sup>80</sup>

The Human Rights Committee has specified that in order for a State to make use of the derogations permitted under a state of emergency, two conditions must be satisfied: the situation “must amount to a public emergency which threatens the life of the nation”, and “the State party must have officially proclaimed a state of emergency”.<sup>81</sup> Derogation from certain human rights through the declaration of a state of emergency as provided for under the International Covenant on Civil and Political Rights (ICCPR) must also be proportional, and strictly limited to the situation that underlies it. In addition, its duration and geographic scope must be specified. The Human Rights Committee has also noted that the ICCPR requires that “no measure derogating from the provisions of the Covenant may be inconsistent with the State party’s other

77 This is particularly the case in the tri-border area between Burkina Faso, Mali and Niger and on the border between Nigeria and Niger. Fishing on Lake Chad was banned because armed groups were taking part of the proceeds from the sale of fish.

78 *Concluding Observations on the Initial Report of the Niger*, UN Doc. CAT/C/NER/CO/1, 20 December 2019, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/350/39/pdf/G1935039.pdf>; *Concluding Observations on the Second Periodic Report of the Niger*, UN Doc. CCPR/C/NER/CO/2, 16 May 2019, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/139/70/pdf/G1913970.pdf>.

79 For Burkina Faso, see Decree No. 2020-0271/PM/MDNAC/MATDC/MSECU/MS/MTMUSR concerning the Temporary Restriction of Freedom under the Special Measures to Reduce the Spread of COVID-19, 15 April 2020. The decree closed airports but allowed flights “for humanitarian purposes”. Similarly, in Niger, despite the border closure, measures were taken to allow for “humanitarian flights”. See Republic of Niger and UN Niger, *Procédures opérationnelles standards pour la gestion des voyageurs des vols régionaux débarquant à Niamey en République du Niger dans le contexte de la pandémie Covid-19*, June 2020.

80 See ICRC, *Les règles du DIH sur l'accès humanitaire et le Covid-19*, Geneva, 8 April 2020; ICRC, “COVID-19 and International Humanitarian Law”, available at: [www.icrc.org/ru/download/file/116784/covid-19\\_and\\_ihl.pdf](http://www.icrc.org/ru/download/file/116784/covid-19_and_ihl.pdf).

81 Human Rights Committee, General Comment No. 29, “States of Emergency (Article 4)”, UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 2, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G01/444/70/pdf/G0144470.pdf>.

obligations under international law, particularly the rules of international humanitarian law”.<sup>82</sup> Furthermore, the Committee has pointed out that during armed conflict, the rules of IHL help to prevent the abuse of a State’s emergency powers and that States may in no circumstances invoke Article 4 of the ICCPR as justification for acting in violation of humanitarian law.<sup>83</sup> The Committee has therefore recognized that IHL continues to apply and can harmoniously complement the derogated rules of international human rights law. It has been recognized that “[c]omplementarity and mutual influence inform the interaction between international humanitarian law and international human rights law in most cases”.<sup>84</sup> Indeed, unlike international human rights law, “unless expressly foreseen in the relevant treaty provisions, the rules and principles of IHL cannot be derogated from”.<sup>85</sup> It therefore follows that if States justifiably use a state of emergency to suspend freedom of movement in part of their territory in order to respond to the dangers caused by armed conflict, this suspension should not jeopardize the provision of humanitarian assistance and the related freedom of movement of humanitarian personnel, or impede it through the imposition of armed escorts.

## Armed escorts

In response to the dangers and serious incidents that humanitarian organizations have experienced in the field, the States of the Sahel region have taken administrative measures to ensure their security, such as armed escorts.<sup>86</sup> The imposition of armed escorts on humanitarian actors often provokes contrasting reactions among them. Some organizations may agree to use them under certain conditions, while others refuse them outright. The Inter-Agency Standing Committee (IASC), for example, has produced non-binding guidelines on the use of armed escorts during humanitarian operations which state that “[a]s a general rule, humanitarian convoys will not use armed escorts”.<sup>87</sup> It is worth recalling some of the arguments that have been put forward to show why the use of armed

82 *Ibid.*, para. 9.

83 *Ibid.*, paras 3, 11.

84 Cordula Droeger, “Elective Affinities? Human Rights and Humanitarian Law”, *International Review of the Red Cross*, Vol. 90, No. 871, 2008, available at: <https://international-review.icrc.org/articles/elective-affinities-human-rights-and-humanitarian-law>.

85 Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction*, ICRC, Geneva, November 2019, p. 28, available at: <https://shop.icrc.org/international-humanitarian-law-a-comprehensive-introduction-pdf-en.html>.

86 In Niger, the use of armed escorts is governed by several regulatory texts, such as Decree No. 2019-115/MFP/RA/MF Establishing Travel Allowances for Contractual and Auxiliary Civil Servants of the State’s Administrations and Public Establishments, 1 March 2019; Letter 008535/MAE/C/IA/NE/SG, 2 September 2020, stipulating that “movements outside built-up areas are only permitted with an authorized escort” (author’s translation); and Joint Order 2019/042/MDN/MI/SP/D/AR, 19 April 2013, which sets the allowances applicable to the escorts of humanitarian organizations, UN agencies, NGOs, State bodies, embassies, private companies, enterprises and banks.

87 IASC, *IASC Non-Binding Guidelines on the Use of Armed Escorts for Humanitarian Convoys*, 27 February 2013, p. 3, available at: [www.unocha.org/sites/unocha/files/Armed%20Escort%20Guidelines%20-%20Final.pdf](http://www.unocha.org/sites/unocha/files/Armed%20Escort%20Guidelines%20-%20Final.pdf).

escorts provided by the State – and which are therefore composed, more often than not, of elements of the armed and security forces – seems to have more disadvantages than advantages for impartial humanitarian organizations.

The ICRC and the International Federation of Red Cross and Red Crescent Societies (IFRC), during a workshop on the use of armed protection and humanitarian assistance, identified as a general principle that the use of armed protection conflicts with the principles of humanity, independence, impartiality and neutrality. On the basis of this, they concluded that as a rule, the components of the Movement should not use armed escorts.<sup>88</sup> This prohibition was confirmed by Resolution 9 of the 1995 Council of Delegates of the International Red Cross and Red Crescent Movement, which reiterates “the basic principle that the components of the Movement do not use armed protection”.<sup>89</sup> This was reaffirmed at the 2005 Council of Delegates in Seoul.<sup>90</sup>

Respect for a neutral, impartial and independent humanitarian space is essential if the ICRC and the Movement are to carry out their humanitarian mission. The Fundamental Principle of neutrality states that “the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature”.<sup>91</sup> Neutrality is a means to an end, not an end in itself. It is a tool used to ensure access for concrete action in all situations.<sup>92</sup> This concrete action must be guided by the Fundamental Principle of humanity, which aims to “prevent and alleviate human suffering wherever it may be found” and “to protect life and health and to ensure respect for the human being”,<sup>93</sup> and by that of impartiality, which prohibits any form of discrimination in the provision of humanitarian assistance and, as we have seen, implies the prioritization of the most urgent needs. For the ICRC, the Fundamental Principle of independence implies that its humanitarian action is distinct, and perceived as such, from any political or military interest.<sup>94</sup>

88 The components of the Movement are the ICRC, the IFRC and the National Red Cross and Red Crescent Societies of States Parties to the Geneva Conventions. See ICRC and IFRC, *Report on the Use of Armed Protection for Humanitarian Assistance*, 2 December 1995, available at: [www.icrc.org/en/doc/resources/documents/report/57jneg.htm](http://www.icrc.org/en/doc/resources/documents/report/57jneg.htm).

89 “Resolutions of the Council of Delegates”, *International Review of the Red Cross*, Vol. 36, No. 310, 1996, Resolution 9, available at: <https://international-review.icrc.org/articles/resolutions-council-delegates-4>.

90 Council of Delegates, *Guidance Document on Relations between the Components of the Movement and Military Bodies*, Seoul, 2005, Resolution 7, available at: [www.icrc.org/en/doc/resources/documents/resolution/council-of-delegates-resolutions-181105.htm](http://www.icrc.org/en/doc/resources/documents/resolution/council-of-delegates-resolutions-181105.htm). See in particular the Annex to this resolution, “Relations between the Movement’s Components and Military Bodies on the Latter’s National Territory”, point 7, “Use of Escorts and Armed Protection”: “The components of the Movement may not resort to armed protection.” The only possible exceptions are defined in Resolution 9 of the 1995 Council of Delegates: see ICRC and IFRC, *Handbook of the International Red Cross and Red Crescent Movement*, 14th ed., 2008, available at: <https://shop.icrc.org/handbook-of-the-international-red-cross-and-red-crescent-movement-pdf-en.html>.

91 Statutes of the International Red Cross and Red Crescent Movement, above note 51, preamble.

92 Pierre Krähenbühl, “The ICRC’s Approach to Contemporary Security Challenges: A Future for Independent and Neutral Humanitarian Action”, *International Review of the Red Cross*, Vol. 86, No. 855, 2004, p. 511, available at: <https://international-review.icrc.org/fr/articles/icrcs-approach-contemporary-security-challenges-future-independent-and-neutral>.

93 See Statutes of the International Red Cross and Red Crescent Movement, above note 51, preamble.

94 P. Krähenbühl, above note 92, p. 511.

On the basis of these Fundamental Principles, therefore, the ICRC must respect, but also ensure respect for, humanitarian space in the Sahel.<sup>95</sup> To properly carry out its strictly humanitarian mission, it must be able to maintain a bilateral and confidential dialogue with all parties involved in armed conflicts, whether they be States or non-State armed groups. To do so it must have unhindered access, both so that it can provide protection and assistance to the victims of armed conflicts and so that it can conduct prevention activities, reminding the parties to armed conflicts of their obligations under IHL. In a statement on humanitarian space in the Sahel, the ICRC pointed out that influencing parties to armed conflict in such a way that they fulfil their obligations and respect humanitarian space is a never-ending task:

To constantly seek influence with the parties to the conflict or their supporters, to use persuasion to convince each side to guarantee humanitarian space, to constantly remind them of the obligation to ‘respect and ensure respect for’ international humanitarian law ‘in all circumstances’ ... these are the tasks – sometimes Sisyphean – that the ICRC must accomplish wherever there are victims.<sup>96</sup>

The imposition of armed escorts on humanitarian missions in the field does not therefore appear compatible with the principles that should guide humanitarian action. It also seems difficult to reconcile such a measure with the obligation to respect and protect humanitarian personnel and relief objects, as provided for in customary IHL.<sup>97</sup> The respect and protection due to humanitarian personnel and relief objects does not mean that an armed escort must be provided. The notion of protection and respect for humanitarian personnel in Rule 31 of the ICRC Customary Law Study is linked to the practice of States party to Additional Protocol I to the Geneva Conventions and Article 71 of that Protocol, on personnel participating in relief actions. The ICRC’s Commentary on Article 71 leaves the decision as to whether or not a humanitarian mission should be provided with an armed escort to the discretion of those who might benefit from it.<sup>98</sup>

Apart from the incompatibility between humanitarian action according to the Movement’s Fundamental Principles and armed protection, some organizations have put forward other arguments. In particular, the fact that armed forces come under attack during a conflict means that their presence may expose members of humanitarian missions to unnecessary danger, rather than protect them.<sup>99</sup> In the specific context of the Sahel, several humanitarian organizations that participated

95 ICRC, “Sahel: Respecter et faire respecter l’espace humanitaire”, 20 November 2019, available at: [www.icrc.org/fr/document/sahel-respecter-et-faire-respecter-lespace-humanitaire](http://www.icrc.org/fr/document/sahel-respecter-et-faire-respecter-lespace-humanitaire).

96 *Ibid.* (author’s translation).

97 ICRC Customary Law Study, above note 43, Rule 31 on the protection of humanitarian relief personnel and Rule 32 on the protection of relief objects.

98 Yves Sandoz, Christophe Swinarski and Bruno Zimmerman (eds), *Commentary on the Additional Protocols*, ICRC, Geneva, 1987, paras 2887–2888, available at: <https://tinyurl.com/44x5zcm>.

99 MSF observes in a report that “humanitarians may be attacked if they are identified as part of the enemy to fight. The use of armed escorts by humanitarians and the use of vehicles not clearly identified as military, both observed in Mali, can increase the likelihood of such attacks.” Alejandro Pozo Marin, *Perilous*

in the preparatory work for the Virtual Ministerial Roundtable on the Central Sahel recommended that the States of the region “explicitly commit to not forcing humanitarians to use armed escorts and to respect the principle of ‘last resort’ as defined within the Humanitarian Coordination bodies in accordance with humanitarian principles and in particular neutrality and independence”.<sup>100</sup>

Two factors must be reconciled: the obligation to protect relief personnel and the assets needed to provide assistance, on the one hand, and unhindered access by relief personnel to areas where civilians affected by armed conflict are located, on the other. To see how this might be achieved, we need to review the initiatives that the States of the Sahel region have taken.

## Measures to facilitate humanitarian access in the Sahel

Action is being taken to ensure better coordination between State authorities and humanitarians in the interests of improved access. Furthermore, legislative measures have been taken to support humanitarian access.

### Dialogue on humanitarian access between civilian and military authorities and impartial humanitarian organizations

Open dialogue and coordination between all involved in protecting and helping the victims of armed conflict are necessary to ensure quality humanitarian access and to meet the needs of the civilian population. This is all the more crucial in the Sahel, where there is not only a wide variety of arms bearers but also a wide variety of humanitarian organizations.<sup>101</sup> It is therefore important to identify the dialogue mechanisms that are used in the Sahel to constructively discuss issues related to humanitarian access on the ground. One should note the important role of civil–military dialogue mechanisms that bring together the humanitarian country teams—composed of UN humanitarian agencies and non-governmental humanitarian organizations—and the national and foreign military forces involved. These fora allow an exchange of views on the mandates of humanitarian organizations, the nature of their operations and their priority areas of intervention. The military forces explain their operational situation on the

*Terrain: Humanitarian Action at Risk in Mali*, MSF, May 2017, p. 4, available at: <https://arhp.msf.es/sites/default/files/Case-Study-03-Mali-EN.pdf>.

100 OCHA, *Responding to Humanitarian Challenges in a Long-Term Perspective in the Central Sahel: Track 3: Humanitarian Principles, Humanitarian Space and Civil-Military Coordination*, 2020, available at: [www.unocha.org/sites/unocha/files/Track%203%20Humanitarian%20Principles%20EN\\_0.pdf](http://www.unocha.org/sites/unocha/files/Track%203%20Humanitarian%20Principles%20EN_0.pdf).

101 For example, in Niger in 2020 there were forty organizations participating in the humanitarian response plan in Tillabéry, thirty-one in Diffa and twenty-six in Tahoua. See OCHA, *Lancement conjoint du Plan de Soutien et du Plan de Réponse Humanitaire du Niger (PS/PRH 2020)*, 24 February 2020, p. 13, available at: [www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ner\\_fh\\_presentation\\_ps\\_prh\\_2020\\_27\\_02\\_2020.pdf](http://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ner_fh_presentation_ps_prh_2020_27_02_2020.pdf).

ground, which then makes it possible to identify geographic areas where access could prove problematic for security reasons.<sup>102</sup>

However, the issue of humanitarian access as such remains the exclusive competence of each State, and the civil–military coordination meetings are primarily fora for the exchange of information, with no decision-making powers. Furthermore, the rules of IHL relating to humanitarian access in the field allow the parties to an armed conflict to temporarily restrict the freedom of movement of humanitarian relief personnel in the event of imperative military necessity, and they retain the right to verify the content and destination of relief supplies.<sup>103</sup>

The prime minister of Niger has set up a high-level committee on access to advance dialogue and decision-making in this area. Its members consist of the relevant ministries and the humanitarian country team,<sup>104</sup> and high-level dialogue on humanitarian access has already taken place within this framework.<sup>105</sup> It would be useful for the other Sahel States to follow this example. Such a body should be the primary forum in which all concerned can establish clear rules on humanitarian access. In particular, this would include national civilian and military authorities, the UN system, impartial humanitarian non-governmental organizations and the various components of the Movement. Dialogue at the national level must be accompanied by dialogue at the regional and local levels, as local civilian and military authorities and humanitarian organizations have much more detailed knowledge of the security environment—which is most often dynamic and changing—and of the humanitarian assistance needs of the population.

One must draw a distinction between mechanisms for dialogue between humanitarian organizations and armed forces, on the one hand, and civil–military action conducted by the armed forces in parallel with their combat activities, on the other. Operation Barkhane carries out a variety of activities in this area, such as renovating schools, donating school equipment and supporting

102 In preparation for the Ministerial Roundtable on the Central Sahel, documents on civil–military coordination were produced for each of the countries concerned. For Burkina Faso, see OCHA, *Principes humanitaires, accès et coordination civilo-militaire: Analyse de la crise et recommandations des organisations humanitaires et de développement au Burkina Faso*, September 2020, pp. 5, 6, available at: [www.unocha.org/sites/unocha/files/Acces\\_notes%20uniformisées\\_vf-20201013\\_Disclaimer.pdf](http://www.unocha.org/sites/unocha/files/Acces_notes%20uniformisées_vf-20201013_Disclaimer.pdf). For Mali, see OCHA, *Les principes humanitaires et la relation civilo-militaire: Diagnostique et recommandations des organisations humanitaires et de développement au Mali*, August 2020, pp. 5–7, available at: [www.unocha.org/sites/unocha/files/Principes%20Humanitaires%20et%20Relation%20Civillo-Militaire\\_Legal%20Notice.pdf](http://www.unocha.org/sites/unocha/files/Principes%20Humanitaires%20et%20Relation%20Civillo-Militaire_Legal%20Notice.pdf). For Niger, see OCHA, *Humanitarian Access and Civil-Military Coordination: Reaffirming Respect for Humanitarian Principles and Humanitarian Space and Strengthening Civil-Military Coordination*, 11 October 2020, pp. 6, 7, available at: [www.unocha.org/sites/unocha/files/201019%20Niger%20T3%20final%20English%20Version.pdf](http://www.unocha.org/sites/unocha/files/201019%20Niger%20T3%20final%20English%20Version.pdf).

103 See ICRC Customary Law Study, above note 43, Rule 55 on access to humanitarian relief for civilians in need and Rule 56 on freedom of movement of humanitarian relief personnel.

104 The main donor States and the EU are taking part in this dialogue. The ICRC participates as an observer: see OCHA, *Humanitarian Access and Civil-Military Coordination*, above note 102.

105 Government of Niger, “Le Premier ministre en visite à Kouré: SE. Brigi Rafini rend hommage aux 8 victimes de l’attaque terroriste du 9 août et préside un dialogue de haut niveau sur l’accès humanitaire au Niger”, 24 August 2020, available at: [www.lesahel.org/le-premier-ministre-en-visite-a-koure-se-brigi-rafini-rend-hommage-aux-8-victimes-de-lattaque-terroriste-du-9-aout-et-preside-un-dialogue-de-haut-niveau-sur-lacces-humanitaire-au-nig/](http://www.lesahel.org/le-premier-ministre-en-visite-a-koure-se-brigi-rafini-rend-hommage-aux-8-victimes-de-lattaque-terroriste-du-9-aout-et-preside-un-dialogue-de-haut-niveau-sur-lacces-humanitaire-au-nig/).



improvements to health centre infrastructure.<sup>106</sup> Similarly, MINUSMA is running quick-impact projects to improve access to basic health services and water, the use of pastoral and agricultural resources and the economic resilience of conflict-affected households.<sup>107</sup> These activities are in every way similar to those that impartial humanitarian organizations may carry out. During the Ministerial Roundtable on the Central Sahel held on 20 October 2020, humanitarian organizations – which engage in dialogue with the armed forces through the coordination mechanisms just described – emphasized the importance of their not taking part in these civil–military activities. They explained that there was a risk of confusion between the mandates of humanitarians and the military, fuelled by the existence of these activities. They also reiterated that in order to maintain the distinction between humanitarian and military actors, it was crucial for the former not to be associated with the latter and to avoid using the infrastructure, equipment or escorts of security or military actors.<sup>108</sup> It has also been pointed out very clearly that the “blending of aid work with military goals can put at risk humanitarian actors, who, in the eyes of insurgents are seen to be in cahoots with the ‘invading’ foreign military powers”.<sup>109</sup>

## Legislative measures to facilitate humanitarian access

One of the best ways to ensure compliance with IHL rules on humanitarian access is to take national measures to ensure their implementation. It is interesting to note that the Kampala Convention has established humanitarian access for IDPs and host populations as a general obligation of States Parties.<sup>110</sup> In particular, States must allow the rapid and unimpeded passage of all relief consignments, equipment and personnel to IDPs.<sup>111</sup> The Convention also establishes clear

106 See Ministère des Armées, “Barkhane: Destins croisés des adjudants Mathieu et Nicolas, des actions civilo-militaires”, 30 December 2020, available at: <https://archives.defense.gouv.fr/operations/afrique/bande-sahelo-saharienne/operation-barkhane/breves/barkhane-destins-croises-des-adjudants-mathieu-et-nicolas-des-actions-civilo-militaires>; Ministère des Armées, “Barkhane: Jumelée à Gao (Mali), la ville de Thionville achemine ses dons grâce aux soldats de Barkhane”, 7 October 2020, available at: <https://archives.defense.gouv.fr/operations/afrique/bande-sahelo-saharienne/operation-barkhane/breves/barkhane-jumeele-a-gao-mali-la-ville-de-thionville-achemine-ses-dons-grace-aux-soldats-de-barkhane>; Ministère des Armées, “Barkhane: Nouvelles infrastructures inaugurées au centre de santé communautaire du quartier de Djidara (Gao)”, 18 August 2020, available at: <https://archives.defense.gouv.fr/operations/afrique/bande-sahelo-saharienne/operation-barkhane/breves/barkhane-nouvelles-infrastructures-inaugurees-au-centre-de-sante-communautaire-du-quartier-de-djidara-gao>.

107 See MINUSMA, *QIPs Overview: Mali*, September 2020, available at: [https://minusma.unmissions.org/sites/default/files/2013-2020\\_qips\\_overview\\_en\\_0.pdf](https://minusma.unmissions.org/sites/default/files/2013-2020_qips_overview_en_0.pdf).

108 See the preparatory document concerning Burkina Faso, Mali and Niger presented at the Ministerial Roundtable on the Central Sahel: OCHA, above note 100.

109 Jamie A. Williamson, “Using Humanitarian Aid to ‘Win Hearts and Minds’: A Costly Failure?”, *International Review of the Red Cross*, Vol. 93, No. 884, 2011, available at: <https://international-review.icrc.org/articles/using-humanitarian-aid-win-hearts-and-minds-costly-failure>.

110 Article 3(1)(j) of the Kampala Convention states that “States Parties undertake to respect and ensure respect for this Convention, and in particular to ... [e]nsure assistance to internally displaced persons by meeting their basic needs as well as allowing and facilitating rapid and unimpeded access by humanitarian organizations and personnel”.

111 Kampala Convention, Art. 5(7).

obligations on armed groups by prohibiting them from “[h]ampering the provision of protection and assistance to internally displaced persons under any circumstances” and from “[i]mpeding humanitarian assistance and passage of all relief consignments, equipment and personnel to internally displaced persons”.<sup>112</sup> Further, the Kampala Convention calls on States to take legislative measures to give effect to the Convention in their domestic systems.<sup>113</sup>

In the particular context of the Sahel, Niger was the first State to adopt a specific law to implement the obligations of the Kampala Convention, thereby creating a domestic legal regime for humanitarian access. Law No. 2018-74 on the Protection and Assistance of Internally Displaced Persons sets out a number of specific provisions related to access. Article 22 of the law provides that

[w]ithin the framework of international cooperation, the State ensures unimpeded and rapid access of humanitarian personnel to internally displaced persons. The State ensures that humanitarian aid is not diverted. It ensures respect for and protection of humanitarian personnel, means of transport, objects and any products necessary for humanitarian assistance” (author’s translation).

To strengthen protection for humanitarian personnel and to guarantee that they have access to victims, the law also sets out criminal sanctions for attacking humanitarian personnel and for obstructing the unimpeded passage of humanitarian aid or its rapid and unimpeded distribution to IDPs.<sup>114</sup> Article 26 of the law created an institutional framework to ensure its implementation, in particular a Comité de Coordination Nationale de Protection et d’Assistance aux Personnes Déplacées Internes, which brings together the relevant ministries and national and international humanitarian agencies.

The development of national legal frameworks for humanitarian access should be an opportunity to address and clarify the thorny issue of the relationship between humanitarian access rules and national counterterrorism legislation. It is not uncommon for impartial humanitarian organizations to have to negotiate humanitarian access to the civilian population not only with States,

<sup>112</sup> *Ibid.*, Arts 7(5)(b), 7(5)(g).

<sup>113</sup> *Ibid.*, Arts 3(2)(a), 14(4).

<sup>114</sup> Law No. 2018-74 on the Protection and Assistance of Internally Displaced Persons, 10 December 2018, Art. 33, states: “Whoever attacks humanitarian personnel in the exercise or during the exercise of their aid, protection and assistance activities, [or] harms or perpetrates any form of violence against humanitarian personnel ..., shall be punished by imprisonment of six months to five years and a fine of 500,000 to 5 million francs” (author’s translation). Article 35 of the law states: “Anyone who: (1) hinders the rights of internally displaced persons to live in satisfactory conditions of dignity, security, sanitation, food, water, health and shelter, in particular; (2) separates family members for reasons other than protection and assistance as defined in this Act; (3) prevents the free passage of humanitarian aid and its rapid and free distribution to internally displaced persons; (4) attacks or carries out other acts of violence against persons in charge of humanitarian aid, their means of transport or stocks for the assistance of IDPs; (5) violates the civilian or humanitarian character of sites hosting internally displaced persons; (6) misuses, confiscates or diverts humanitarian aid intended for internally displaced persons shall be punished by imprisonment for a term of five years to less than ten years and a fine of 2 million francs” (author’s translation).

but also with organized armed groups. They must be able to engage in dialogue with these groups on respect for IHL and the humanitarian situation of the civilian population, without suffering legal consequences under national legislation on the fight against terrorism. In a report to the International Conference of the Red Cross and Red Crescent in 2019, the ICRC pointed out that “[i]n legal terms, counterterrorism measures impeding principled humanitarian action are incompatible with the letter and spirit of IHL”.<sup>115</sup> During the preparatory work for the Ministerial Roundtable on the Central Sahel, several humanitarian organizations operating in the Sahel expressed the need for national legal frameworks to make it clear that the action they undertake in accordance with the principles of neutrality, impartiality and independence do not fall under national provisions on terrorism. They noted that “[t]he space for dialogue on humanitarian access with all parties to the conflict, although clarified by IHL, lacks clarity within national law”.<sup>116</sup>

One solution that preserves both the legitimate right of States to take counterterrorism measures and the access of impartial humanitarian organizations is the use of humanitarian exemptions. Their purpose is to “exclude from the scope of application of counterterrorism measures exclusively humanitarian activities undertaken by impartial humanitarian organizations such as the ICRC”.<sup>117</sup> Chad has already embarked on this path; the 2018 Law on the Repression of Acts of Terrorism in the Republic of Chad states in its Article 1(3) that “no provision of this law may be interpreted as derogating from international humanitarian law and international human rights law”. Article 1(4) stipulates that “activities of an exclusively humanitarian and impartial nature carried out by neutral and impartial humanitarian organizations are excluded from the scope of this law”.<sup>118</sup> Other States in the Sahel region should be inspired by these initiatives to clarify the legal framework for humanitarian access.

## Conclusion

This article has shown that while the rules of IHL on humanitarian access are clear, implementing them at the national level is challenging in the particular context of the Sahel. States must strike a balance between preserving security and ensuring that people have access to goods and services that enable the full enjoyment of their rights. Excessive firmness in the application of movement restrictions could deprive the population of goods essential to their survival. On the other hand,

115 ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Geneva, November 2019, p. 60, available at: [www.icrc.org/en/publication/4427-international-humanitarian-law-and-challenges-contemporary-armed-conflicts](http://www.icrc.org/en/publication/4427-international-humanitarian-law-and-challenges-contemporary-armed-conflicts).

116 OCHA, *Humanitarian Access and Civil-Military Coordination*, above note 102, pp. 11, 12.

117 ICRC, above note 115, p. 60.

118 Law No. 003/PR/2020 on the Repression of Acts of Terrorism in the Republic of Chad, adopted by the National Assembly on 28 April 2020 and promulgated by the President of the Republic on 20 May 2020, Art. 1(3–4) (author’s translation).

excessive inertia could endanger the lives of humanitarian workers and the civilian population.

In the face of armed conflict, the Sahel States must find pragmatic solutions to the dilemmas posed by legitimate security considerations: the protection of all, the work of impartial humanitarian organizations and the ever-increasing needs of a civilian population suffering the effects of armed conflict. States may be torn between all of these elements and take measures that either facilitate humanitarian access or impede it.

Experience shows that strong coordination mechanisms involving State, military and civilian authorities and impartial humanitarian organizations can foster productive dialogue on humanitarian access. This dialogue must be constant and must remain as close as possible to the realities on the ground and to situations in the Sahel, which are never static but are rather in a constant state of flux. For example, it is important to avoid banning access to certain areas indefinitely when the situation may have changed and the factors that fully justified a ban may have disappeared. Dialogue on coordination must lead to the establishment of a clear and precise system for notifying the movements of humanitarian organizations in the field. This system must enable humanitarian organizations to enter their areas of operation with up-to-date and reliable information on the security situation. Humanitarian organizations must communicate openly on the objectives of their operations in the field, their mandates, the complementarity between them and their respect for the principles of humanity, impartiality, neutrality and independence, in order to ensure that the authorities clearly understand the services they are offering.

Developing national legal frameworks for humanitarian access will help States fulfil their obligations under IHL and provide humanitarian actors with clear guidelines. By adopting the Kampala Convention, the States of Africa have helped strengthen IHL as it applies to respect for and protection of humanitarian organizations and humanitarian access. The laws of Chad and Niger presented here are valuable tools that will help to promote improved humanitarian access and hence promote respect for a neutral, impartial and independent humanitarian space.

# Reparations for victims of terrorist acts in Sahel conflicts: The case of Niger

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## Abstract

*After the crisis in Mali erupted in 2012, numerous conflicts have broken out in countries of the Sahel and resulted in many violations of international human rights law and international humanitarian law. While these bodies of law were designed primarily to protect individuals or categories of individuals, they also require that reparations be made for harm suffered by the victims of such violations. Despite the ever-growing number of victims in conflicts in the Sahel in general and in Niger in particular, it is evident that States of the Sahel have not made a priority of meeting the reparation obligation, which falls mainly on them. However, the specific nature of the harm suffered (as a result, in part, of civilians being targeted) in terrorist-related conflicts calls for a prompt reaction by States, as they are the true targets of acts perpetrated by terrorist-designated non-State armed groups, while individuals and communities*

*are only proxy victims. A legal, institutional and operational framework for victim reparations needs to be set up by the States, but that has yet to happen, even though it is one of the conditions of durable conflict resolution. The scattered initiatives that have been launched in Niger would gain from being brought together under a holistic framework with a global strategic vision.*

**Keywords:** Sahel, Niger, non-State armed groups, reparations for victims of terrorist acts, conflict resolution.

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## Introduction

In the Sahel, a region made up of countries whose development indicators are among the lowest in the world,<sup>1</sup> the human toll continues to mount as conflicts are perpetuated<sup>2</sup> by attacks by non-State armed groups (NSAGs)—designated terrorist groups in many cases—and by counterattacks by government forces. The number of violent events and deaths connected with Sahel-based extremist groups has doubled every year since they began to occur in 2012. In 2019 alone, Sahel communities recorded some 2000 deaths attributable to violent extremist groups;<sup>3</sup> in November 2019, there were 1.2 million displaced people in the region,<sup>4</sup> while many others were missing or victims of various acts of violence carried out by NSAGs or government forces.<sup>5</sup> Sahel States are, indeed, being challenged by various terrorist groups. This is certainly the case in Niger, where local franchises of both al-Qaeda (the Support Group for Islam and Muslims)<sup>6</sup> and the Islamic State

1 See Stellah Kwasi, Jakkie Cilliers, Lily Welborn and Ibrahim Maïga, “The G5 Sahel Region: a Desert Flower?”, Institute for Security Studies, 15 January 2020, available at: <https://issafrica.org/iss-today/the-g5-sahel-region-a-desert-flower> (all internet references were accessed in March 2022).

2 See Marc-Antoine Perouse de Montclos, “L’émergence de Boko Haram et la diffusion progressive du conflit”, in Géraud Magrin and Marc-Antoine Pérouse de Montclos (eds), *Crise et développement : La région du lac Tchad à l’épreuve de Boko Haram*, Agence française de développement, Paris, 2018, available at: [https://horizon.documentation.ird.fr/exl-doc/pleins\\_textes/divers18-05/010072290.pdf](https://horizon.documentation.ird.fr/exl-doc/pleins_textes/divers18-05/010072290.pdf); Lori-Anne Thérroux-Bénoni and Baba Dakono, “Are Terrorist Groups Stoking Local Conflicts in the Sahel?”, Institute for Security Studies, 14 October 2019, available at: <https://issafrica.org/iss-today/are-terrorist-groups-stoking-local-conflicts-in-the-sahel>.

3 Pauline Le Roux, “Responding to the Rise in Violent Extremism in the Sahel”, Africa Center for Strategic Studies, 2 December 2019, available at: <https://africacenter.org/publication/responding-rise-violent-extremism-sahel/>.

4 United Nations High Commissioner for Refugees, data portal on 30 November 2019 (Burkina Faso, Mali, Niger); United Nations Office for the Coordination of Humanitarian Affairs (OCHA), *Burkina Faso, Aperçu de la situation humanitaire au 9 décembre 2019; Rapport CMP [Commission Mouvement de Populations] Mali du 21 novembre 2019*; Regional Directorate of Civil Status (DREC) Statistics Niger from September 2019.

5 Amnesty International, “They Executed Some and Brought the Rest with Them”: Human Rights Violations by Security Forces in the Sahel, London, June 2020, available at: <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR3723182020ENGLISH.pdf>.

6 Daniel Eizenga and Wendy Williams, “The Puzzle of JNIM and Militant Islamist Groups in the Sahel”, Africa Center for Strategic Studies, 1 December 2020, available at: <https://africacenter.org/publication/puzzle-jnim-militant-islamist-groups-sahel/>.



(Islamic State in the Greater Sahara and the Islamic State's West Africa Province, a splinter of Boko Haram)<sup>7</sup> operate alongside other local groups that carry out terrorist attacks against civilians and government forces near the border with Nigeria in the south and near the borders with Burkina Faso and Mali in the east. Given the predominance of terrorist-related violence and conflicts in the Sahel, this article will focus on victims of terrorist acts, although this is not meant to exclude victims of other types of violence occurring in these conflicts.

Numerous violations of international human rights law (IHRL) and international humanitarian law (IHL) have been committed against the backdrop of these armed conflicts, yet the obligation of victim reparations,<sup>8</sup> which falls primarily on States,<sup>9</sup> seems to have been overlooked. Despite the fact that the rules of IHL provide for reparations for harm suffered by victims, the legal framework and implementation mechanisms in Sahel countries<sup>10</sup> remain in their infancy. Victim reparations, however, are one of the prerequisites of lasting conflict resolution.<sup>11</sup> The approach required is one that recognizes the primacy of victims' rights and that places the victims' interests at the core of States' concerns and action. Not only will such an approach ensure that the physical and psychological wounds of those who have suffered are treated, but it will also help to prevent new violations thanks in part to appropriate sanctions being applied to perpetrators.<sup>12</sup>

International law provides mechanisms for victim reparations, yet these mechanisms are limited by the fact that they are based primarily on ordinary legal proceedings<sup>13</sup> and that they are implemented principally by virtue of the

7 Vincent Foucher, "The Islamic State Franchises in Africa: Lessons from Lake Chad", Crisis Group, 29 October 2020, available at: <https://www.crisisgroup.org/africa/west-africa/nigeria/islamic-state-franchises-africa-lessons-lake-chad>.

8 The right to reparations for harm suffered is a fundamental principle of international law. In the *Factory at Chorzów* case, in 1928, the Permanent Court of International Justice ruled that: "It is a principle of international law, and even a general conception of the law, that any breach of an engagement involves an obligation to make reparation." See Permanent Court of International Justice, *Case Concerning the Factory at Chorzów, Claim for Indemnity, Merits*, Collection of Judgments of the Permanent Court of International Justice, No. 13, Series A – No. 17, 13 September 1928, available at: [https://www.icj-cij.org/public/files/permanent-court-of-international-justice/serie\\_A/A\\_17/54\\_Usine\\_de\\_Chorzow\\_Fond\\_Arret.pdf](https://www.icj-cij.org/public/files/permanent-court-of-international-justice/serie_A/A_17/54_Usine_de_Chorzow_Fond_Arret.pdf).

9 While NSAGs are required to comply with IHL under Article 1.1 of Additional Protocol II, there is still debate over their obligation to make reparations. Indeed, the question will surely arise as to how to apply this obligation to Sahel NSAGs for which it is difficult to sufficiently ascertain whether a clearly defined body exercises effective control and whether the group is sufficiently organized. See Aurélien Tobie and Boukary Sangaré, *Impacts des groupes armés sur les populations au nord et au centre du Mali*, Stockholm International Peace Research Institute (SIPRI), Solna, October 2019, available at: [https://www.sipri.org/sites/default/files/2019-11/1910\\_sipri\\_report\\_impacts\\_des\\_groupes\\_armes\\_sur\\_les\\_populations\\_au\\_nord\\_et\\_au\\_centre\\_du\\_mali.pdf](https://www.sipri.org/sites/default/files/2019-11/1910_sipri_report_impacts_des_groupes_armes_sur_les_populations_au_nord_et_au_centre_du_mali.pdf).

10 I am referring mainly to countries affected by conflicts in the "three-border region": Burkina Faso, Mali and Niger. However, the focus of this article is Niger.

11 See Oscar Uhler et al., *Commentary on the Geneva Conventions of 12 August 1949*, Vol. 4: *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, ICRC, Geneva, 1956, Art. 8.

12 See Claus Kress and Frédéric Mégret, "The Regulation of Non-International Armed Conflicts: Can a Privilege of Belligerency be Envisioned in the Law of Non-International Armed Conflicts?", *International Review of the Red Cross*, Vol. 96, No. 893, 2015, available at: <https://international-review.icrc.org/sites/default/files/irrc-893-kress-megret.pdf>.

13 In the sense that they are based on common-law proceedings rather than special proceedings.

State's international responsibility and the individual's criminal liability.<sup>14</sup> First of all, State responsibility under IHL, which is analogous to responsibility under general international law, is generally applied to situations involving inter-State relations rather than those involving individuals who are direct victims of violations of IHL.<sup>15</sup> Criminal proceedings against individual perpetrators are indeed one way of obtaining reparations, but their criminal liability needs to be established, the victims must join the proceedings as a civil party<sup>16</sup> and the perpetrators – if convicted – must have some financial means. These are serious obstacles for victims in the Sahel. For these reasons, a mechanism based on State responsibility rather than judicial responsibility must be created in order to ensure that reparations are made to victims of conflicts in Sahel countries – victims who are often poor and ill-prepared to exercise their right of access to justice.<sup>17</sup> Such a mechanism is provided by the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (hereinafter “Principles and Guidelines”), a resolution adopted by the United Nations General Assembly (UNGA) on 16 December 2005.<sup>18</sup> This text, if applied, would undoubtedly form a solid basis for appropriate reparations for victims of armed conflicts in the Sahel.

The conditions that must be met for appropriate reparations to be made to victims of IHRL and IHL violations will now be examined,<sup>19</sup> with a focus on Niger. I will then address the legal and practical framework of these reparations.

14 Sophie Rondeau, “La réparation individuelle en application des mécanismes prévus par le droit international humanitaire”, *Windsor Yearbook of Access to Justice*, Vol. 27, No. 2, 2009, pp. 431–4, available at: [https://www.canlii.org/fr/doctrine/doc/2009CanLIIDocs17#!fragment/zoupio-\\_Tocpdf\\_bk\\_1/BQCwhgziBcwMYgK4DsDWszlQewE4BUBTADwBdoAvbRABwEtsBaAfX2zhoBMAzZgIITMAjAEoANMmylCEAlqjCuA7JQA5KrERCYXAnmKV6zdt0gAynlIAhFQCUAogBl7ANQCCAOQDC9saTB80KTsljAA](https://www.canlii.org/fr/doctrine/doc/2009CanLIIDocs17#!fragment/zoupio-_Tocpdf_bk_1/BQCwhgziBcwMYgK4DsDWszlQewE4BUBTADwBdoAvbRABwEtsBaAfX2zhoBMAzZgIITMAjAEoANMmylCEAlqjCuA7JQA5KrERCYXAnmKV6zdt0gAynlIAhFQCUAogBl7ANQCCAOQDC9saTB80KTsljAA).

15 However, when it comes to non-international armed conflicts, victims suffer violations within their own State and must have access to national courts in order to claim reparations under domestic law; the State's obligation to make reparations following a violation of IHL in these cases should not in principle be controversial. See, for example, United Nations Human Rights Committee, *International Covenant on Civil and Political Rights. General Comment No. 29: States of Emergency (Article 4)*, 31 August 2001, para. 14, available at: <https://digitallibrary.un.org/record/451555?ln=en#record-files-collapse-header>.

16 In countries with a civil law system, in particular.

17 Maman Aminou A. Koundy, *Les victimes de violations de droits de l'homme dans le conflit en lien avec Boko Haram*, United Nations Development Programme, Niger, April 2019.

18 UNGA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UNGA Res. 60/147, 16 December 2005, available at: <https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx>.

19 This article will not be limited to any given body of law, as our aim is to explore the legal bases of appropriate reparations for victims in the Sahel conflict. Also, it is now accepted that IHRL can strengthen and supplement IHL; see Robert Kold, “Human Rights and Humanitarian Law”, in Rüdiger Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law*, Vol. 4, Oxford University Press, Oxford, 2012, note 18, pp. 1040 ff.

## Required conditions for appropriate and comprehensive reparations under international law

In the Principles and Guidelines, the question of reparations is not based on abstract considerations and definitions, but rather on the recognition of States' dual obligation towards victims: States are required to create remedy mechanisms and procedures for victims and ensure that these mechanisms and procedures result in effective reparations.<sup>20</sup>

Various measures can be implemented to ensure that victims receive reparations following violations of their fundamental rights and other types of violations that commonly take place during conflict periods. They may include criminal proceedings, truth commissions, various types of institutional reform, transitional justice, and local initiatives to administer justice and oversee reconciliation, not to mention financial and other measures for victims. All of these initiatives are important and consist of positive aspects for both remedying and preventing violations (although to varying degrees).<sup>21</sup>

It is now recognized that achieving this will require a combination of initiatives designed and implemented with the involvement of the intended beneficiaries, i.e. the victims.<sup>22</sup> The victims must therefore be grouped into categories, and the appropriate response – in view of the circumstances – must be identified.

### Categorizing victims, and responsibility for reparations

In Sahel countries, a large number of gross and systematic violations of IHRL and IHL affect many people, all of whom are entitled to reparations.<sup>23</sup> However, the large number of people affected, and States' limited capacity to make reparations, represent important challenges. Should criteria be set out in order to define who is a victim?

In Principles and Guidelines,<sup>24</sup> the term “victims” is defined as:

persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment

20 See point “VII. Victims’ right to remedies”, in UNGA, Basic Principles and Guidelines (above note 18), which states that: “Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to the following as provided for under international law:

- (a) Equal and effective access to justice;
- (b) Adequate, effective and prompt reparation for harm suffered;
- (c) Access to relevant information concerning violations and reparation mechanisms.”

21 See the document prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR) about truth commissions, prosecutions and vetting: OHCHR, *Rule-of-Law Tools for Post-Conflict States: Prosecution Initiatives*, United Nations, New York and Geneva, 2006, available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/RuleoflawProsecutionsen.pdf>.

22 *Ibid.*

23 Amnesty International, above note 5.

24 For an analysis of the United Nations’ Principles and Guidelines resolution, see Theo van Boven, *The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, United Nations Audiovisual Library of International Law, United Nations, Geneva, 2010, available at: [https://legal.un.org/avl/pdf/ha/ga\\_60-147/ga\\_60-147\\_e.pdf](https://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_e.pdf).

of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. [...] A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.<sup>25</sup>

This definition paves the way towards the categorization of victims. In effect, a person is a victim if they have suffered harm or a loss, regardless of whether the perpetrator is identified or has a familial relationship, and regardless of whether the harm or loss is caused by acts or omissions. Moreover, someone can be a direct or indirect victim, and the harm can be suffered individually or collectively. In any event, responsibility for reparations must be clearly set out in States’ domestic laws.

### *Categorizing victims*

In the Sahel, and in Niger in particular, current armed conflicts<sup>26</sup> are accompanied by sporadic acts of terrorism; the victims are thus primarily victims of what are considered terrorist acts.<sup>27</sup> It is widely accepted that terrorist victims can be direct, secondary, indirect or potential victims. These four categories were laid out in the report of the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism:<sup>28</sup>

- Direct victims of terrorism: natural persons who have been killed or have suffered serious physical or psychological injury as the result of an act of terrorism;
- Secondary victims of terrorism: natural persons who are the next of kin or dependents of a direct victim of terrorism;
- Indirect victims of terrorism: individuals who have suffered serious physical or psychological injury as the indirect result of an act of terrorism. This category includes: (a) members of the public (such as hostages or bystanders) who have been killed or injured through the use of potentially lethal force against suspected terrorists; (b) eyewitnesses who have

25 See point V of UNGA Res. 60/147, above note 18.

26 For an analysis that shows that it is indeed a situation of armed conflict during which acts of terrorism take place, see Maman Aminou A. Koundy, *Les obligations des Etats en matière de respect des droits de l’homme dans la lutte contre le terrorisme*, PhD thesis, Abdou Moumouni University, Niamey, January 2018, p. 205.

27 They are certainly victims of violations of IHRL and IHL at the same time.

28 Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Ben Emmerson, UN Doc. A/HRC/20/14, 4 June 2012, available at: [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/HRC/20/14](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/20/14).

sustained serious psychological harm as the result of witnessing a violent terrorist incident or its immediate aftermath; (c) individuals who have been subjected to potentially lethal force by a public authority after being mistakenly identified as a suspected terrorist; (d) rescue workers who suffer serious physical or psychological harm as the result of taking part in emergency relief.

- Potential victims of terrorism: potential victims of future terrorist acts.

These distinctions are useful in that they encompass the various types of harm or loss suffered, whether from a physical or psychological perspective. However, in the context of the Sahel, they do not cover many victims whose property is destroyed or damaged, who have lost access to social services or who have had to leave their homes owing to the threat of terrorism, becoming internally displaced people or refugees. There are many such victims in the Sahel owing to the unique nature of the conflict, i.e. the fact that it is being perpetuated by the actions of NSAGs.<sup>29</sup> Indeed, the *modus operandi* of some of these groups has consisted of destroying villages, social services or farms, thereby forcing civilians to flee their villages and seek refuge elsewhere.

It is thus essential to include them in a victim reparations process despite the risk of secondary victimization – a term that refers to the victimization that results, not directly from the criminal act itself, but from the response provided to the victim by institutions or individuals.<sup>30</sup> Failing to consider them victims can indeed be viewed as one aspect of double victimization.

### *Responsibility for reparations*

Until recently, wrongful acts and the ensuing reparations were treated in international law as a matter of inter-State responsibility.<sup>31</sup> At least that is the basis of the ruling of the Permanent Court of International Justice in the *Factory at Chorzów* case: “It is a principle of international law that the breach of an engagement involves an obligation to make a reparation in an adequate form.”<sup>32</sup> This is also the reasoning behind the judgment handed down by the International Court of Justice (ICJ) on 26 February 2007 concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (in the case of Bosnia and Herzegovina v. Serbia and Montenegro), in which it ordered Serbia to “take immediate and effective steps to ensure full compliance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide [...]”.<sup>33</sup>

29 M. A. A. Koundy, above note 17.

30 Luc Barret, “Victimisation secondaire : quelle prévention ?”, in Philippe Bessole and Louis Crocq (eds), *Victime–Agresser. Tome 4: Récidive, répétitions, répétition, lien d’emprise et lois des séries*, Champ social, Nîmes, 2004.

31 OHCHR Resolution 1993/29, 25 August 1993, available at: [https://ap.ohchr.org/documents/E/SUBCOM/resolutions/E-CN\\_4-SUB\\_2-RES-1993-29.doc](https://ap.ohchr.org/documents/E/SUBCOM/resolutions/E-CN_4-SUB_2-RES-1993-29.doc).

32 Permanent Court of International Justice, above note 8.

33 For a commentary on that judgment, see Olivier Corten, “L’arrêt rendu par la CIJ dans l’affaire du *Crime de génocide (Bosnie-Herzégovine c. Serbie)* : vers un assouplissement des conditions permettant d’engager

These two rulings, handed down by international courts, set forth both the principle of State responsibility where a State violates its commitments, and its obligation to remedy the resulting harm with respect to another State entity.

However, customary international law regarding State responsibility strengthens the legal basis of the right that victims of violations of IHRL and IHL have to reparations, thereby modifying the traditional concept of State responsibility.<sup>34</sup> It is now recognized that the obligations assumed by a State under IHRL and IHL entail legal consequences not just with respect to other States, but also with respect to individuals or groups that fall within the State's jurisdiction.<sup>35</sup> Under the concept of State responsibility, where international obligations have been violated, the State is required to make reparations not only to other States but also to the injured people or groups. Thus, where a State fails in its obligation to protect civilians' rights, including from third-party violations, as is the case in Niger, State responsibility is engaged and the State has a duty to provide reparations to victims.

Under international law, the right to reparations also includes procedural and substantive aspects. Procedural aspects cover purely legal remedies as well as those remedies set out to ensure victims' access to domestic or international reparation mechanisms; they carry particular weight in the reparations process. This is underscored by the notion of "effective domestic remedies", which is mentioned explicitly in most human rights instruments. On this basis, the Human Rights Committee emphasized States' duty to make reparations to individuals whose rights under the Covenant have been violated, in these terms: "Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy [...] is not discharged."<sup>36</sup> Growing importance is given to the concept of effective remedy, in that it implies a right for victims and not just a duty for States.<sup>37</sup> In substantive terms, a mechanism must be created that effectively delivers reparations<sup>38</sup> in the form of restitution, compensation, rehabilitation, satisfaction and, where applicable, guarantees of non-repetition.<sup>39</sup>

la responsabilité d'un État pour génocide ?", *Annuaire français de droit international*, Vol. 53, 2007, available at: [https://www.persee.fr/doc/afdi\\_0066-3085\\_2007\\_num\\_53\\_1\\_3978](https://www.persee.fr/doc/afdi_0066-3085_2007_num_53_1_3978).

34 See S. Rondeau, above note 14.

35 United Nations Security Council, Resolution S/RES/827, 25 May 1993. In this resolution on the creation of the International Criminal Tribunal for the Former Yugoslavia, for example, the United Nations Security Council "Decides [...] that the work of the International Tribunal shall be carried out without prejudice to the right of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law", available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N93/306/28/PDF/N9330628.pdf?OpenElement>.

36 Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (Eightieth Session), UN Doc. CCPR/C/21/Rev.1/Add. 13, 29 March 2004, para. 16, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsjYoiCfMKoIRv2FVaVzRkMjTnjRO%2Bfud3cPVrcM9YR0iW6Txxgp3f9kUFpWqo%2FhW%2FTpKi2tPhZsbEjw%2FGeZRASjdFuuJQRnbJEAUhby31WiQPl2mLFD6ZSvMMvmQGVHA%3D%3D>.

37 *Ibid.*

38 UNGA, above note 18, paras 19 to 23.8 of the annex.

39 See Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 2: *Practice*, Cambridge University Press, Cambridge, 2005, Chapter 42, Section B, p. 3548, Rule 150,



At this stage, it is important to point out that the right to reparations is increasingly anchored in international case law, meaning it is no longer solely theoretical in scope. In its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the ICJ concluded that Israel had an obligation to make reparations for the damage caused to “all natural or legal persons having suffered any form of material damage as a result of the wall’s construction”.<sup>40</sup> Furthermore, the Rome Statute of the International Criminal Court (ICC) not only reaffirms victims’ right to reparations in cases heard by the ICC,<sup>41</sup> but it also establishes a fund for victims.<sup>42</sup> It is therefore clear that Sahel States involved in terrorism-related conflicts are under greater pressure from international law and practice to set up an appropriate reparations process.

## Determining the appropriate response in Niger

The right to reparations encompasses not only the right to an effective remedy, but also appropriate, effective and comprehensive reparations. The reparations must therefore lead to changes in social, economic and political relationships and structures.<sup>43</sup> Achieving this will require a range of appropriate and comprehensive initiatives designed and implemented with the involvement of the victims that they are meant to help.

### *Appropriate reparation measures*

Gross violations of IHRL and serious violations of IHL entitle the victims to reparations and impose on States the duty to provide them. However, it is obvious that the right to reparations and the duty to make them depend on the domestic legislation and policies of the State concerned. In this regard, States can draw inspiration from the suggestions on implementation measures set out in the Principles and Guidelines.

The core conditions of reparations<sup>44</sup> are fulfilled when the mechanism is designed to provide reparations for harm suffered in any of the forms generally

available at: <https://www.icrc.org/en/doc/assets/files/other/customary-international-humanitarian-law-ii-icrc-eng.pdf>.

40 See ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, advisory opinion of 9 July 2004, ICJ Reports of Judgments, Advisory Opinions and Orders, 2004, p. 136, available at: <https://www.icj-cij.org/public/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>.

41 Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, 17 July 1998 (entered into force 1 July 2002), Art. 75, available at: <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>.

42 *Ibid.*, Art. 79.

43 African Commission on Human and Peoples’ Rights, *General Comment No. 4 on the African Charter on Human and Peoples’ Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)*, adopted at the 21st Extra-Ordinary Session of the African Commission on Human and Peoples’ Rights, held from 23 February to 4 March 2017 in Banjul, The Gambia. Page 3, section 8, available at: [https://www.achpr.org/public/Document/file/English/achpr\\_general\\_comment\\_no\\_4\\_english.pdf](https://www.achpr.org/public/Document/file/English/achpr_general_comment_no_4_english.pdf).

44 I have already mentioned the concept of “effective remedies” that must guide States as they set up a reparation mechanism.

accepted in international law.<sup>45</sup> First comes the concept of restitution, which refers to measures meant to “restore the victim to the original situation before the violations occurred”.<sup>46</sup> These measures may include, for example, restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property. This type of reparation could be considered to have been achieved when the Niger authorities moved victims back to their villages after rebuilding their housing and restoring social services in 2021;<sup>47</sup> another example is communities in which some of its members received vocational training and set-up kits at the same time that repentant ex-members of Boko Haram who turned themselves into the Niger authorities were being reintegrated into society.<sup>48</sup>

Second, there is the concept of the compensation that should be awarded for any harm resulting from IHRL and IHL violations where an economic value can be attributed to the harm, as appropriate and in proportion to the gravity of the violation and the circumstances of each case (such as missed opportunities, lost income and moral injury). Third, rehabilitation measures are required, and they must include medical and psychological care as well as access to legal and social services. Fourth, satisfaction can be achieved through measures aimed at the cessation of continuing violations, verifying the truth, the search for the whereabouts of the disappeared, the recovery and reburial of bodies, public apologies, judicial and administrative sanctions, commemorations and tributes, and training on fundamental rights.

Lastly, guarantees of non-repetition must be provided to the victims. Such measures include institutional reforms aimed at ensuring civilian control of military and security forces; strengthening the independence of the judiciary; protecting human rights defenders; sufficiently protecting communities against third-party violations; providing human rights training; and promoting the observance of international standards relative to IHRL and IHL by public servants, law enforcement, the media and psychological and social services.

45 UNGA, above note 18.

46 Pierre d’Argent, “Le droit de la responsabilité internationale complété ? Examen des *Principes fondamentaux et directives concernant le droit à un recours et à réparation des victimes de violations flagrantes du droit international des droits de l’homme et de violations graves du droit international humanitaire*”, *Annuaire français de droit international*, Vol. 51, 2005, available at: [https://www.persee.fr/doc/afdi\\_0066-3085\\_2005\\_num\\_51\\_1\\_3871](https://www.persee.fr/doc/afdi_0066-3085_2005_num_51_1_3871).

47 See OCHA, Niger – Région de Diffa, *Analyse situationnelle trimestrielle, au 30 juin 2021*, p. 2, available at: [https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ner\\_diffa\\_analyse\\_situationnelle\\_trimestrielle\\_juin\\_2021\\_17082021.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ner_diffa_analyse_situationnelle_trimestrielle_juin_2021_17082021.pdf). Excerpt from p. 2: “In the second quarter of 2021, the authorities decided to return internally displaced people (IDPs) to their region on a voluntary basis. The operation was launched on 20 June 2021 by the regional and national authorities, and around 300 villages will be affected. This operation will involve all 104,588 IDPs in the region. Around 9000 IDPs from the villages of Baroua, Gagam and Kindjandji were the first to start the return process. By 20 June 2021, the return to Baroua (Bosso) involved 1187 households consisting of 5935 people, who left Awaridi (Diffa), Kindjandi (Gueskérou) and Barwa Yala (Kablewa).” (my translation)

48 More details are provided on the process of reintegrating the ex-Boko Haram members in the “Building a legal and institutional framework” section below.

Above all, reparation mechanisms must be capable of satisfying all victims, without exception.

### *Comprehensive reparations*

The victim reparation programme that States have a duty to set up must be designed so that each victim benefits from it. It is obvious that the benefits will not be uniform, given the differences between the victims and the types of harm suffered. However, that is precisely what would make the programme comprehensive, i.e. its capacity to reach every victim, so that every victim stands to benefit. To achieve that, the objectives will have to be clearly defined before the process begins and then, once it is under way, the measures meant to guarantee this result must be put in place and remain so as long as the reparation programme lasts.

It is recognized that the development of a comprehensive programme depends on several factors.<sup>49</sup> First, reliable information on the victims and the reparation mechanism must be available. Information on victims can be hard to come by or inaccurate in terms of the victims' socio-economic characteristics and expectations. The reparation programme also risks being weakened by a lack of basic information, such as the number of victims that will have to be included, along with more detailed yet important information, such as the types of harm and injuries that are to be remedied. Steps will then have to be taken to ensure that the victims actually benefit from the programme. A participatory process can empower the victims, and this will increase the chances of success. This approach in itself has a remedial effect on victims, and it can also help ensure that victims who might otherwise be left out of the programme are effectively included. Lastly, the victims themselves must be aware of the reparation programme for it to be effective. This means making efforts to spread word of the programme far and wide and making it easy to receive the benefits.

In the Sahel in particular, local social structures must be taken into account. First, the process needs to factor in gender considerations, by adopting flexible measures that will bring in as many women as possible. Second, specific outreach measures aimed at displaced people must be created and implemented, as most victims in conflict-affected countries in the Sahel, and in Niger in particular, have been forcibly displaced, and most of the border villages that have borne the brunt of the conflict have been abandoned by their residents.<sup>50</sup>

Special attention must also be paid to the victims' ability to benefit from the programme, including the level of proof required of them. The procedures and

49 OHCHR, *Rule-of-Law Tools for Post-Conflict States: Reparations Programmes*, United Nations, New York and Geneva, 2008, pp. 17 ff., available at: <https://www.refworld.org/docid/47ea6ebf2.html>.

50 See RFI, "Evacuation du lac Tchad: le rapport qui accable le Niger", 11 May 2015, available at: <https://www.rfi.fr/fr/afrique/20150510-evacuation-habitants-iles-lac-tchad-rapport-accable-autorites-niger-boko-haram-expulsion>; Agence Afrique, "Niger : 88 civils tués et plus de 18.000 déplacés suite aux attaques de Boko Haram", 5 April 2019, available at: <https://www.agenceafrique.com/16393-niger-88-civils-tues-et-plus-de-18-000-deplacés-suite-aux-attaques-de-boko-haram.html>.

requirements must not become obstacles to the programme's comprehensive scope by excluding a large number of victims from the reparations process. For example, short application deadlines will disproportionately affect female victims, who often need more time to get past their reluctance to enter into contact with public institutions<sup>51</sup> – in most cases because these individuals were excluded or marginalized in the past. A high level of proof will also exclude many victims from the programme.

The social structure and the special role played by the traditional chiefdom in Niger must be taken into consideration during the decision-making process.<sup>52</sup> Village chiefs can help to establish, through witness accounts, the truth of allegations made by potential reparations recipients. Also, the criteria employed must reflect the wide-ranging nature of the violations; while it is less difficult for someone to prove they were detained illegally or lost a loved one, it is very difficult for them to prove that they were tortured or sexually abused in cases where no physical traces remain, especially when the events in question took place in the distant past. This consideration is quite important in Niger and other Sahel countries.<sup>53</sup>

All these conditions must be met for the reparations process to be capable of reconciling people within and between communities and building long-term peace. Also, adapting these conditions to the Sahel context is crucial for the post-crisis process to succeed. One of the unique characteristics of the situation, which cannot escape the notice of any observer, is that thousands of people who were poor before the conflict lost what little they had. What reparations should be provided to these people? A legal and operational framework is required to answer this question. However, the States have clearly not yet recognized the urgency of putting such a framework into place.

## **The legal framework and practical considerations for reparations in the Sahel: a look at Niger**

As noted above, the needs of victims of violations of IHRL or IHL vary widely, depending on the extent to which each individual was affected. Moreover, these needs change over time, from the short term (right after the violation) to the medium and long term.

If victims' rights legislation were adopted, that would give victims more forms of recourse and deliver an effective message against violent extremism and

51 Humanitarian Dialogue, *Processus de sortie de crise à Diffa : Recueil des perceptions dans les 12 communes de la région*, Geneva, September 2017.

52 See Nassirou Bako-Arifari, *De la résurgence et de la ré-justification de la chefferie en contexte de démocratisation au Bénin et au Niger*, Das Arabische Buch, Berlin, 1998.

53 See Aurélien Tobie and Boukary Sangaré, *Impacts des groupes armés sur les populations au nord et au centre du Mali : Adaptations souhaitables des stratégies de rétablissement de la paix*, SIPRI, 2019, available at: [https://www.sipri.org/sites/default/files/2019-11/1910\\_sipri\\_report\\_impacts\\_des\\_groupes\\_armes\\_sur\\_les\\_populations\\_au\\_nord\\_et\\_au\\_centre\\_du\\_mali.pdf](https://www.sipri.org/sites/default/files/2019-11/1910_sipri_report_impacts_des_groupes_armes_sur_les_populations_au_nord_et_au_centre_du_mali.pdf).

terrorism, which are an underlying factor in Sahel conflicts. It would also make public entities more transparent and help build trust in reparation mechanisms. In addition, if the rights of victims of armed conflicts were enshrined in domestic law, these rights would stand a greater chance of being invoked and leading to an effective remedy. Beyond legislation, however, a comprehensive reparation mechanism will also require institutions capable of implementing it, along with procedures for victims to apply for benefits.

Unfortunately, the expected standards are not being met by current law, institutions or practices.

## Building a legal and institutional framework

The first prerequisite for an effective reparation mechanism for victims of violations of IHRL and IHL is without a doubt the establishment of an appropriate legal and institutional framework. However, the necessary legal framework has not yet been created in conflict-affected countries of the Sahel, including Niger, and this is an objective hindrance to the post-conflict process. Let us take the case of Niger, where victims of violations of IHRL and IHL can in principle bring civil proceedings and obtain reparations from perpetrators whose guilt has been established.<sup>54</sup> The particular nature of the conflict and the large number of victims, however, as well as the difficulty that often-illiterate victims have in exercising their rights, are all factors that work against the awarding of reparations.<sup>55</sup>

Niger's parliament, clearly taking into account these circumstances as well as international recommendations, introduced a new article in this regard into the Criminal Code through Law No. 2018-86 of 19 December 2018. Under this law, "victims of terrorist acts are entitled to compensation under the terms set out by decree by the Council of Ministers".<sup>56</sup> There is no doubt that appropriate legislation on victim reparations could be developed on the basis of this law. However, the implementing decree has not yet been enacted,<sup>57</sup> which means that victims of current conflicts are still considered victims of ordinary criminal offences.

Victims have little chance of obtaining any reparations given these legal circumstances. Although they may seek reparations by instituting criminal proceedings, they may be prevented from fully exercising their rights by several obstacles. First, the criminal prosecution mechanism is complex; this will confuse rural and, in many cases, illiterate individuals, who make up most of the victims of Niger's ongoing conflicts. Next, in criminal court, the judge will not award damages to a victim until the alleged perpetrators are actually found guilty, yet this is usually a very slow process that, in some cases, requires laborious evidence gathering. Lastly, even if the perpetrators are ordered to make reparations, they may not have the means to do

54 See Niger's Code of Criminal Procedure, Arts 80 ff., available at: [http://www.justice.gouv.ne/images/lois/pdfs/Code\\_penal\\_et\\_CPP\\_Edition\\_Janvier\\_2018.pdf](http://www.justice.gouv.ne/images/lois/pdfs/Code_penal_et_CPP_Edition_Janvier_2018.pdf).

55 M. A. A. Koundy, above note 17.

56 Niger's Criminal Code, Art. 399.1.25 (my translation): available at: [http://www.justice.gouv.ne/images/lois/pdfs/Code\\_penal\\_et\\_CPP\\_Edition\\_Janvier\\_2018.pdf](http://www.justice.gouv.ne/images/lois/pdfs/Code_penal_et_CPP_Edition_Janvier_2018.pdf).

57 More than two years have passed, at the time of writing.

so.<sup>58</sup> Another concern is that victims and their loved ones may open themselves up to reprisals by appearing in criminal proceedings, as their identity may not be protected and the measures needed to keep them safe may not be taken. An appropriate legal framework must therefore be put in place quickly to prevent secondary victimization, which would be prejudicial to the establishment of durable peace.

It is indeed necessary to recognize that the harm caused by conflict-related violence often goes beyond the immediate impact on direct victims to affect the entire society. Also, it is indeed because of the need to protect society that the criminal sanction was put in place. However, criminally sanctioning perpetrators is not enough. The victims should be awarded reparations under an appropriate legal mechanism. In the specific context of terrorist acts, they are the victims – whether direct or indirect – of an infraction that targeted one or more States or international organizations and that were aimed at the most highly valued interests of a State or of the international community. It is therefore absolutely necessary to assess the rights and needs of victims, to support them, and to deliver reparations that compensate them for the harm they have suffered.

The institutional framework is also lacking; there is no appropriate institution dedicated to ensuring that reparations are made to conflict victims in Sahel countries in general, and in Niger in particular.<sup>59</sup>

The existence of a reparations process sponsored by the High Authority for the Consolidation of Peace in Niger must not, however, be overlooked. It came about when combatants and others associated with Boko Haram defected from the group in response to the government's appeal and promise of amnesty in 2016. The government authorized the creation of a reception centre for those who surrendered, in Goudoumaria, through an order issued on 4 February 2019 by the Ministry of the Interior, Public Safety, Decentralization and Customary and Religious Affairs. This legal framework is based on the post-crisis strategy in the Diffa region<sup>60</sup> and the framework document governing the surrender of Boko Haram members.<sup>61</sup> It set out the legal basis for the centre, which actually began operating in February 2017.

The amnesty resulted in the surrender of at least 375 Boko Haram members, including 30 women. They all enrolled in the socio-economic

58 According to the statistics kept by Niger's specialized judicial unit in charge of terrorism cases (*Pôle judiciaire spécialisé en matière de lutte contre le terrorisme*), no reparations have been made to date, even though it has heard and handed down rulings in 100 cases per year on average since 2017. See *Pôle judiciaire spécialisé en matière de lutte contre le terrorisme et la criminalité transnationale organisée*, December 2020.

59 The only decrees that can be considered to address this issue are Decree No. 2013-214/PRN/MI/SP/D/AR/MDN/MH/E/MF of 7 June 2013, which amends and supplements Decree No. 2008-376/PRN/MI/SP/D/MDN of 21 November 2008, on the compensation of agents of the defence and security forces, their dependants, their direct ascendants and victims of operations to maintain order or defend the country, and Decree No. 2013-219/PRN/MDN of 14 June 2013, on compensation for orphans, widows, widowers, direct ascendants, military personnel and police officers who have died in the line of duty. However, these decrees only cover victims of defence and security forces and only provide for individual monetary damages, while reparations go well beyond this and also cover memorial aspects and the ability of communities to become self-sustaining more broadly.

60 *Stratégie de sortie de crise dans la région de Diffa*, Cabinet of the Prime Minister of Niger, July 2021 version.

61 High Authority for the Consolidation of Peace, *Document cadre de prise en charge de la reddition des éléments de Boko Haram*, December 2016.



reintegration programme at the centre.<sup>62</sup> This programme consists of training and psychosocial support, which leads to a completion certificate, a vocational training certificate, a set-up kit and a set-up grant of 50,000 CFA francs. Participants also swear a Koranic oath, as a group, in which they renounce violent extremism. Before those eligible are accepted in the programme, anyone who committed a war crime or a crime against humanity is separated out, so that they can be criminally prosecuted. At the same time, in order to make it easier to reintegrate ex-members in host communities, and to pinpoint those communities' needs, awareness-raising meetings are held, and a programme designed to provide socio-economic support for 600 young people from these communities was set up as a way of sustaining and bolstering their resilience in the face of violent extremism.

This programme is designed in part to ensure that the objectives of justice and peace can both be achieved. However, in addition to the fact that this process suffers from a serious lack of funding, it is limited to the region of Diffa and does not appear to have taken root in the western part of the country even though, as already mentioned, it is crucial for a durable exit from the crisis. Furthermore, there is a need to more effectively outline the conceptual and legal framework of this transitional justice in Niger, turning it from a secondary mechanism, like it is now, into a primary instrument.

A recent change has taken place in the institutional framework for reparations for victims of armed conflict in Niger. The Niger government created the “*waqf*” fund<sup>63</sup> to support the dependants of agents of the defence and security forces who die or go missing in the line of duty, or who die or become disabled as a result of wounds suffered on the field of operations.<sup>64</sup> On 7 February 2020, the High Waqf Authority was created by Decree No. 20-136/PRN/MF. The same decree sets out the protocol for managing and monitoring this funding mechanism.

There is reason to believe that this reparation mechanism could be used for all victims, not just agents of the defence and security forces. It could, thus, be a powerful tool for Niger's government to meet its reparation obligations towards conflict victims.

## A nascent practice to build on

The conflicts plaguing Niger, and the Sahel in general, have multiple causes.<sup>65</sup> Among them, the failure of various sectors to further develop has helped spur the

62 Jeannine Ella Abatan and Remadji Hoinathy, “Getting Goudoumaria Right: Are Boko Haram Defectors Reintegrating Safely?”, Institute for Security Studies, 8 December 2021, available at: <https://issafrica.org/iss-today/getting-goudoumaria-right-are-boko-haram-defectors-reintegrating-safely>.

63 Under Islamic law, the *waqf* is an inalienable donation to a public, religious or charitable entity, or to one or more individuals.

64 See G5 Sahel, “Lancement du premier fonds public Waqf au profit des forces de Défense et de Sécurité du Niger”, 12 April 2021, available at: <https://www.g5sahel.org/lancement-du-premier-fonds-public-waqf-au-profit-des-forces-de-defense-et-de-securite-du-niger/>.

65 Isel van Zyl, *Preventing Violent Extremism: The Role of Communications*, ISS Policy Brief, Institute for Security Studies, 31 March 2020, available at: <https://issafrica.org/research/policy-brief/preventing-violent-extremism-the-role-of-communications>.

political, economic and social marginalization that underpins radicalization within certain socio-economic groups. There is a high risk that reparation needs will not be sufficiently addressed if this situation is not properly analysed before any reparation programmes are set up.

Such programmes must also be designed and implemented with a view to achieving durable peace. The programme's design can include the forms of reparation discussed above (restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) and divide them into two groups: material and symbolic reparations, which can be delivered individually or collectively.

Reparations, whether material or symbolic, can come in various guises. Material reparations can take the form of compensation, i.e. cash payments or the delivery of services such as education, health care or housing. Symbolic reparations may include official apologies, commemoration days or symbolic sites dedicated to the victims' memory. These measures would fall under the "satisfaction" category.

Reparation programmes must have both dimensions to be effective. Indeed, programmes that provide for a range of benefits—including material and symbolic—with each delivered both individually and collectively, are more likely to reach a greater proportion of victims than programmes that focus on delivering material benefits. This is because the victims, whose rights have been violated in different ways, should not necessarily receive exactly the same types of benefits; creating a broader range of benefits will ensure that more victims are covered.<sup>66</sup> In Niger, a solely material reparation programme may not be appropriate given the differences among the victims and the harm suffered. It will be more appropriate to set up a process that provides both cash payments and health-care services, education and housing assistance, vocational training and so on. With a complex programme of this type, benefits could reach—through collective symbolic measures in particular—a larger number of victims and other people who have been affected in one way or another, and the benefits could be delivered flexibly in order to meet the victims' specific needs.

However, it is clear that the initiatives under way in Niger's conflict zones lack overall consistency in terms of objectives and implementation. But the fact that such initiatives exist is noteworthy,<sup>67</sup> and, at the very least, they are contributing to the collective reparations process, including by improving the social infrastructure and fostering social cohesion and reconciliation.

Social cohesion has indeed been impaired by past violations, particularly violations of fundamental rights, including sexual and sexist violence committed by a wide range of people. Under these circumstances, a reconciliation programme must be created alongside the legal mechanism so as to promote the peaceful reintegration of perpetrators and ensure reparations are made to victims. Lasting, strategic and comprehensive solutions that reflect the needs of those affected must

<sup>66</sup> See UNGA, above note 18; and T. Van Boven, above note 24.

<sup>67</sup> Examples include the Stabilization Facility for Lake Chad, in the eastern region of Diffa, and the reconstruction programme in Tillabéri region in western Niger, both led by Niger's government.

be identified in consultation with the victims. In addition, to avoid secondary victimization and provide guarantees of non-repetition, an inclusive and multilateral dialogue should be set up with the goal of building trust and overcoming divisions between communities and stakeholder groups, in particular between local administrations and authorities on one hand and the communities on the other.<sup>68</sup> The communities need to be brought in to ensure that the reintegration process is acceptable to them. In addition, consulting victims of sexist violence and providing them with support services will facilitate their reintegration into the community. If possible, reconciliation and social cohesion programmes should be designed and put in place at the regional level (at a minimum, regional consultations should be held), and key inclusion-related actions should be run at the community level.<sup>69</sup>

In October 2020, Niger adopted the National Strategy for Preventing Radicalization and Violent Extremism, undoubtedly in response to the need for a coherent and comprehensive vision of reparations and a durable exit from the crisis.<sup>70</sup> This framework, if applied, would certainly provide a better foundation for reparations for victims of conflict in Niger.

## Conclusion

The severity and scope of the conflict-related crisis and its impact in the Sahel, and in Niger in particular, have only been made worse by social, environmental and both climate- and governance-related challenges over the course of recent decades. These challenges, the product of long-established economic and sociocultural practices, have worn away at the resilience of people and households and at systemic resilience, disrupting institutions, economic production and social cohesion in the region. Current armed conflicts, the effects of which add to the burden of these structural challenges, have uprooted large numbers of people, disrupted markets and social services, and damaged the economy in the affected zones. The conflicts have left behind them numerous direct and indirect victims. In response, States in the Sahel, including Niger, must comply with their international reparation obligations. This means creating the legal, institutional and practical conditions under which victims can benefit from reparations – outside of the common-law legal mechanism, if possible, in view of its known limitations.

There is an increasingly urgent need for reparations for conflict victims in the Sahel, and in Niger in particular, starting with symbolic acts of recognition.

68 It is good to see that, in this regard, the High Authority for the Consolidation of Peace is carrying out various activities aimed at community reconciliation and cohesion among social strata. This undoubtedly makes a significant difference in maintaining a certain level of intercommunity peace in Niger's conflict-affected zones, which is better than in neighbouring countries in a similar situation.

69 M. A. A. Koundy, above note 17.

70 National Centre for Strategic and Security Studies (CNESS) of the Republic of Niger, *Stratégie nationale de prévention de la radicalisation et de l'extrémisme violent*, October 2020, available at: [https://www.g5sahel.org/wp-content/uploads/2021/03/SNPREV-Niger\\_-version-finale.pdf](https://www.g5sahel.org/wp-content/uploads/2021/03/SNPREV-Niger_-version-finale.pdf).

Preliminary steps should be taken to empower this group of people so that they can break free of their dependent status, which they clearly dislike.<sup>71</sup> This phase will lay the groundwork for other, more comprehensive and effective, reparation measures.

These measures need to be part of a holistic programme so as to be coherent and coordinated with all other measures. Ultimately, victim reparations – material and symbolic, individual and collective – must be designed and implemented in a manner befitting the circumstances, the available resources and the victims themselves.

<sup>71</sup> *Ibid.*

# The applicability of international humanitarian law to acts of violence perpetrated by unidentified armed individuals in the Sahel: The case of Burkina Faso

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## Abstract

*Burkina Faso has suffered attacks most often attributed to unidentified armed individuals. These attacks occur in an area which is under the influence of terrorist groups as well as criminal groups. Instability does not stem from a prior armed conflict, but from a continuous deterioration resulting from unclaimed attacks. The challenge then is to know whether international humanitarian law (IHL) can apply in a context where the perpetrators of violence are not identified. This requires visiting the conditions of applicability of IHL in non-international armed conflict to assess their relevance in a context of production of violence without identification of the perpetrators.*

**Keywords:** non-identification, applicability, international humanitarian law, non-international armed conflicts, Sahel, violence, armed individuals.

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## Introduction

According to a report by the Armed Conflict Location & Event Dataset (ACLED), some 12% of attacks by armed groups are the work of unidentified armed groups.<sup>1</sup> This confirms the impression that violence by unidentified armed groups and individuals is on the increase globally. As far as Africa is concerned, this problem occurs most often in the Central African Republic, Somalia and the Sahel. The media regularly report attacks by unidentified armed men in Burkina Faso.<sup>2</sup> Elsewhere in the world, Syria also suffers large numbers of attacks by unidentified armed groups. For instance, the Lafarge group has admitted making indirect payments to unidentified armed groups so that it could continue operating its cement plant in an area controlled by the Islamic State group.<sup>3</sup>

We therefore need to examine the definitions of “unidentified armed group” and “unidentified armed individual”. For the purposes of the present study, these terms refer primarily to groups and individuals that rarely claim responsibility for their attacks on government forces, civilians or other armed groups. This makes it difficult to attribute an attack to a group. Such attacks generally occur in areas experiencing conflict and instability because of the State’s inability to exercise its authority. Multiple weapon bearers operate in such areas, often with divergent aims and relationships that are merely opportunistic. Even if these zones are under the influence of one or more known armed groups, they do not claim responsibility for the vast majority of attacks occurring there. According to a report by the Institute for Security Studies, “In Burkina Faso, where numerous acts are unaccounted for, the expression ‘unidentified armed men’ is also used.”<sup>4</sup>

An armed group may choose to remain unidentified for strategic reasons; it may be engaging in terrorism, or using anonymity to avoid being held responsible

- 1 ACLED, *Unidentified Armed Groups*, July 2012, p. 12, available at: [https://www.acleddata.com/wp-content/uploads/2012/07/ACLED\\_Unidentified-Armed-Groups-Working-Paper\\_July-2012.pdf](https://www.acleddata.com/wp-content/uploads/2012/07/ACLED_Unidentified-Armed-Groups-Working-Paper_July-2012.pdf) (all internet references were accessed in April 2022).
- 2 Nadia Chahed, “Burkina Faso : plus de 2000 personnes ont fui leurs villages après une série d’attaques dans le Sahel”, *Agence Anadolu*, 30 April 2021, available at: <https://www.aa.com.tr/fr/afrique/burkina-faso-plus-de-2-mille-personnes-ont-fui-leurs-villages-apr%C3%A8s-une-s%C3%A9rie-d-attaque-dans-le-sahel/2225741>. According to that article, “A total of 2224 persons (including 438 women and 1308 children) have fled the villages of Koumbri, Yatakou and Sikiré in the commune of Seytenga (which lies in the Sahel region of northern Burkina Faso) following attacks by unidentified armed individuals on Monday that led to 18 deaths, according to an announcement by the regional directorate of the ministry responsible for humanitarian action.” (our translation) In an administrative communiqué dated 7 August 2020, the governor of Burkina Faso’s Est region reported that “today, 7 August 2020, at about 12:00 hrs, unidentified armed individuals burst into the livestock market in Namoungo, a village in the commune of Fada N’Gourma, and attacked the people there”. (our translation) Administrative communiqué No. 2020-024/MATDC/REST/GVRT-FGRM/CAB, 7 August 2020.
- 3 Franceinfo, “Syrie : le groupe Lafarge reconnaît avoir indirectement financé des groupes armés”, 2 March 2017, available at: [https://www.francetvinfo.fr/economie/emploi/metiers/droit-et-justice/syrie-le-groupe-lafarge-reconnait-avoir-indirectement-finance-des-groupes-armes\\_2078359.html](https://www.francetvinfo.fr/economie/emploi/metiers/droit-et-justice/syrie-le-groupe-lafarge-reconnait-avoir-indirectement-finance-des-groupes-armes_2078359.html).
- 4 William Assanvo *et al.*, “Violent Extremism, Organised Crime and Local Conflicts in Liptako-Gourma”, Institute for Security Studies, *West Africa Report* 26, 10 December 2019, p. 3, available at: <https://issafrica.org/research/west-africa-report/violent-extremism-organised-crime-and-local-conflicts-in-liptako-gourma>.



for abuses.<sup>5</sup> On the other hand, it is sometimes impossible to identify the perpetrators of an attack because no armed group can say for certain that it is linked with the persons responsible, on account of the proliferation of weapon bearers and the general lack of security.

Reports of the Crisis Group list three groups as operating in Burkina Faso. The first is Ansar ul Islam, founded by Malam Ibrahim Dicko, a radicalized preacher from the province of Soum in the north of the country.<sup>6</sup> This group is primarily national in origin, although it does have as its mentor Hamadoun Kouffa, founder of the Macina Liberation Front (central Mali).<sup>7</sup> Ansar ul Islam's zone of influence appears to cover parts of the provinces of Soum, Bam and Sanmatenga in the north-east and north of Burkina Faso.<sup>8</sup> The second is Islamic State in the Greater Sahara (also known as ISWAP (Islamic State's West Africa Province)). This group is active in the Nord and Est regions of Burkina Faso.<sup>9</sup> The third is The Support Group for Islam and Muslims (JNIM or GSIM; Groupe de Soutien à l'Islam et aux Musulmans), which appears to be operating in the Nord, Ouest and Est regions of the country.<sup>10</sup> Ansar ul Islam is said to have pledged allegiance to this group, which is said to include nationals of Burkina Faso.<sup>11</sup> In Burkina Faso, the provinces most affected by the deteriorating security situation are therefore those in the Nord, Centre-Nord, Est and Boucle du Mouhoun regions.

In Burkina Faso, armed groups claimed responsibility for just nine attacks between 2016 and 2020: the Islamic State group claimed responsibility for four, GSIM for two, Ansar ul Islam for one and the Islamic State group and GSIM jointly claimed responsibility for two.<sup>12</sup> These numbers pale into insignificance when one realize that the Observatoire pour la Démocratie et les droits de l'homme (ODDH) recorded 580 attacks between 4 April 2015 and 31 May 2020.<sup>13</sup> Clearly, most attacks in Burkina Faso occur without any group claiming responsibility. The fact that no groups are claiming responsibility for these attacks poses a problem, given the large number of players in the regions affected by the deteriorating security situation: bandits; criminals involved in cigarette trafficking, poaching, artisanal gold mining and drug trafficking; armed terror groups who control the area and self-defence militia groups.<sup>14</sup> In such a situation, the fact

5 ACLED, above note 1, pp. 1–2.

6 Crisis Group, "The Social Roots of Jihadist Violence in Burkina Faso's North", *Africa Report No. 254*, 12 October 2017, pp. 3–4, available at: <https://www.crisisgroup.org/africa/west-africa/burkina-faso/254-social-roots-jihadist-violence-burkina-faso-north>.

7 *Ibid.*, p. 9.

8 *Ibid.*, pp. 10–12.

9 Crisis Group, "Burkina Faso: Stopping the Spiral of Violence", *Africa Report No. 287*, 24 February 2020, p. 12, available at: <https://www.crisisgroup.org/africa/sahel/burkina-faso/287-burkina-faso-sortir-de-la-spirale-des-violences>.

10 *Ibid.*

11 *Ibid.*, p. 11.

12 Ministère de l'Economie, des Finances et du Développement, coopération pour le développement, *Défis sécuritaires et coopération au développement au Burkina Faso*, Rapport 2019, June 2020, p. 68.

13 ODDH, *Burkina Faso, Risque d'un nouveau Rwanda ? Bilan de la Violence au Burkina Faso 04 avril 2015 – 31 mai 2020*, Ouagadougou, 22 June 2020, p. 24.

14 W. Assanvo *et al.*, above note 4, pp. 9–19.

that no group claims responsibility for attacks makes it difficult to say whether an armed group is involved in an armed conflict within the meaning of international humanitarian law (IHL).<sup>15</sup>

The situation in Burkina Faso changes rapidly. The present analysis covers the period from 2015 to March 2022 and will examine the applicability of IHL in a context where the State is disintegrating and the security situation is deteriorating. In Mali, the existence of an armed conflict prior to an increase in acts of terrorism makes it quite clear that IHL applies there. In Burkina Faso, however, acts of violence are occurring without any armed conflict having existed beforehand. Given that these acts were initially viewed as a security problem, it was understandable that their perpetrators did not claim responsibility for them. However, the increasing frequency of attacks now raises the question as to whether the conditions for application of IHL have been met, and if so from what date onwards. The fact that no group claims responsibility for the majority of attacks makes it even harder to apply IHL. In most cases, the persons carrying out these attacks are described as “unidentified”. There are doubts as to their degree of organization, for instance, given the general deterioration of the security situation. The question is therefore as follows: can the fact that a group is unidentified constitute an obstruction to the application of IHL in contexts where the security situation is deteriorating?

We must start by assuming that the unidentified armed group is not being supported by a foreign State. If a State were exercising overall control over the unidentified armed group, this would be a case of internationalization of a non-international armed conflict. The hypothesis that interests us here is that under which individuals (possibly in the form of a group) carry out their acts without the support of another State. If such a hypothesis is true, can one state that a non-international armed conflict is taking place, even if the armed group has not been identified?

In the remainder of this article, we shall attempt to show that not being able to identify an armed group makes it difficult to decide whether an armed conflict is taking place. Not being able to identify a group makes it difficult to decide whether two criteria for classifying a situation as a non-international conflict have been satisfied: (I) the group possesses the necessary degree of organization; and (II) the violence has reached a certain level of intensity.

## **I. The implications of an absence of identification when assessing the organized nature of an armed group**

Article 3 common to the Geneva Conventions and Additional Protocol II do not specify what is meant by an “organized” armed group. This task has largely been

15 Claiming responsibility for attacks is not the only means whereby a party to a conflict can be identified, especially in the case of armed groups. Other means of identification include confidential dialogue with the parties, intelligence-gathering by armed and security forces, testimony from witnesses or victims of abuses, judicial measures, the media, research papers, etc.

left to jurisprudence and doctrine. According to the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY), an armed group can be considered “organized” if it fulfils a number of conditions: the existence of a command structure, the ability to conduct coordinated military operations, the possession of certain logistics capabilities, the ability to respect and ensure respect for IHL, the ability to speak with one voice and the ability to define a unified military strategy and use military tactics.<sup>16</sup> From all these characteristics, Zakaria Dabone extracts three concepts: “three ideas stand out, and it is by no means certain that a group which fails to satisfy any one of them can be classed as a party to an armed conflict. The ideas are those of cohesion, a certain degree of power, and operationality.”<sup>17</sup> “Cohesion” refers to a command structure, discipline, a unified military strategy and the ability to speak with one voice, whereas “power” is the ability to recruit, the fact of having a headquarters or controlling a certain territory and the possession of weapons or other military equipment.<sup>18</sup> “Operationality” means such things as the issuing of military orders, the use of military tactics or the execution of military operations.<sup>19</sup>

In the current context of Burkina Faso, it would appear difficult to apply the “organization” criterion (A). As a result, the absence of a command structure makes it difficult to apply IHL (B).

## A. The difficulty of applying the “organization” criterion in the context of Burkina Faso

The difficulty of applying the “organization” criterion in the context of Burkina Faso stems from the fact that some evidence indicates that the unidentified armed groups possess a certain degree of organization (1), while other evidence suggests that they do not (2).

### 1. Evidence for the unidentified armed groups possessing a certain degree of organization

Operations against armed and security forces in Burkina Faso are very often planned, and point to a significant level of military strategy and tactics.<sup>20</sup> According to the report compiled by the Burkina Faso minister of finance and development, “The agents of insecurity in the Sahel appear to be better organized and informed regarding the movements of the armed and security forces. They

16 ICTY, *Prosecutor v. Ramush Haradinaj, Idrij Balaj and Lahi Brahimaj*, Case No. IT-04-84-T, Judgment (Trial Chamber I), 3 April 2008, para. 60, available at: <https://www.icty.org/x/cases/haradinaj/tjug/en/080403.pdf>.

17 Zakaria Dabone, *Le droit international public relatif aux groupes armés non étatiques*, Schulthess Médias Juridiques SA, Basle, Geneva and Zurich, 2012, p. 83 (our translation).

18 *Ibid.*

19 *Ibid.*

20 Crisis Group, above note 9, pp. 33–8.

use the effect of surprise and regularly change their *modi operandi*.”<sup>21</sup> The *modi operandi* of the attacks therefore suggest a degree of organization on the part of the groups carrying them out. That was particularly the case of the attack of 14 November 2021 on the gendarmerie detachment guarding the Inata mine.<sup>22</sup> This was the deadliest attack that the army of Burkina Faso has ever experienced. Fifty-three gendarmes out of the 120 who made up the detachment were killed, and at the time of writing twenty are still missing.<sup>23</sup> It is reported that a large number of individuals were using pickups or motorbikes.<sup>24</sup> The ability of the terrorists to carry out deadly ambushes against the armed and security forces is further evidence that the attacks are planned. Examples include the ambush of 23 December 2021 that targeted a group of Volunteers for the Defence of the Homeland (VDPs; Volontaires de la patrie) in You (Nord region).<sup>25</sup> That ambush claimed the lives of forty-one persons, including Soumaila Ganamé (also known as Ladjî Yoro), the most famous VDP in Burkina Faso.<sup>26</sup> It is also worth mentioning the attack of 18 August 2021 at a location 25 km from Gorgadji (Sahel region), on a mixed convoy of military personnel, civilians and VDPs that was moving from Dori to Arbinda.<sup>27</sup> That attack resulted in the deaths of eighty people, including sixty-five civilians and fifteen gendarmes.<sup>28</sup>

What also demonstrates the organized nature of these operations is the clear intention of isolating villages, towns and provinces by destroying mobile phone towers.<sup>29</sup> The idea is to facilitate attacks by preventing people from communicating. Destruction of mobile phone towers is often accompanied by the cutting of power lines, with the aim of plunging the target area into darkness.<sup>30</sup> Knocking out mobile phone towers and power lines – a method used in several regions and provinces – appears to point to a carefully conceived and methodically executed strategy.

21 Ministère de l’Economie, des Finances et du Développement, coopération pour le développement, above note 12, p. 69 (our translation).

22 Le Figaro, “Burkina : L’attaque de dimanche contre les gendarmes a fait au moins 53 morts”, 17 November 2021, available at: <https://www.lefigaro.fr/flash-actu/burkina-au-moins-20-morts-dans-une-attaque-contre-un-detachement-de-gendarmerie-20211114>.

23 Jeune Afrique, “Burkina Faso : colère et indignation à l’inhumation de gendarmes tués à Inata”, 24 November 2021, available at: <https://www.jeuneafrique.com/1270246/politique/burkina-faso-colere-et-indignation-a-linhumation-de-gendarmes-tues-a-inata/>.

24 Voice of America, “Burkina Faso : l’attaque d’Inata illustre la déroute de l’armée face aux jihadistes”, 23 November 2021, available at: <https://www.voafrique.com/a/burkina-l-attaque-d-inata-illustre-la-d%C3%A9route-de-l-arm%C3%A9e-face-aux-jihadistes/6324376.html>.

25 Lefaso.net, “Burkina : Un deuil de 48 heures décrété après la mort de 41 personnes dont Ladjî Yoro dans une attaque dans le Nord”, 26 December 2021, available at: <https://lefaso.net/spip.php?article110088>.

26 *Ibid.*

27 Le Point Afrique, “Burkina Faso : l’attaque d’un convoi fait 80 morts”, 19 August 2021, available at: [https://www.lepoint.fr/afrique/burkina-faso-l-attaque-d-un-convoi-fait-47-morts-19-08-2021-2439467\\_3826.php](https://www.lepoint.fr/afrique/burkina-faso-l-attaque-d-un-convoi-fait-47-morts-19-08-2021-2439467_3826.php).

28 *Ibid.*

29 Siébo Kansié and Jules Natabzanga Ouédraogo, “Burkina Faso : destruction de pylônes, d’aérodrome, des édifices publics, rien n’échappe à la colère des terroristes”, *Libre info*, 8 February 2022, available at: <https://libreinfo.net/burkina-faso-destruction-de-pylones-daerodrome-des-edifices-publics-rien-echappe-pencore-a-la-colere-des-terroristes/>.

30 Hamadou Ouédraogo, “Burkina : Titao se réjouit de retrouver la lumière”, *Minute.bf*, 22 February 2022, available at: <https://minute.bf/burkina-titao-se-rejouit-de-retrouver-la-lumiere/>.

Furthermore, these groups have been able to lay their hands on weapons that sometimes give them more firepower than government forces. While they often use homemade bombs, reports of attacks indicate regular use of Kalashnikov assault rifles, rocket launchers, etc. This ability to make regular acquisitions of weaponry indicates the existence of a command structure.<sup>31</sup> According to the Institute for Security Studies, “These groups have a varied armament made up of assault rifles (AK-47), light machine guns (PK), heavy machine guns (12.7 mm and 14.5 mm), rocket launchers and mortars. They also use improvised explosive devices.”<sup>32</sup>

Furthermore, these groups are able to recruit members of the population, which indicates a certain degree of organization:

For their recruitment drives, jihadists exploit injustices frequently linked to land disputes and coupled with political and community-based issues. Certain situations are conducive to the enlistment of individuals or entire groups; new recruits have no “typical” profile but may be civilians struggling to assert their rights over land, gold miners facing restricted access to mines, or bandits seeking more powerful allies. (...) Jihadists also recruit from groups familiar with handling weapons. In Burkina Faso, a country that has experienced no rebellions, these people include former soldiers, whether discharged or deserters, and highway robbers. Bandits are increasingly enlisting as jihadists in Burkina (...) <sup>33</sup>

Armed groups also recruit among ethnic groups who feel a strong sense of injustice, such as Folani herders.<sup>34</sup> Armed groups exploit ethnic violence between Folani herders and other, agricultural ethnic groups. The armed groups offer protection, but it comes at a price. The increasing number of perpetrators, in terms of both space and time, indicates that the groups behind the attacks have been able to recruit more personnel. This is confirmed by the Burkina Faso Economic and Social Council, which reports “an almost exponential increase in the number of attacks between 2015 and 2019, from three to 224”.<sup>35</sup> This indicates the ability to organize, although it has to be said that some members are recruited against their will, as a result of pressure exerted on them and their families.

That these groups are organized can also be deduced from their ability to use funds from criminal activities to train and retain recruits: “these funds are

31 ICTY, *Prosecutor v. Slobodan Milosevic*, Decision on Motion for Judgment of Acquittal, Case No. IT-02-54-T (Trial Chamber III), 16 June 2004, para. 23, available at: [https://www.icty.org/x/cases/slobodan\\_milosevic/tdec/en/040616.htm](https://www.icty.org/x/cases/slobodan_milosevic/tdec/en/040616.htm).

32 W. Assanvo *et al.*, above note 4, pp. 9–10.

33 Crisis Group, above note 9, p. 14.

34 Crisis Group, “A Course Correction for the Sahel Stabilisation Strategy”, *Africa Report No. 299*, 1 February 2021, p. 4, available at: <https://www.crisisgroup.org/africa/sahel/299-course-correction-sahel-stabilisation-strategy>.

35 Conseil économique et social, *Mécanismes de lutte contre le blanchiment de capitaux et le financement du terrorisme en zone UEMOA : cas du Burkina Faso*, Rapport public 2020, August 2020, p. 27 (our translation).

necessary to maintain their organizations (or cells) and to recruit and train fighters, and to support combatants and their families where necessary”.<sup>36</sup>

Furthermore, the media reported negotiations between the authorities of Burkina Faso and these armed men, via intermediaries, aimed at obtaining a pause in these attacks during the elections of October and November 2020.<sup>37</sup> If those negotiations did in fact take place, that would indicate that the groups possess a certain level of organization.

All of the above would appear to indicate that those behind the violence in Burkina Faso make up organized armed groups. However, other evidence calls into question the organized nature of these groups.

## 2. Evidence that calls into question the organized nature of the unidentified armed groups

Various factors make it less certain that Burkina Faso’s unidentified armed groups meet the “organization” criterion.

First of all, the fact that a group is unidentified makes it difficult to verify that it has an internal command structure.<sup>38</sup> Having a command structure is one of the most important criteria when it comes to deciding whether an armed group can be classified as “organized”.<sup>39</sup> According to the judgment of the International Criminal Tribunal for Rwanda in the case of *The Prosecutor v. Jean-Paul Akayesu*, “the armed forces opposing the government must be under responsible command, which entails a degree of organization within the armed group or dissident armed forces”.<sup>40</sup> In *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, the trial chamber of the ICTY listed a number of factors to use when assessing the organization of an armed group, including:

the establishment of a general staff or high command, which appoints and gives directions to commanders, disseminates internal regulations, organises the weapons supply, authorises military action, assigns tasks to individuals in the organisation, and issues political statements and communiqués, and which is informed by the operational units of all developments within the unit’s area of responsibility. Also included in this group are factors such as the existence

36 Inter-Governmental Action Group against Money Laundering and Terrorism Financing in West Africa, cited by Elie Kaboré in “Financement du terrorisme: pour recruter, former et entretenir les combattants et leurs familles”, *L’Economiste du Faso*, available at: <https://www.leconomistedufaso.bf/2021/07/19/financement-du-terrorisme-pour-recruter-former-et-entretenir-les-combattants-et-leurs-familles/> (our translation).

37 Sam Mednick, “Burkina Faso’s Secret Peace Talks and Fragile Jihadist Ceasefire”, *The New Humanitarian*, 11 March 2021, available at: <https://www.thenewhumanitarian.org/2021/03/11/exclusive-burkina-faso-s-secret-peace-talks-and-fragile-jihadist-ceasefire>.

38 Tilman Rodenhäuser, *Organizing Rebellion: Non-State Armed Groups under International Humanitarian Law, Human Rights Law, and International Criminal Law*, Oxford University Press, Oxford, 2018, p. 72.

39 Sandesh Sivakumaran, *The Law of Non-International Armed Conflict*, Oxford University Press, Oxford, 2012, p. 175.

40 International Criminal Tribunal for Rwanda, *The Prosecutor versus Jean-Paul Akayesu*, Case No. ICTR-96-4-I, Judgment (Chamber I), 2 September 1998, para. 626, available at: <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-96-04/MS15217R0000619817.PDF>.



of internal regulations setting out the organisation and structure of the armed group; the assignment of an official spokesperson; the communication through communiqués reporting military actions and operations undertaken by the armed group; the existence of headquarters; internal regulations establishing ranks of servicemen and defining duties of commanders and deputy commanders of a unit, company, platoon or squad, creating a chain of military hierarchy between the various levels of commanders; and the dissemination of internal regulations to the soldiers and operational units.<sup>41</sup>

The Boskoski judgment enables us to distinguish between criteria that can be assessed against publicly available information, such as communiqués and official statements, and those that require information from less accessible sources, such as the internal regulations of an unidentified armed group. The judgment emphasizes the publication of communiqués and political statements, and the appointment of an official spokesperson enabling the armed group to report on its operations. Publication of a group's communiqués and of reports on its military operations enables it to both claim and take responsibility for them. However, what makes the situation in Burkina Faso unusual is the almost total silence of the perpetrators regarding their attacks. As mentioned above, over 500 attacks took place between 2016 and 2020, but only in nine instances did any group claim responsibility.<sup>42</sup> This casts a doubt on the existence of a chain of command sufficiently well informed regarding the actions of its fighters in the field. Even in the case of the attack on the gendarmerie detachment at Inata – the most deadly attack that the armed and security forces of Burkina Faso have ever suffered – no group has claimed responsibility, although the media have indicated that GSIM was responsible.<sup>43</sup> The Solhan attack, during the night of 4 to 5 June 2021 – the most deadly attack in Burkina Faso to date, resulting in the deaths of 160 civilians<sup>44</sup> – initially targeted the VDP post, before moving on to the execution of civilians.<sup>45</sup> No group has claimed responsibility.<sup>46</sup> While Solhan

41 ICTY, *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-T, Judgment (Trial Chamber II), 10 July 2008, para. 199, available at: [https://www.icty.org/x/cases/boskoski\\_tarculovski/tjug/en/080710.pdf](https://www.icty.org/x/cases/boskoski_tarculovski/tjug/en/080710.pdf).

42 Conseil économique et social, above note 35, p. 27.

43 Morgane Le Cam, “Au Burkina Faso, la colère monte après l’attaque meurtrière du poste d’Inata”, *Le Monde*, 19 November 2021, available at: [https://www.lemonde.fr/afrique/article/2021/11/19/au-burkina-faso-la-colere-monte-apres-l-attaque-meurtriere-du-poste-d-inata\\_6102704\\_3212.html](https://www.lemonde.fr/afrique/article/2021/11/19/au-burkina-faso-la-colere-monte-apres-l-attaque-meurtriere-du-poste-d-inata_6102704_3212.html).

44 Nadoun Coulibaly, “Burkina Faso : ce que l’on sait de l’attaque de Solhan”, *Jeune Afrique*, 7 June 2021, available at: <https://www.jeuneafrique.com/1184499/politique/burkina-ce-que-lon-sait-sur-l-attaque-de-solhan/>.

45 *Ibid.*

46 Rose-Marie Bouboutou-Poos, “Violences djihadistes : pourquoi le Burkina Faso a du mal à vaincre les groupes armés ?”, 8 June 2021, *BBC News Afrique*, available at: <https://www.bbc.com/afrique/region-57385879>.

lies within GSIM's zone of influence, the *modus operandi* points rather more to Islamic State in the Greater Sahara.<sup>47</sup> Both GSIM and Islamic State in the Greater Sahara have denied involvement.<sup>48</sup>

It is difficult to establish whether or not a group has a set of internal regulations, as such groups are less than transparent.

While the attacks on armed and security forces indicate that the perpetrators have some knowledge of military strategy, there is reason to doubt whether there is any leadership planning the vast majority of attacks, or coordinating them at any level. In its judgment in the case of *Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu*, the trial chamber of the ICTY rejected objections regarding the mystery and opacity of the Kosovo Liberation Army (UCK), largely because the group had an official spokesperson and communicated publicly regarding its action in the field. Furthermore, the main leaders of the UCK were known, and its internal disciplinary regulations were accessible.<sup>49</sup> According to the trial chamber, the General Staff "issued political statements and communiqués which informed the general public in Kosovo and the international community of its objectives and its activities".<sup>50</sup> In this sense, the UCK represents the armed group that enables one to distinguish between an underground armed group and an unidentified armed group. It is important not to confuse a group that operates in secret to ensure the security of its senior leadership with an unidentified armed group. For instance, the senior leadership of Hezbollah operates in secret, but the Lebanese armed group is identifiable, is represented by a known leader and claims responsibility for its attacks.

As a result, the fact that those responsible for the attacks in Burkina Faso remain unidentified and no groups claim responsibility for them leads one to question the existence of a command structure behind these attacks. This absence of a command structure makes it difficult to apply IHL.

## B. The difficulty of applying IHL in the absence of an identified command structure

In Burkina Faso, the absence of a command structure makes it difficult to apply IHL because of (1) the autonomy of the members of the armed groups and (2) the importance of identification in establishing the existence of parties to a conflict.

47 France 24, "Burkina Faso : la tragédie de Solhan 'ne restera pas impunie', assure le Premier ministre", 8 June 2021, available at: <https://www.france24.com/fr/afrique/20210608-burkina-faso-la-trag%C3%A9die-de-solhan-ne-restera-pas-impunie-assure-le-premier-ministre>.

48 RFI, "Massacre de Solhan: entre le GSIM et l'EI, l'enjeu de la réputation", *Radio France Internationale*, 25 June 2021, available at: <https://www.rfi.fr/fr/afrique/20210625-massacre-de-solhan-entre-le-gsim-et-l-ei-l-enjeu-de-la-r%C3%A9putation>.

49 ICTY, *Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu*, Case No. IT-03-66-T, Judgment (Trial Chamber II), 30 November 2005, paras 102–3 and paras 110–11, available at: <https://www.icty.org/x/cases/limaj/tjug/en/lim-tj051130-e.pdf>.

50 *Ibid.*, para. 101.

## 1. The autonomy of members of armed groups in Burkina Faso

The wide variety of participants in Burkina Faso's terrorist insurrection is one of its most striking characteristics. As the Crisis Group points out, "Militants are a motley crowd of insurgents motivated by local concerns around a small core of ideologues. They include farmers and herders who are victims of land-related injustices or racketeering, bandits who bring experience in weaponry and fighting, gold miners seeking protection, and stigmatised populations."<sup>51</sup> Not only are those involved in terrorism highly diverse, but the ideological factor is of minor importance, in the sense that local factors are more important than any ostensible religious agenda. This gives terror groups a large measure of autonomy: "The autonomy enjoyed by Burkina Faso's jihadist groups gives room for the fighters to satisfy their local (or even personal) interests."<sup>52</sup> According to the Crisis Group, terror groups in Burkina Faso enjoy a particularly marked degree of autonomy with regard to GSIM and Islamic State in the Greater Sahara, which have a limited degree of control over the actions of these units.<sup>53</sup> These factors no doubt explain why no group has claimed responsibility for the vast majority of attacks. This lends considerable weight to the idea that these attacks are individual rather than collective,<sup>54</sup> and to the concomitant absence of a command structure controlling those who carry them out. The Solhan attack is typical in this sense. Both Islamic State in the Greater Sahara and GSIM have denied involvement. However, the authorities in Burkina Faso maintain that it was carried out by GSIM, via its presumed *katiba* (unit), Mujaheed al-Qaeda. According to researcher Héni Nsaibia:

the Solhan attack is said to have provoked dissent within the group linked to Al-Qaeda in the Islamic Maghreb. The *katiba* Mujaheed al-Qaeda – (literally "the fighters of Islam of al-Qaeda"), to which the authorities in Burkina Faso attribute responsibility for the Solhan massacre, is unknown to any specialist in the area, and RFI has spoken to many of them. However, the terminology corresponds to the way in which fighters of Al-Qaeda in the Islamic Maghreb generally refer to themselves. According to Héni Nsaibia, it was indeed a sub-group of GSIM that carried out this attack, and "the leadership chose to disown the group by means of purely strategic communications".<sup>55</sup>

The fact that no group claimed responsibility for this attack, and that it has been attributed to a *katiba* not obviously linked to either of the major groups operating in Burkina Faso's part of the Sahel, gives a clear indication of the autonomy enjoyed by those who frequently carry out these attacks, and the very loose nature of their links with transnational terror groups. The fact that people

51 Crisis Group, above note 9, Executive Summary.

52 *Ibid.*, p. 15.

53 *Ibid.*

54 While the absence of any claims of responsibility does not necessarily mean that these attacks were not carried out by armed groups, it does seem to indicate that they were the work of individuals. The author believes that the Burkina Faso attacks were carried out by individuals.

55 RFI, above note 48 (our translation).

with specialist knowledge of the region have never heard of a “katiba Mujaheed al-Qaeda” reinforces the impression that these groups are not sufficiently well organized to meet IHL thresholds, in that they lack a chain of command capable of controlling them, and hence of taking responsibility for attacks. Those perpetrating attacks must form a collective entity if they are to qualify as an armed group.

One of the defining features of an armed conflict is its collective character, the idea of an “uprising” on the part of a “community” – State or non-State. It is the collective aspect that distinguishes an armed conflict from individual acts of violence. This does not mean that every hostile act must be collective in nature. It is the entity that must be collective. It could be that a particular mission is carried out by just one member of a group, acting on its behalf. If we see the term “collective” in this sense, we must look at the question of number.<sup>56</sup>

Under this hypothesis, the fact that no group claims an attack stems from the fact that those who carried it out enjoyed such a large degree of autonomy that none of the armed groups mentioned above could accept responsibility for their operation, as they had not been involved in the main phases of it. In other words, there was no effective chain of command exercising control, because of the predominantly local agenda of the persons involved and the disparity between them. Under such circumstances, any links between those persons and one or more of the armed groups mentioned above would be largely circumstantial – as opposed to material or operational – as personal interests are highly significant. This would also indicate that the attacks were opportunistic, rather than organized or planned. Even if one accepts the idea that an armed group might have a decentralized structure, the fact that no group claimed responsibility for these attacks would appear to support the theory of groups with insufficient organization in the structural sense, or even a total absence of any leader capable of assuming responsibility for their actions. If no leader can speak on behalf of these unidentified armed individuals, it is possible that they are not organized as a group. After all, “the organization of an armed group is related to the concept of a unified entity, and presupposes the existence of a chain of command that is responsible for the acts committed. The group has to demonstrate discipline and coordination in its actions.”<sup>57</sup>

As the ICTY Appeals Chamber so rightly pointed out in the *Tadic* case, “Normally a member of the group does not act on his own but conforms to the standards prevailing in the group and is subject to the authority of the head of the group.”<sup>58</sup> The unidentified armed individuals operating in Burkina Faso would generally appear to be answerable only to themselves. The relationships

<sup>56</sup> Z. Dabone, above note 17, p. 84.

<sup>57</sup> *Ibid.*, pp. 83–4 (our translation).

<sup>58</sup> ICTY, *The Prosecutor v. Duško Tadic*, Case No. IT-94-I-A, Judgment (Appeals Chamber), 15 July 1999, para. 120, available at: <https://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>.

between groups of these persons appear to be more horizontal than vertical. It is not possible to say that an individual belongs to a specific group, particularly in view of the fact that the persons concerned are said to frequently transfer between groups.<sup>59</sup> This situation could also explain why certain very minor attacks have been claimed jointly.

In its judgment in the *Haradinaj* case, the Trial Chamber rightly refused to recognize the existence of a non-international armed conflict in a situation involving village defence units that were independent of each other and had been created without reference to the Kosovo Liberation Army (KLA) General Staff, which exercised no control over them, despite wishing them to become part of a more organized structure, led by the KLA General Staff.<sup>60</sup> In Burkina Faso, where armed terror groups have to share a zone of influence with many other entities, it has not been possible to establish a definite link between the persons carrying out these attacks and the chains of command of these groups. This leads one to doubt the existence of a group that is truly organized within the meaning of IHL.

In its judgment of 25 February 2019, the Brussels Appeals Court denied Syrian armed group Majlis Shuran Al Mujahidin (the Mujahideen Shura Council) the status of organized armed group, despite the existence of headquarters, an identified leader and a large number of members, on the grounds that those members enjoyed a considerable measure of autonomy and had to provide their own weapons and equipment.<sup>61</sup> This confirmed the importance of solid links between the members of a group and its chain of command. The conclusion we draw from the above is that if, in a given area, it is not possible to link the perpetrators of the majority of attacks to the command structure of a known or identifiable armed group – either because they do not claim responsibility for the attacks, or because the security situation is deteriorating – it is difficult to say that groups operating in the zone can be classed as “organized”. This in turn makes it impossible to say that an armed conflict is in progress. In Burkina Faso, the fact that no group has claimed responsibility in the case of most attacks makes it difficult to state that the groups responsible are organized, rendering it impossible to state that an armed conflict is occurring in the country. The implication of this is that identification is an essential criterion when it comes to deciding whether parties to a conflict exist.

## *2. Identification as an essential criterion for determining the existence of parties to a conflict*

The notion of “parties to a conflict” presupposes the existence of organized entities. This was confirmed by the 28th International Conference of the Red Cross and Red

<sup>59</sup> Crisis Group, above note 9, p. 16.

<sup>60</sup> ICTY, above note 16, para. 68.

<sup>61</sup> Brussels Appeals Court (30th Chamber), 25 February 2019, cited by Marine Wéry, “La jurisprudence relative à la clause d’exclusion prévue à l’article 141 bis du Code pénal : la difficile application du droit international humanitaire par les cours et tribunaux belges”, *Revue de droit militaire et de droit de la guerre*, Vol. 57, 2018–2019, available at: <http://www.ismllw.org/REVIEW/2018-2019%20ART%20Wery.php>.

Crescent, where it was stated that: “a clear consensus seemed to have emerged that the requirement of this minimum threshold of organisation stemmed implicitly from the reference to the term ‘Parties to the conflict’ in Article 3, as it seems difficult to conceive of this qualification being applied to a group without at least a basic hierarchical structure”.<sup>62</sup>

The fact that no group has claimed responsibility for the vast majority of attacks in Burkina Faso indicates that the groups responsible are not willing to accept such responsibility via their chain of command or leader—if they exist. However, the notion of a “party to the conflict” implies the existence of an identifiable group,<sup>63</sup> as an armed conflict can only take place if there are parties to it. The concept of a party to a conflict is closely linked with that of responsible command:

While this is not stated explicitly, the criterion of responsible command presupposes that the members of a group operate under a leader capable of taking responsibility for the group’s actions. That leader plays the role of a belligerent that does not hide itself and is capable of taking responsibility for the actions of the group at an international level. If those conditions are not fulfilled, the group is not a belligerent and its armed operations do not qualify as an armed conflict. In a sense, it is the public nature of this leadership that distinguishes it from a well-organized terrorist group.<sup>64</sup>

In general, one may assume that if no group is claiming responsibility for these attacks, it is because no collectively organized group identifies with them. This implies that the attacks are the work of individuals who are acting on their own behalf and are not capable of being classified as parties to a conflict.

Furthermore, the absence of control over the actions of a group of individuals makes it impossible for groups who are under the authority of a leader to openly associate themselves with their actions, as they risk being disowned if they do. Government forces therefore have no counterpart with whom they could communicate. The concept of party to a conflict is connected with the ability of an armed group to comply with IHL and hence with its being “organized”.<sup>65</sup> There are serious reasons to doubt the ability of a group to comply with IHL if it does not claim responsibility for its attacks, as it is questionable

62 International Committee of the Red Cross (ICRC), *Supplement to the Report Prepared by the International Committee of the Red Cross Entitled “International Humanitarian Law and the Challenges of Contemporary Armed Conflicts”*. *International Humanitarian Law and Other Legal Regimes: Interplay in Situations of Violence*, available at: <https://www.icrc.org/en/doc/resources/documents/report/5ubcvx.htm>.

63 ICRC, “International Humanitarian Law and the Challenges of Contemporary Armed Conflicts. Document Prepared by the International Committee of the Red Cross for the 30th International Conference of the Red Cross and Red Crescent, Geneva, Switzerland, 26–30 November 2007”, *International Review of the Red Cross*, Vol. 89, No. 867, 2007, p. 4, available at: <https://international-review.icrc.org/articles/international-humanitarian-law-and-challenges-contemporary-armed-conflicts>.

64 Éric David, “Le concept de conflit armé : enjeux et ambiguïtés”, in Vincent Chetail (ed.), *Permanence et mutation du droit des conflits armés*, Bruylant, Brussels, 2013, p. 5 (our translation).

65 Martha M. Bradley, “Revisiting the Notion of ‘Organized Armed Group’ in Accordance with Common Article 3: Exploring the Inherent Minimum Threshold Requirements”, *African Yearbook of International Humanitarian Law*, Vol. 2018, No. 1, 2018, pp. 65–6.



whether such a group possesses a system of internal discipline that would allow its commanders to give orders and verify that they were carried out. That is also the view taken by Pre-Trial Chamber II of the International Criminal Court, which stated that an armed group can be classified as a party to a conflict if it has a hierarchical structure that allows it to act under responsible command, with operational and disciplinary powers.<sup>66</sup> In the *Tadic* case, the ICTY Appeals Chamber stated that “an organised group differs from an individual in that the former normally has a structure, a chain of command and a set of rules as well as the outward symbols of authority.”<sup>67</sup> In that sense, “The term ‘responsible command’ indicates an exercise of command authority that produces this broader notion of a disciplined and effective fighting force. Thus, an *effective* military unit is by implication a *responsible* military unit: a unit competent in tactically executing combat operations *in a manner* that manifests respect for and compliance with IHL.”<sup>68</sup>

Clearly, there is a connection between “responsible command”, discipline and compliance with IHL. The existence of responsible command makes it possible to distinguish between a party to the conflict and loosely organized groups of individuals.<sup>69</sup> Such groups are not capable of ensuring that their members comply with IHL. Is there any value in applying IHL to groups or individuals who are incapable of ensuring compliance with it? The primary aim of requiring that a group be under responsible command before classifying it as “organized” is to ensure that its leadership has the authority required to prevent or punish IHL violations. If it is impossible to identify the group or its commander, it is impossible to apply IHL to any acts of violence it may carry out. The concept of “party to a conflict” in a non-international armed conflict is clearly intended to have a functional role: “the organization criterion implies that the actions are best understood as those of a group and not its individual members. This structural requirement is fundamental, for absent structure there is no identifiable enemy to treat as the other party to the conflict.”<sup>70</sup>

If the leaders of an armed group cannot be identified, and if it does not formally claim responsibility for its attacks, it is doubtful whether it can be described as “organized” within the meaning of IHL. This is confirmed by jurisprudence in Belgium. The Brussels Appeals Court concluded that Syria’s Al-Nusra Front was not “organized” in this sense:

66 International Criminal Court, *The Prosecutor v. Bosco Ntaganda*, Case No. ICC-01/04-02/06, Pre-Trial Chamber II, Decision on the Prosecutor’s Application under Article 58, 13 July 2012, para 49, available at: <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/04-02/06-36-Red>.

67 ICTY, above note 58, para. 120.

68 Geoffrey S. Corn, “Contemplating the True Nature of the Notion of ‘Responsibility’ in Responsible Command”, *International Review of the Red Cross*, Vol. 96, No. 895/896, December 2015, p. 906 (emphasis in the original), available at: <https://international-review.icrc.org/articles/contemplating-true-nature-notion-responsibility-responsible-command>.

69 Andrea Bianchi and Yasmin Naqvi, *International Humanitarian Law and Terrorism*, Hart Publishing, Oxford, 2011, p. 107.

70 Michael N. Schmitt, “Classification of Cyber Conflict”, *International Law Studies*, Vol. 89, No. 233, 2013, p. 255, available at: <https://digital-commons.usnwc.edu/ils/vol89/iss1/12/>.

This applies to the secrecy – or at least partial secrecy – in which they operate; secrecy between the members of the groups and secrecy and anonymity with regard to the leaders. In each instance, we are dealing with a complex web of scattered groups. While these are indeed affiliated to a “mother” group, they often operate autonomously, without common aims. They have no common structures and no common discipline. They have no leadership with the ability to implement the rules of IHL – assuming they wished to – and the ability or obligation to take responsibility for any breaches of that branch of law.<sup>71</sup>

The Appeals Court merely confirmed the original judgment, which found that the members of the Al-Nusra Front “operate in secrecy by their very nature, both towards each other and towards the leadership and third parties, and the leadership is not formally identified or identifiable”.<sup>72</sup> The decisions of the Belgian courts were criticized because they appeared to support the objectives of the Syrian armed groups<sup>73</sup> and demand proof of a certain degree of hierarchical organization within the groups concerned.<sup>74</sup> The Belgian courts’ analysis of the aims and objectives of the armed groups was certainly clumsy. However, examination of their decisions shows that the actual basis for rejecting the claim that the Al-Nusra Front was “organized” was the fact that its leadership was unidentified, together with the nature of the links between its members. We believe that in this sense, the Belgian courts applied IHL perfectly.<sup>75</sup>

If we transpose this approach to Burkina Faso, it implies that the failure by the perpetrators of attacks to claim responsibility for them, and the anonymity of the main leaders of the armed individuals operating in the country, mean that we cannot conclude that any organized armed group (within the meaning of IHL) actually exists. One might ask whether this absence of identification also has implications when it comes to determining the intensity of hostilities.

## II. The consequences of the non-identification of the perpetrators of attacks on assessments of the intensity of hostilities

In Burkina Faso, a number of factors indicate that hostilities have reached a sufficient level of intensity (A). However, those factors lose some of their weight where it is not possible to identify the group responsible (B).

71 Brussels Appeals Court, 12th Chamber, Criminal Cases, Judgment No. 2016/1262, 9 FC 2015, 14 April 2016, cited by Vaios Koutroulis, “How Have the Belgian Courts Dealt with the Interplay between IHL and Counter-Terrorism Offences?”, in *Proceedings of the Bruges Colloquium, Terrorism, Counter-Terrorism and International Humanitarian Law, 17th Bruges Colloquium, 20–21 October 2016*, Collegium No. 47, College of Europe/ICRC, 2017, p. 115 (our translation), available at: <https://www.coe-icrc.eu/en/previous-editions>.

72 Brussels Francophone Trial Chamber, Case Nos. FD35.97.15-12, FD35.97.5-13 and FD35.98.144-15, 29 July 2015, cited by V. Koutroulis, *ibid.*, p. 114 (our translation).

73 M. Wéry, above note 61, pp. 123–7.

74 V. Koutroulis, above note 71, pp. 116–17.

75 The ICRC took a different approach, stating that the Al-Nusra Front could be classified as an armed group that had participated in non-international armed conflict in Syria.

## A. Factors indicating sufficient intensity of hostilities

One can take a number of factors into account when assessing the intensity of a conflict: the seriousness of attacks and whether there has been an increase in armed clashes, the spread of clashes over territory and over a period of time, the number of violent incidents, the number of dead and wounded, the extent of damage to property, the number of persons involved in the clashes, the weapons used, etc.<sup>76</sup> Attacks in Burkina Faso take the form of: threats and physical aggression; targeted kidnappings and assassinations; armed attacks on the police, gendarmerie and army; destruction of infrastructure (schools, administrative buildings, bridges, etc.); the burning down of markets and the use of improvised explosive devices on roads.<sup>77</sup> According to the government, 3280 schools were closed because of terrorism as of 5 January 2022—13.09% of the country's educational facilities.<sup>78</sup>

Factors supporting the contention that clashes in Burkina Faso have attained the threshold of intensity required to constitute a non-international armed conflict include the declaring of a state of emergency in several regions and provinces, especially in the Nord and Est regions.<sup>79</sup> This indicates that in the government's view, an emergency regime is required in order to deal with the situation. Furthermore, the defence forces have been deployed to the areas where the security situation has deteriorated, and have installed permanent camps in those areas. The need to resort to the defence forces<sup>80</sup> to respond to the attacks indicates that the clashes are of a certain intensity. As pointed out above, the weapons used by the insurgents (rocket launchers, AK-47 assault rifles, improvised bombs, etc.) is evidence for a high level of intensity, as the defence and security forces have been obliged to adopt more powerful weaponry. The clashes and the deteriorating security situation have had consequences for civilians: as of 31 January 2022, 1,741,655 people were displaced within the borders of Burkina Faso.<sup>81</sup>

As of 31 January 2021, terror attacks had claimed the lives of over 2000 people,<sup>82</sup> including almost 500 members of the armed and security

76 ICTY, above note 41, para. 177; S. Sivakumaran, above note 39, p. 167.

77 Ministère de l'Economie, des Finances et du Développement, coopération pour le développement, above note 12, p. 69.

78 Nadia Chahed, "Burkina Faso : 3 280 écoles fermées à cause du terrorisme", *Anadolu Agency*, 5 January 2022, available at: <https://www.aa.com.tr/fr/afrique/burkina-faso-3-280-%C3%A9coles-ferm%C3%A9es-%C3%A0-cause-du-terrorisme-gouvernement/2466211#>.

79 The state of emergency was proclaimed on 31 December 2018.

80 In the context of the Sahel, "defence forces" include both security forces (police, gendarmes and the national guard) and armed forces.

81 Action contre le faim, "Burkina Faso: Second Biggest Spike in Displacement Since Crisis Began", 10 March 2022, available at: <https://www.actioncontrelafaim.org/en/press/second-biggest-spike-in-displacement-since-crisis-began/>.

82 Eléonore Abou Ez, "Au Burkina Faso, le pouvoir semble dépassé par l'insécurité grandissante", *France info*, 17 November 2021, available at: [https://www.francetvinfo.fr/monde/afrique/politique-africaine/au-burkina-faso-le-pouvoir-semble-depasse-par-linsecurite-grandissante\\_4847285.html](https://www.francetvinfo.fr/monde/afrique/politique-africaine/au-burkina-faso-le-pouvoir-semble-depasse-par-linsecurite-grandissante_4847285.html).

forces.<sup>83</sup> Of those killed, almost 300 had fallen victim to improvised explosive devices.<sup>84</sup> The number of deaths among armed and security forces personnel does not include VDPs. According to the ODDH, more than 580 attacks took place between 4 April 2015 and 31 May 2020.<sup>85</sup> According to the same source, 221 of those attacks targeted the armed and security forces.<sup>86</sup> However, the ODDH statistics do include VDPs in the figure for armed and security forces personnel. One could include clashes between VDPs and armed individuals when deciding whether the intensity threshold has been reached, as VDPs are civilians who form volunteer groups at village level, with the task of maintaining peace. According to Article 2 of the law governing VDPs,<sup>87</sup> “a Volunteer for the Defence of the Homeland is a natural person of Burkina Faso nationality, auxiliary to the armed and security forces, serving the security interests of his village or sector of residence on a voluntary basis, under a contract concluded between the Volunteer and the State”. VDPs receive basic training and financial assistance from the State, and must obey the military chain of command.<sup>88</sup>

As of June 2020, almost 1500 of Burkina Faso’s 2000 VDPs were located in the Nord region. It was taking rather longer to recruit and deploy them in other regions,<sup>89</sup> but the objective was to recruit a total of 13,000 VDPs.<sup>90</sup> While the statute of VDPs may be open to debate as regards the IHL applicable in a non-international armed conflict, it would currently appear that they can be included when assessing the intensity of clashes with unidentified armed groups.

This does not apply to the *kolg-weogo* self-defence groups, which operate on the margins of the State. They receive no training from the armed forces and have no links with them. If we take account of clashes between VDPs and soldiers on one side, and unidentified armed individuals on the other, the level of hostilities has been very high since 2018 at the latest. There is a degree of regularity in these clashes at certain times. Since June 2021, they have become almost daily occurrences. We can therefore conclude that there is a certain intensity of violence in the Nord and Est regions of Burkina Faso, at least during some periods. However, one might question such a conclusion, given the impossibility of identifying the perpetrators of the attacks.

83 Lassaad Ben Ahmed, “Burkina Faso : 478 militaires tués depuis 2015 dans des attaques (Armée)”, *Anadolu Agency*, 1 November 2021, available at: <https://www.aa.com.tr/fr/afrique/burkina-faso-478-militaires-tue%C3%A9s-depuis-2015-dans-des-attaques-arm%C3%A9e/2409045>.

84 Voice of America, “Une dizaine de gendarmes tuées; plusieurs portés disparus”, 14 March 2022, available at: <https://www.voafrique.com/a/une-dizaine-de-gendarmes-burkinab%C3%A8-tu%C3%A9s-plusieurs-port%C3%A9s-disparus-/6483737.html>.

85 ODDH, above note 13, p. 27.

86 *Ibid.*, p. 24.

87 Law No. 002-2020/AN concerning volunteers for the defence of the homeland of 21 January 2020.

88 Articles 7, 8, 9 and 15 of Law No. 002-2020/AN concerning volunteers for the defence of the homeland of 21 January 2020.

89 Antonin Tisseron, *Pandora’s Box. Burkina Faso, Self-Defense Militias and VDP Law in Fighting Jihadism*, Friedrich Ebert Stiftung, Dakar-Fann, 2021, p. 23, available at: <http://library.fes.de/pdf-files/bueros/fes-pscc/17590.pdf>.

90 *Ibid.*

## B. The difficulty of determining the intensity of the violence in view of the non-identification of those perpetrating attacks

According to the Appeals Chamber of the ICTY, “an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State”.<sup>91</sup> In the International Committee of the Red Cross’s (ICRC’s) view, “The ascertainment whether there is a non-international armed conflict does not depend on the subjective judgment of the parties to the conflict; it must be determined on the basis of objective criteria; the term ‘armed conflict’ presupposes the existence of hostilities between armed forces *organised to a greater or lesser extent*; there must be the opposition of armed forces and *a certain intensity* of the fighting.”<sup>92</sup> The non-identification of the perpetrators of attacks in Burkina Faso raises questions regarding the nature of the acts of violence and their continuity.

Firstly, attacks in Burkina Faso very often directly and deliberately target civilians, in markets, villages, places of worship, etc. However, direct and deliberate attacks on civilians – important as they may be – provide no basis for deciding whether the intensity criterion has been met unless they are directly linked to a clash with the armed forces. Any assessment of intensity must be based primarily on clashes involving the armed forces. Damage and harm to civilians can be taken into account as the consequence of clashes between the armed group and government forces, or between armed groups. While it is undeniable that forced displacement in Burkina Faso is partly the result of clashes between unidentified armed groups and the armed and security forces, it is also undeniable that – for at least the last two years – armed individuals have been directly ordering people to leave their villages if they do not wish to be killed.<sup>93</sup> The purpose of these threats is to acquire the villagers’ livestock and the produce they have harvested; people are unable to take their property with them when they undergo forced displacement. As a result, illicit livestock trading has become a major activity in areas where security conditions are deteriorating.

The difficulty caused by the non-identification of the perpetrators becomes apparent when one attempts to decide whether the violence has reached the intensity threshold; as we do not know who is carrying out the attacks, and as the perpetrators do not claim responsibility for them, it is difficult to say whether they are the work of groups with a sufficient degree of connection between them, or of armed individuals pursuing their own aims in a geographical area from which the State is absent. If the perpetrators are unidentified, the question is

91 ICTY, *The Prosecutor v. Dusko Tadic a/k/a “DULE”*, Case No. IT-94-1-A, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 70, available at: <https://www.icty.org/x/cases/tadic/acdec/en/51002.htm>.

92 Cited in ICTY, above note 49, para. 89 (emphasis in the original).

93 Armand Kinda, “Nouna : les terroristes donnent dix jours aux populations de Soins pour quitter le village”, *Minute.bf*, 15 March 2022, available at: <https://minute.bf/nouna-les-terroristes-donnent-10-jours-aux-populations-de-soin-pour-quitter-le-village/>.

whether all the attacks are carried out by a single armed group, by a number of armed groups or by unconnected individuals. The problem is that we need to measure the intensity of clashes between government forces and each armed group, separately.<sup>94</sup> In other words, to decide whether the level of violence meets the intensity criterion, we must look not at the overall intensity but at the violence perpetrated by each armed group in its clashes with the government forces of Burkina Faso. This is not possible if one cannot attribute each attack to a specific group.

The difficulty is exacerbated by the fact that these acts of violence may be committed by bandits and others who have long been active in the areas currently subject to deteriorating security conditions. These individuals generally have mainly opportunistic and *ad hoc* connections with armed terror groups, depending on their interests at any given time.

Given the impossibility of measuring the intensity of the fighting, it is tempting to combine all acts of violence committed in Burkina Faso, so as to draw the conclusion that the intensity criterion has been met, or to say that the deteriorating security situation that is obliging officials to flee and causing the forced displacement of the population is sufficient to show that the criterion has been satisfied. While the idea of making a global assessment of intensity is attractive, it does run up against the fact that those behind the violence clearly do not necessarily constitute a homogeneous, cohesive group. The absence of reports and statements regarding the operations carried out against the armed and security forces of Burkina Faso by those responsible for them must not lead one to assess intensity globally. To do so would imply that the mere existence of violence – even if perpetrated by anarchic groups or by individuals following their own whims – would be sufficient to classify a situation as an armed conflict.

One other major difficulty in measuring the intensity of violence in Burkina Faso is the duration of the attacks. While the criterion of an armed conflict being prolonged was introduced by the ICTY in the *Tadic* case, and adopted by the Rome Statute of the International Criminal Court, one should see this criterion not as a third condition that must be fulfilled in order to classify a situation as a non-international armed conflict, but rather as a factor that should be taken into account when assessing the intensity of violence. The difficulty of measuring the intensity of the fighting in Burkina Faso also results from the fact that these attacks are occurring against the background of a progressive deterioration in the security situation, in the absence of any pre-existing armed conflict.<sup>95</sup> The difficulty lies in the irregular nature of the attacks; periods of frequent attacks

94 Annyssa Bellal, “ICRC Commentary of Common Article 3: Some Questions Relating to Organized Armed Groups and the Applicability of IHL”, *EJIL:Talk!*, 5 October 2017, available at: <https://www.ejiltalk.org/icrc-commentary-of-common-article-3-some-questions-relating-to-organized-armed-groups-and-the-applicability-of-ihl/>.

95 Robin Geiß, “Armed Violence in Fragile States: Low-Intensity Conflicts, Spillover Conflicts, and Sporadic Law Enforcement Operations by Third Parties”, *International Review of the Red Cross*, Vol. 91, No. 873, March 2009, available at: <https://international-review.icrc.org/articles/armed-violence-fragile-states-low-intensity-conflicts-spillover-conflicts-and-sporadic-law>.



alternate with periods of calm. The attacks are discontinuous in both time and space, and the fact that the armed groups responsible remain unidentified makes it impossible to say whether the intensity criterion has been met.

Several months – or even a year – can elapse between two attacks for which a group does indeed claim responsibility. Attacks for which no group claims responsibility (which account for the majority of attacks in Burkina Faso) may be concentrated into a limited period, such as the year 2018 – indicating that the intensity criterion has been met – and then become less frequent; Burkina Faso is experiencing a low-intensity conflict. Furthermore, the attacks do not all take place in the same area. Most occur in the Nord, Centre-Nord and Est regions. However, they do not necessarily take place continuously in a given region. An attack may occur in the Nord region, followed by an attack next day in the Est, followed by another in the Centre-Nord a few days later. As we do not know who is carrying out the attacks, and as the perpetrators do not claim responsibility for them, it is difficult to say whether they are the work of groups with a sufficient degree of connection between them, or of armed individuals pursuing their own aims in a geographical area from which the State is absent.

## Conclusion

This analysis has shown that the impossibility of identifying the perpetrators of attacks in Burkina Faso very much calls into question the applicability of IHL, in terms both of the level of organization of the unidentified armed individuals and of the intensity of the fighting, despite the deterioration in the security situation in the Nord and Est regions of the country. The fact that no identified or identifiable group is claiming responsibility for these attacks makes it difficult to say that a party to the conflict exists with which the Burkina Faso armed forces could enter into contact, and which could take on rights and obligations. The conclusion that would appear to emerge is that in Burkina Faso – where the majority of attacks cannot be objectively attributed to an armed group, and where no group claims responsibility for them – one cannot claim that the conditions have been fulfilled for classifying the situation as a non-international armed conflict. It is very tempting to apply IHL to any situation of generalized violence. However, such an approach would be mistaken, as IHL presupposes that the parties to a conflict are capable of applying IHL and of punishing breaches. Furthermore, human rights law is always applicable in such situations, and constitutes a far stricter regime than IHL as regards the rules on use of lethal force. Having said that, the government of Burkina Faso could decide unilaterally to apply IHL to the situations of violence described above.



# Why communities hosting internally displaced persons in the Sahel need stronger and more effective legal protection

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## Abstract

*In the Sahel, host communities are among those most affected by recurrent internal displacement, but they are often ignored in responses to displacement. Furthermore, their situation has attracted little attention from researchers or other observers. The present article will argue that it is essential to provide these communities with adequate protection, especially as they play a leading role in providing humanitarian protection and assistance to internally displaced persons (IDPs). The article begins by examining the legal instruments that protect populations affected by forced displacement, in order to identify and present the legal protection they offer to IDP host communities. The article will then analyze and highlight the advantages of fully applying this protection. It will show that the recurrent violence and breaches of the law that these communities suffer are impeding the full realization of those advantages. Finally, the article shall propose solutions that would overcome the deficiencies noted and hence ensure enhanced protection for IDP host communities in Burkina Faso, Mali and Niger.*

**Keywords:** host community, internally displaced persons, legal protection, Kampala Convention, Sahel, Burkina Faso, Mali, Niger.

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## Introduction

The alarming scale of internal displacement<sup>1</sup> has produced a large and growing volume of literature. As far as the present author is aware, however, the extensive literature does not include a single article devoted specifically to an analysis of the legal situation of the host communities of internally displaced persons (IDPs).<sup>2</sup> Indeed, the very term “host community” is rarely defined, despite being widely used in connection with forced displacement. The African Union (AU) Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), which currently constitutes “a legal framework without precedent anywhere in the world”<sup>3</sup> as regards internal displacement, does explicitly mention IDP host communities in some of its provisions,<sup>4</sup> but without defining the concept. The definitions one very occasionally finds in certain documents are not unequivocal. In certain documents, the concept is defined in a restrictive fashion, as referring to “communities in which displaced persons are hosted if they do not live in camps or sites intended for displaced persons”.<sup>5</sup> This definition excludes communities in which IDP camps have been set up. Other documents use the term in a wider sense to mean any community that hosts families, camps, sites or any other form of accommodation where IDPs are

- 1 “Internal displacement” is “the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders”. See African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 52 ILM 400, 23 October 2009 (entered into force 6 December 2012), Art. 1(1), available at: <https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa>. (As this article was originally written in French, the author originally cited this and many other sources in that language. Where possible, this English translation cites the English version of the same source. Where a French source is cited, this is because no English version exists. All internet references were accessed for the purposes of the English translation in January 2022.)
- 2 As far as we know, there have been no studies devoted specifically to IDP host communities, either in French or in English. The few reports we have identified as addressing the situation of these communities – in a somewhat piecemeal fashion – include Katherine Haver, *Out of Site: Building Better Responses to Displacement in the Democratic Republic of the Congo by Helping Host Families*, Oxfam International Research Report, 2008, available at: [www.oxfam.org/en/research/out-site](http://www.oxfam.org/en/research/out-site); Roberto Carlos Vidal López, Clara Inés Atehortú Arredondo and Jorge Salcedo, *The Effects of Internal Displacement on Host Communities: A Case Study of Suba and Ciudad Bolívar Localities in Bogotá, Colombia*, Brookings Institution–London School of Economics Project on Internal Displacement, Bogotá, October 2011, available at: [www.brookings.edu/research/the-effects-of-internal-displacement-on-host-communities/](http://www.brookings.edu/research/the-effects-of-internal-displacement-on-host-communities/); Brigitte Rohwerder, *Democratic Republic of the Congo: Internally Displaced Persons and Refugees’ Relations with Host Communities*, GSDRC Helpdesk Research Report, Birmingham, November 2013, available at: <https://gsdrc.org/publications/democratic-republic-of-the-congo-internally-displaced-persons-and-refugees-relations-with-host-communities/>; Anne Davies, *IDPs in Host Families and Host Communities: Assistance for Hosting Arrangements*, Office of the UN High Commissioner for Refugees (UNHCR), Geneva, 2012, available at: [www.refworld.org/docid/4fe8732c.html](http://www.refworld.org/docid/4fe8732c.html).
- 3 Alexandra Bilak, “L’Afrique face à ses déplacés internes”, *Politique Étrangère*, No. 1, 2016, p. 43 (Review’s translation), available at: [www.cairn.info/revue-politique-etrangere-2016-1-page-39.htm](http://www.cairn.info/revue-politique-etrangere-2016-1-page-39.htm). See also Allehone Mulugeta Abebe, *The Emerging Law of Forced Displacement in Africa: Development and Implementation of the Kampala Convention on Internal Displacement*, Routledge, London, 2018, p. 268.
- 4 See Kampala Convention, preamble, para. 3, and Arts 3(2)(c), 5(5), 9(2)(b).
- 5 Government of Niger, Loi no. 2018-74 du 10 December 2018 relative à la protection et à l’assistance aux personnes déplacées internes du Niger, 10 December 2018 (Law No. 2018-74), Art. 2(6) (Review’s translation), available at: [www.refworld.org/docid/5ce404914.html](http://www.refworld.org/docid/5ce404914.html). See also R. C. V. López, C. I. Atehortú Arredondo and J. Salcedo, above note 2, p. 1.

living.<sup>6</sup> It is this latter definition that shall be adopted for the purposes of the present article, as it takes account of the variety of communities that offer hospitality to people who have been forced to flee their homes, for whatever reason.<sup>7</sup>

Whether or not they are directly integrated into households or living in camps, at other sites or elsewhere, IDPs in the Sahel depend heavily on host communities for their survival. The solidarity and support of those communities takes the form of many types of direct, indirect, permanent and occasional assistance. Host communities show solidarity towards IDPs by allowing them to find shelter with them, in whatever form.<sup>8</sup> They also facilitate IDPs' access to essential products and services, in particular by sharing their resources and social services with them.<sup>9</sup> Furthermore, it is sometimes thanks to host communities that IDPs have access to economic activities that allow them to regain their autonomy and hence to meet their needs themselves.<sup>10</sup> As they have been cut off from their usual support networks and original communities, IDPs rely on host communities to create new social networks<sup>11</sup> and obtain information that is essential if they are to exercise their rights or obtain basic social services.

Host communities therefore play a leading role in the provision of humanitarian assistance and protection to IDPs in the Sahel, especially in Burkina Faso, Mali and Niger, which are at the epicentre of internal displacement

6 See, for example, Protection Cluster Working Group, *Handbook for the Protection of Internally Displaced Persons*, UNHCR, Geneva, March 2010, p. 505, available at: [www.unhcr.org/protection/idps/4c2355229/handbook-protection-internally-displaced-persons.html](http://www.unhcr.org/protection/idps/4c2355229/handbook-protection-internally-displaced-persons.html). See also K. Haver, above note 2, p. 4; A. Davies, above note 2, p. 32.

7 IDPs are generally forced to flee their homes or places of habitual residence as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights, natural disasters or the implementation of development projects. For information on the causes of displacement, see Internal Displacement Monitoring Centre (IDMC), *Understanding the Root Causes of Displacement: Towards a Comprehensive Approach to Prevention and Solutions*, 2015, available at: [www.internal-displacement.org/publications/understanding-the-root-causes-of-displacement-towards-a-comprehensive-approach-to](http://www.internal-displacement.org/publications/understanding-the-root-causes-of-displacement-towards-a-comprehensive-approach-to); Ann Mary Olsen, "Understanding and Addressing Root Causes of Displacement", *Devex*, 29 February 2016, available at: [www.devex.com/news/understanding-and-addressing-root-causes-of-displacement-87785](http://www.devex.com/news/understanding-and-addressing-root-causes-of-displacement-87785); Wendy Williams, *Shifting Borders: Africa's Displacement Crisis and Its Security Implications*, Research Paper No. 8, Africa Center for Strategic Studies, Washington, DC, 17 October 2019, available at: <https://africacenter.org/publication/shifting-borders-africas-displacement-crisis-and-its-security-implications/>.

8 See UN Office for the Coordination of Humanitarian Affairs (OCHA), *Mali: Aperçu des besoins humanitaires 2021*, February 2021, pp. 65, 108, available at: [www.humanitarianresponse.info/en/operations/mali/document/aper%C3%A7u-des-besoins-humanitaires-mali](http://www.humanitarianresponse.info/en/operations/mali/document/aper%C3%A7u-des-besoins-humanitaires-mali); OCHA, *Burkina Faso: Aperçu des besoins humanitaires 2021*, March 2021, p. 60, available at: <https://reliefweb.int/report/burkina-faso/burkina-faso-aper-u-des-besoins-humanitaires-mars-2021>; OCHA, *Niger: Aperçu des besoins humanitaires*, January 2021, pp. 17–18, available at: [www.humanitarianresponse.info/en/operations/niger/document/niger-aper%C3%A7u-des-besoins-humanitaires-201](http://www.humanitarianresponse.info/en/operations/niger/document/niger-aper%C3%A7u-des-besoins-humanitaires-201); UNHCR Burkina Faso, Conseil Provincial de Secours d'Urgence et de Réhabilitation, Direction Provinciale de la Femme, de la Solidarité Nationale et de la Famille, *Profilage des personnes déplacées internes dans la province du Soum, région du Sahel*, January 2019, pp. 17–18, available at: <https://data2.unhcr.org/es/documents/details/68468>.

9 See UNHCR Burkina Faso, above note 8, pp. 14, 17; OCHA, *Mali*, above note 8, p. 65.

10 It is sometimes thanks to host communities that IDPs have access to revenue-generating activities in the informal sector, including paid work in the fields of host community members or the opportunity to sell goods at local markets.

11 A. Davies, above note 2, p. 7.

in this region.<sup>12</sup> In her general study entitled *IDPs in Host Families and Host Communities: Assistance for Hosting Arrangements*, Anne Davies maintains that the role played by host families and communities positions them as “an informal instrument of humanitarian aid – *de facto* NGOs critical to saving lives, building resilience and providing essential services”.<sup>13</sup>

But the negative effects of internal displacement hit IDP host communities just as hard. They are exposed to various threats as they seek to assist and support IDPs. Where resources are already scarce and economic opportunities are absent,<sup>14</sup> frequent displacement places an additional, unexpected burden on the resources of the communities where displaced populations seek refuge, increasing the vulnerability and needs of those communities.<sup>15</sup> Furthermore, mass population movements destabilize host communities, as the resulting rapid depletion of resources can lead to tension between IDPs and those communities.<sup>16</sup> In turn, this tension exacerbates localized violence, and armed extremist groups take advantage of this to recruit members from the local population and step up their attacks.<sup>17</sup>

At the same time as being among the main providers of humanitarian protection and assistance, host communities in the Sahel are severely affected by mass displacement. However, they are often ignored in responses to internal displacement.<sup>18</sup> They are constantly exposed to violence and suffer multiple violations of their fundamental rights.<sup>19</sup>

In view of the above, this article calls for better legal protection for IDP host communities in the Sahel. Providing effective legal protection for these communities

12 For details, see IDMC, *Global Report on Internal Displacement 2020*, April 2020, available at: [www.internal-displacement.org/global-report/grid2020/](http://www.internal-displacement.org/global-report/grid2020/).

13 A. Davies, above note 2, p. 11.

14 See OCHA, *Humanitarian Needs and Requirements Overview: Sahel Crisis*, 26 April 2021, available at: <https://reliefweb.int/report/burkina-faso/sahel-crisis-humanitarian-needs-and-requirements-overview-april-2021>; ICRC, “A Conflict without Borders Continues to Play Out in the Sahel”, 8 July 2020, available at: [www.icrc.org/en/document/conflict-without-borders-continues-play-out-sahel](http://www.icrc.org/en/document/conflict-without-borders-continues-play-out-sahel); Jean-Bernard Véron, “Crises et conflits au Sahel: État des lieux et enjeux économiques”, in Jean-Yves Grosclaude, Laurence Tubiana and Rajendra K. Pachauri, *Regards sur la terre 2014: Les promesses de l’innovation durable*, Armand Colin, Paris, 2014; Laurence Caramel, “Quatre raisons de s’inquiéter pour le Sahel, et de douter de l’aide au développement”, *Le Monde*, 20 October 2016, available at: [www.lemonde.fr/afrique/article/2016/10/20/quatre-raisons-de-s-inquieter-pour-le-sahel-et-de-douter-de-l-aide-au-developpement\\_5017486\\_3212.html](http://www.lemonde.fr/afrique/article/2016/10/20/quatre-raisons-de-s-inquieter-pour-le-sahel-et-de-douter-de-l-aide-au-developpement_5017486_3212.html).

15 OCHA, *Burkina Faso*, above note 8, pp. 60, 73; ACAPS, *Escalation of Armed Violence: Burkina Faso*, Briefing Note, 1 November 2019, p. 5, available at: <https://reliefweb.int/report/burkina-faso/burkina-faso-escalation-armed-violence-briefing-note-1-november-2019>; OCHA, above note 14, p. 20.

16 OCHA, *Mali*, above note 8, pp. 68–69, 80; OCHA, *Burkina Faso*, above note 8, pp. 65, 80.

17 See OCHA, above note 14, p. 8; ACAPS, above note 15, p. 4; OCHA, *Burkina Faso*, above note 8, pp. 80–81.

18 This situation is not limited to the Sahel. As Anne Davies rightly points out, “[t]he benefits of reducing vulnerability by assisting IDPs and their hosts before they fall into extreme poverty and deprivation have not yet filtered through to donors. ... Few strategies exist in the collective humanitarian toolbox to assist host families or host communities.” A. Davies, above note 2, pp. 5, 7.

19 For examples, see OCHA, *Niger*, above note 8, p. 71; UNHCR Burkina Faso, above note 8, pp. 19–20; UNHCR Burkina Faso, *Profilage des personnes déplacées internes dans la commune de Djibo, province du Soum, région du Sahel*, October 2017, p. 26, available at: [www.humanitarianresponse.info/es/operations/burkina-faso/document/unhcr-burkina-faso-profilage-des-personnes-d%C3%A9plac%C3%A9es-internes-0](http://www.humanitarianresponse.info/es/operations/burkina-faso/document/unhcr-burkina-faso-profilage-des-personnes-d%C3%A9plac%C3%A9es-internes-0). We shall return to this point in more detail later.



would bring a number of important benefits. The article begins by examining and interpreting the relevant provisions of the Kampala Convention and other legal instruments to which the States concerned are party, in order to establish the extent to which they offer legal protection to IDP host communities. Having identified and presented the protective provisions applicable to host communities, the article then analyzes them in light of the rules for interpreting treaties set out in the Vienna Convention on the Law of Treaties.<sup>20</sup> In so doing, the article shall focus on the ordinary meaning of the terms used, their context, the objectives of the instruments in which they are used, the associated *travaux préparatoires*, and other relevant rules of international law. From this, it will become apparent that these instruments provide adequate guarantees of protection for IDP host communities through the obligations they impose upon States, non-State armed groups and, to a certain degree, humanitarian organizations.

The article will then analyze and highlight the benefits that would accrue from complying with these obligations and implementing them effectively. Four benefits will be analyzed in depth: strengthening protection for IDPs and boosting their resilience, breaking or at least limiting the cycle of internal displacement, recognizing and promoting the traditional African values of hospitality and solidarity, and preventing or resolving crises and tension. In analyzing each of these potential benefits, the article shall highlight the problems that are preventing full compliance with the legal provisions intended to protect host communities, and will show how those problems are preventing full enjoyment of the benefits listed. The article shall propose measures to help overcome these problems and thereby ensure stronger, more effective legal protection for IDP host communities in the Sahel.

## The legal obligations of various actors regarding the protection<sup>21</sup> of IDP host communities

The arguments set out below are based largely on the Kampala Convention, to which all the Sahelian States are party.<sup>22</sup> There are two reasons for this. First, the Kampala Convention is the only international legal instrument containing

20 Vienna Convention on the Law of Treaties, 1155 UNTS 331, 23 May 1969 (entered into force 27 January 1980), Arts 31, 32, available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>.

21 Here, the term “protection” is used in a generic sense to cover several activities, each of which has its own definition. Furthermore, this article will not always make an absolute distinction between protection and assistance measures. Where such a distinction is made, it is purely for reasons of clarity. Assistance activities frequently play a protective role, and vice versa, making it impossible to separate them. See ICRC, “Le CICR, la ligue et le rapport sur la réévaluation du rôle de la Croix-Rouge III: Protection et assistance en cas de conflits armés”, *Revue Internationale de la Croix-Rouge*, Vol. 18, No. 712, 1978, pp. 205–206, available at: <https://international-review.icrc.org/fr/revues/ricr-no-712-revue-internationale-de-la-croix-rouge-08-1978>.

22 See AU, “List of Countries which Have Signed, Ratified/Acceded to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)”, 18 June 2020, available at: <https://tinyurl.com/yu8azckd>.

specific provisions protecting IDP host communities.<sup>23</sup> Indeed, this is one of the main features that demonstrate the innovative and progressive nature of the Convention. Some of its provisions apply specifically in armed conflict, whereas others apply both to situations of armed conflict<sup>24</sup> and to other situations.<sup>25</sup> The analysis below will examine all of these provisions, especially as the temporal scope of application of many of them is unlimited.

Second, the Kampala Convention reflects – and to a large extent is based on – the general provisions of international human rights law (IHRL) and international humanitarian law (IHL),<sup>26</sup> which implicitly govern the protection of

23 The main universal reference on internal displacement, the *Guiding Principles on Internal Displacement*, UN Doc. E/CN.4/1998/53/add.2, 11 February 1998, available at: <https://undocs.org/E/CN.4/1998/53/Add.2>, does not cover IDP host communities. The Protocol on the Protection and Assistance to Internally Displaced Persons, 30 November 2006, available at: [www.unhcr.org/protection/idps/5ad5a3aa4/international-conference-great-lakes-region-protocol-protection-assistance.html](http://www.unhcr.org/protection/idps/5ad5a3aa4/international-conference-great-lakes-region-protocol-protection-assistance.html), applies only to the Great Lakes region and contains only one provision regarding host communities. Article 4(1)(e) requires member States to “[e]xtend protection and assistance, according to need, to communities residing in areas hosting internally displaced persons”.

24 Regarding the classification of armed conflicts, see Sylvain Vité, “Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations”, *International Review of the Red Cross*, Vol. 91, No. 873, 2009, available at: <https://international-review.icrc.org/articles/typology-armed-conflicts-international-humanitarian-law-legal-concepts-and-actual>.

25 In addition to setting out provisions that specifically protect people affected by internal displacement resulting from armed conflict – including communities hosting IDPs – the Kampala Convention includes provisions protecting people affected by displacement resulting from other causes, such as generalized violence, natural disaster and the implementation of development projects. Where relevant, those provisions may also apply during armed conflict, as the Kampala Convention does not limit their temporal scope of application.

26 The Kampala Convention contains several references to IHRL and IHL. In its preamble, it mentions the main legal instruments that constitute each of these bodies of law. The Convention addresses human rights issues of current relevance, especially the protection of women against sexual and gender-based violence, the implementation of socioeconomic rights, the role of non-State actors including multinationals and private security companies, and the impact of extractive industries, natural disaster and climate change on human rights and forced displacement. The Kampala Convention includes numerous principles and rules borrowed from IHL – of which the purpose is to protect persons who are not or are no longer taking part in hostilities – which apply in times of armed conflict. These include the obligation to respect and ensure respect for IHL, rules regarding the provision of humanitarian assistance, war crimes, etc. In addition to reaffirming and expanding the rules of IHRL and IHL, the Kampala Convention takes care to avoid undermining those bodies of law, by including a saving clause in Article 20. Paragraph 2 of that article states: “This Convention shall be without prejudice to the human rights of internally displaced persons under the African Charter on Human and Peoples’ Rights and other applicable instruments of international human rights law or international humanitarian law. Similarly, it shall in no way be understood, construed or interpreted as restricting, modifying or impeding existing protection under any of the instruments mentioned herein.” For further details regarding the relationship between IHL and IHRL, see Steve Tiwa Fomekong, “Reflections on Humanitarian Law Dimensions of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa”, *African Yearbook on International Humanitarian Law*, 2020; Allehone Mulugeta Abebe, “The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, and Enforcement Challenges”, *Refugee Survey Quarterly*, Vol. 29, No. 3, 2010, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1713296](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1713296); Katinka Ridderbos, “The Kampala Convention and Obligations of Armed Groups”, *Forced Migration Review*, No. 37, March 2011, available at: [www.fmreview.org/non-state/Ridderbos](http://www.fmreview.org/non-state/Ridderbos); Stephane Ojeda, “The Kampala Convention on Internally Displaced Persons: Some International Humanitarian Law Aspects”, *Refugee Survey Quarterly*, Vol. 29, No. 3, 2010, pp. 58–61, available at: <https://academic.oup.com/rsq/article-abstract/29/3/58/1541312>; A. Bilak, above note 3, p. 44; Mehari Taddele Maru, “The Kampala Convention and Its Contribution in Filling the Protection

host communities, in peacetime and during armed conflict. We can therefore focus on these general provisions, while also establishing links with other provisions set out in these two bodies of law.

Having clarified these points, it should be noted that in its preamble, the Kampala Convention pays tribute to IDP host communities. The Convention recognizes and reiterates “the inherent African custom and tradition of hospitality by local host communities for persons in distress and support for such communities”.<sup>27</sup> It also provides protection for these communities in the form of obligations imposed upon States, non-State armed groups and humanitarian organizations.

## Obligations regarding the provision of humanitarian assistance

The Kampala Convention sets out obligations related to the planning, management, execution and monitoring of humanitarian assistance to IDP host communities. It requires States to “[a]dopt other measures as appropriate, including strategies and policies on internal displacement at national and local levels, *taking into account the needs of host communities*”.<sup>28</sup> In other words, all national measures aimed at addressing internal displacement must take the needs of IDP host communities into account<sup>29</sup> and must respond to those needs.

In its ordinary meaning, the word “need” refers to the things that a person must have in order to lead a satisfactory life.<sup>30</sup> This would appear to be the meaning assumed by documents dealing with the needs of populations affected by crisis, armed conflict or natural disaster.<sup>31</sup> It is therefore reasonable to use that meaning to understand and interpret the word “needs” as used in the provision mentioned above.

The specific types of need that must be addressed are numerous. It is worth noting that the word “needs” used in the above provision is not defined in any way that might limit its scope. One can therefore argue that it is used in a sense which is sufficiently broad to cover various types of need that must be met in order to ensure the survival and well-being of host communities. Seen from this point of view, a non-exhaustive list of “needs” could include such basic necessities as food, water,

Gap in International Law”, *Journal of Internal Displacement*, Vol. 1, No. 1, 2011, available at: <https://journalofinternaldisplacement.org/index.php/JID/article/view/8/6>.

27 Kampala Convention, preamble, para. 3.

28 *Ibid.*, Art. 3(2)(c) (emphasis added).

29 ICRC, *Translating the Kampala Convention into Practice: A Stocktaking Exercise*, Geneva, October 2016, pp. 46–50, available at: <https://shop.icrc.org/translating-the-kampala-convention-into-practice-pdf-en.html>.

30 “Need”, *Cambridge Dictionary*, available at: <https://dictionary.cambridge.org/dictionary/english/need>.

31 See, for instance, OCHA, *Mali*, above note 8; Humanitarian Coalition, “Humanitarian Needs”, fact sheet, available at: [www.humanitariancoalition.ca/sites/default/files/factsheet/humanitarian\\_needs-\\_english.pdf](http://www.humanitariancoalition.ca/sites/default/files/factsheet/humanitarian_needs-_english.pdf); Felix Schwendimann, “The Legal Framework of Humanitarian Access in Armed Conflict”, *International Review of the Red Cross*, Vol. 93, No. 884, 2011, available at: <https://international-review.icrc.org/articles/legal-framework-humanitarian-access-armed-conflict>; Jakob Kellenberger, “L’action humanitaire dans les conflits armés actuels: Contexte et besoins”, ICRC, Geneva, 25 January 2001, available at: [www.icrc.org/fr/doc/resources/documents/misc/5fzhshu.htm](http://www.icrc.org/fr/doc/resources/documents/misc/5fzhshu.htm); ICRC, above note 29, pp. 46–50.

shelter, education and health care,<sup>32</sup> protection and security<sup>33</sup> (especially in view of the risks to which host communities expose themselves by helping IDPs<sup>34</sup>), economic security,<sup>35</sup> psychosocial support,<sup>36</sup> and the rights to a healthy environment and to development, as enshrined in the African Charter on Human and Peoples' Rights.<sup>37</sup> According to the provision mentioned above, all the needs that host communities are likely to face—which may vary according to the context, the environment and cultural norms—must be taken into account in the design, planning, implementation and monitoring of the laws, policies, strategies and other measures whereby States address internal displacement.

If the needs of IDP host communities are to be properly taken into account and met as effectively as possible, it is essential that they first be properly identified and assessed.<sup>38</sup> The Kampala Convention takes this into account by stipulating that “States Parties shall assess or facilitate the assessment of the needs and vulnerabilities of internally displaced persons *and of host communities*, in cooperation with international organizations or agencies”.<sup>39</sup> This means that States must identify the nature and scale of the needs and vulnerabilities not only of the IDPs, but also of the communities that are hosting them.<sup>40</sup> States do not enjoy exclusive competence in this area, even though they do bear primary

32 These types of need are explicitly mentioned in Article 9(2)(b) of the Kampala Convention. See also ICRC, above note 29, p. 49.

33 See ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions*, Geneva, 2019, available at: <https://shop.icrc.org/international-humanitarian-law-and-the-challenges-of-contemporary-armed-conflicts-recommitting-to-protection-in-armed-conflict-on-the-70th-anniversary-of-the-geneva-conventions.html>. On p. 38, this publication includes this type of need among those experienced by civilian populations affected by armed conflict.

34 Steve McDowell, *Internal Displacement in North Kivu: Hosting, Camps, and Coping Mechanisms*, study prepared for UNICEF DRC and CARE DRC, April 2008, p. 15; K. Haver, above note 2, pp. 25–26.

35 Economic security is defined as the ability of individuals, households or communities to cover their essential needs sustainably and with dignity. See ICRC, “What Is Economic Security?”, 18 June 2015, available at: [www.icrc.org/en/document/introduction-economic-security](http://www.icrc.org/en/document/introduction-economic-security); British Red Cross, *Household Economic Security (HES): Technical Guidance for Assessment and Analysis*, 26 February 2021, available at: <https://cash-hub.org/news-and-events/news-articles/household-economic-security-hes-guidelines-technical-guidance-for-assessment-and-analysis/> (the cited version of this reference is more recent than that cited in the original French version of this article, as the earlier version of the reference was no longer available when this article was translated).

36 See J. Kellenberger, above note 33, p. 38.

37 See African Charter on Human and Peoples' Rights, 1520 UNTS 217, 27 June 1981 (entered into force 21 October 1986), Arts 22 and 24 respectively, available at: <https://au.int/en/treaties/african-charter-human-and-peoples-rights>. For an analysis of each of these rights, see Madjid Benchikh, “Article 22”, and Mohamed Ali Mekoua, “Article 22”, in Maurice Kamto (ed.), *La Charte africaine des droits de l'homme et des peuples et le Protocole y relatif portant création de la Cour africaine des droits de l'homme: Commentaire article par article*, Bruylant, Brussels, 2011.

38 Christelle Cazabat, “The Importance of Monitoring Internal Displacement”, *Forced Migration Review*, No. 59, October 2018, available at: [www.fmreview.org/GuidingPrinciples20/cazabat](http://www.fmreview.org/GuidingPrinciples20/cazabat); Joint IDPs Profiling Service, *Making Data Useful: How to Improve the Evidence-Base for Joint Responses to Forced Displacement?*, Conference Report, July 2017, available at: [www.jips.org/uploads/2018/10/JIPS-Conference-2017-report-vf.pdf](http://www.jips.org/uploads/2018/10/JIPS-Conference-2017-report-vf.pdf).

39 Kampala Convention, Art. 5(5) (emphasis added).

40 ICRC, above note 29, p. 49.

responsibility for assessing needs.<sup>41</sup> They are required to cooperate with international organizations and agencies in carrying out this assessment, especially if they lack the necessary resources to carry it out themselves.<sup>42</sup> This cooperation is all the more necessary in view of the fact that such organizations and agencies generally have both a specific mandate and extensive experience in assessing the needs of vulnerable people. They can therefore provide valuable support to a State facing the challenges of internal displacement.

However, the Kampala Convention provides no indication as to which other bodies might also be competent to conduct assessments, and whose work in this area must be facilitated by the State. Nor does the African Union Model Law for the Implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa (AU Model Law),<sup>43</sup> the purpose of which is to provide guidelines for fulfilling the obligations emanating from the Kampala Convention. In the interests of people in need, one must take a broad interpretation, accepting that the entities involved may include other States, humanitarian organizations or any other non-State entities<sup>44</sup> able and willing to assess the needs of IDPs and host communities, while respecting the sovereignty and laws of the State concerned. The State to which these entities offer their services must provide them with the authorizations and physical protection they require, together with whatever information they need to reach vulnerable populations and assess their needs in complete safety. This being so, one can reasonably maintain that the Kampala Convention provides a true framework for cooperation, aimed at uniting all activities in this domain, so that all concerned have as complete an understanding as possible of the needs and vulnerabilities involved.

Furthermore, while the Kampala Convention does not say so explicitly, one can argue that assessing the needs of host communities should involve consulting them. These consultations should be conducted on an ongoing basis, as the needs are likely to change as the situation evolves.<sup>45</sup> Similarly, measures should be taken

41 For a more detailed analysis of the provisions relating to humanitarian assistance in the Kampala Convention, and the division of responsibility in this area between States and humanitarian organizations, see, for example, J. O. Moses Okello, “In Lieu of a *Travaux Préparatoires*: A Commentary on the Kampala Convention for IDPs”, *International Journal of Refugee Law*, Vol. 31, No. 2–3, 2019, pp. 370–372, available at: <https://academic.oup.com/ijrl/article-abstract/31/2-3/349/5686251>; M. Taddele Maru, above note 26, pp. 118–120.

42 This interpretation is based on a joint reading of paragraphs 5 and 6 of Article 5, and is claimed to correspond to the intention of the States party to the Kampala Convention. Paragraph 6 limits the general obligation on States to cooperate with organizations regarding protection and assistance to IDPs by stating that this obligation applies “where available resources are inadequate” to enable them to provide sufficient protection and assistance to IDPs. J. O. Moses Okello, above note 41, p. 371, reveals that this provision was included to allay the fears of certain States, expressed during the preparatory sessions, that obliging them to cooperate on a matter that fell under their primary sphere of competence impinged on the principle of non-interference in the internal affairs of States.

43 African Union Model Law for the Implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa, January 2018 (AU Model Law), Art. 1, available at: [www.refworld.org/docid/5afc3a494.html](http://www.refworld.org/docid/5afc3a494.html).

44 M. Taddele Maru, above note 26, pp. 118–120.

45 ICRC, above note 29, p. 42.

to allow for the continued participation of these communities in decision-making and in the monitoring of measures relating to the assistance offered to them. Such an interpretation would be in line with the aims of the provisions we are examining here. To compile as complete an overview as possible of the needs and vulnerabilities of IDP host communities and respond to them properly, it is important to identify the expectations and needs of the populations who are to be the main beneficiaries. This point of view is generally accepted today, including by humanitarian organizations working in the field.<sup>46</sup>

The French version of the Kampala Convention provides that “[c]ette assistance peut être étendue, en cas de besoin, aux communautés locales et d’accueil” (“In case of need, this assistance may be extended to local and host communities”).<sup>47</sup> This formulation differs somewhat from that used in the English version of the Convention. The English version (which is equally authentic) does not include “peut être” (“may be”). Rather, it reads “States Parties shall ... [p]rovide internally displaced persons ... with adequate humanitarian assistance ... and where appropriate, [shall] extend such assistance to local and host communities” (emphasis added). The expression “peut être étendue” (“may be extended”) in the French version of the Convention is ambiguous. It could give the impression that even if it is necessary to extend humanitarian assistance to host communities, doing so remains no more than a possibility. In other words, it could be interpreted as meaning that a State is not necessarily obliged to provide assistance to host communities, even if they need it. Such an interpretation would be mistaken. A good-faith interpretation requires one to take the view that once it has been established that host communities need humanitarian assistance, States are legally obliged to provide them with it, albeit within the scope of their capacity.<sup>48</sup> Such an interpretation would be in line with the AU Model Law, which emphasizes “[t]he responsibility of every person, including public authorities, involved in the protection and assistance of internally displaced persons to act in accordance with this legislation and to give due regard to the needs of displacement affected populations and host communities”.<sup>49</sup> This provision does not make taking account of the needs of such communities subject to any conditions whatsoever.

The interpretation suggested here would also be in conformity with the provisions mentioned above, which require States to assess and take account of

46 See ICRC, *Professional Standards for Protection Work*, Geneva, 2018, pp. 28–32, available at: <https://shop.icrc.org/professional-standards-for-protection-work-print-en.html>. Regarding children, see Canadian International Development Agency, *Children’s Participation in Humanitarian Action: Learning from Zones of Armed Conflict*, Quebec, 2007, available at: <https://publications.gc.ca/site/fra/9.689421/publication.html>. Regarding IDPs, see Brookings Institution and University of Bern, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, Project on Internal Displacement, October 2008, pp. 31–32, available at: [www.brookings.edu/research/protecting-internally-displaced-persons-a-manual-for-law-and-policymakers/](http://www.brookings.edu/research/protecting-internally-displaced-persons-a-manual-for-law-and-policymakers/); ICRC, above note 29, pp. 8, 11.

47 Kampala Convention, Art. 9(2)(b) (Review’s translation, which differs from the official English version).

48 See also M. Taddele Maru, above note 26, who emphasizes on p. 118 that supplying humanitarian assistance as required by the Kampala Convention depends on the capacity of the State.

49 AU Model Law, above note 43, Art. 4(1)(6).



the needs of host communities in their response to internal displacement. It would be pointless to assess the needs of these communities without taking steps to address them as far as possible. Furthermore, under international law, States bear primary responsibility for meeting the basic needs of affected populations,<sup>50</sup> which include IDP host communities. This obligation, which emanates from the principle of sovereignty,<sup>51</sup> has been confirmed by international practice.<sup>52</sup> If a State is unwilling or unable to fully discharge its primary responsibilities, humanitarian entities can offer their services in accordance with IHL, which contains rules concerning humanitarian assistance and access to civilian populations affected by armed conflict.<sup>53</sup> An offer of assistance in conformity with humanitarian principles<sup>54</sup> cannot be seen as illicit intervention or as contravening international law in any other way.<sup>55</sup> Furthermore, while the provision of humanitarian aid is subject to the consent of the State, States may not withhold such consent for arbitrary reasons.<sup>56</sup>

## Obligations regarding the protection of IDP host communities

The Kampala Convention also contains provisions aimed at protecting IDP host communities – i.e., safeguarding them against the dangers, suffering and abuse of power to which they could be exposed.<sup>57</sup> In particular, it requires States to “[r]

50 See F. Schwendimann, above note 31, p. 996.

51 UN Charter, 26 June 1945 (entered into force 24 October 1945), Art. 2(1), available at: [www.un.org/en/about-us/un-charter](http://www.un.org/en/about-us/un-charter).

52 See F. Schwendimann, above note 31, who provides a list of resolutions supporting this practice on p. 996.

53 See Article 3(2) common to the four Geneva Conventions and Article 10 of Geneva Convention IV; Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I), Art. 70(1), available at: <https://ihl-databases.icrc.org/ihl/INTRO/470>; Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978) (AP II), Art. 18(1–2), available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/475>.

54 This view is based, in particular, on the principles of humanity, impartiality, non-discrimination, neutrality and independence. For details regarding these principles, see the preamble to the Statutes and Rules of Procedure of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross at Geneva in October 1986 and amended by the 26th International Conference of the Red Cross and Red Crescent at Geneva in December 1995 and by the 29th International Conference of the Red Cross and Red Crescent at Geneva in June 2006 (Statutes of the Movement), available at: [www.icrc.org/en/publication/0911-statutes-and-rules-procedure-international-red-cross-and-red-crescent-movement](http://www.icrc.org/en/publication/0911-statutes-and-rules-procedure-international-red-cross-and-red-crescent-movement). See also F. Schwendimann, above note 31, p. 997; Jean Pictet, *Les Principes de la Croix-Rouge*, ICRC, Geneva, 1955.

55 International Court of Justice (ICJ), *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, 1986, para. 242, available at: [www.icj-cij.org/en/case/70](http://www.icj-cij.org/en/case/70).

56 See F. Schwendimann, above note 31; Denise Plattner, “Assistance à la population civile dans le droit international humanitaire: Évolution et actualités”, *Revue Internationale de la Croix-Rouge*, Vol. 74, No. 795, 1992, available at: <https://international-review.icrc.org/fr/articles/lassistance-la-population-civile-dans-le-droit-international-humanitaire-evolution-et>; Françoise Bouchet-Saulnier, “Consent to Humanitarian Access: An Obligation Triggered by Territorial Control, not States’ Rights”, *International Review of the Red Cross*, Vol. 96, No. 893, 2014, available at: <https://international-review.icrc.org/articles/consent-humanitarian-access-obligation-triggered-territorial-control-not-states-rights>.

57 This definition is based on the definition of “protection” in ICRC, above note 21, p. 206. See also UNHCR, “Glossary of Terms”, in *The Protection Induction Programme Handbook*, 2006, available at: [www.refworld.org/pdfid/466e71c32.pdf](http://www.refworld.org/pdfid/466e71c32.pdf).



respect and ensure respect for the humanitarian and civilian character of the protection of and assistance to internally displaced persons”.<sup>58</sup> It also requires them to “[r]espect and maintain the civilian and humanitarian character of the places where internally displaced persons are sheltered and safeguard such locations against infiltration by armed groups or elements and disarm and separate such groups or elements from internally displaced persons”.<sup>59</sup> Furthermore, the Convention prohibits members of armed groups from violating the civilian and humanitarian character of the places where IDPs are sheltered and from infiltrating such places.<sup>60</sup>

It would appear that these provisions are sometimes interpreted as covering only IDP camps and the work of traditional humanitarian organizations.<sup>61</sup> However, there is nothing to require a restrictive reading of this nature. Indeed, the AU Model Law uses wording that could indicate that the provisions mentioned above do not apply exclusively to camps. After reproducing the provisions cited above,<sup>62</sup> Article 12 of the Model Law explicitly stipulates that “[a]ll parties shall refrain from attacking camps, settlements, or any other areas where internally displaced persons might be located”.<sup>63</sup> The expression “any other areas” is sufficiently broad to be seen as an indication that host communities’ places of residence also benefit from the intended protection.

As mentioned above, host communities show solidarity towards IDPs by allowing them to find shelter with them. They also offer significant humanitarian assistance to IDPs. This humanitarian action, which is in line with the African customs and traditions of hospitality and solidarity,<sup>64</sup> is explicitly recognized and underlined by the Kampala Convention.<sup>65</sup> Furthermore, such humanitarian action accords with the “absolute right” to care for and assist the wounded, sick and shipwrecked enshrined in Additional Protocol I (AP I).<sup>66</sup> This being so,

58 Kampala Convention, Art. 3(1)(f).

59 *Ibid.*, Art. 9(2)(g).

60 *Ibid.*, Art. 7(5)(i).

61 See, for example, Flavia Zorzi Giustiniani, “New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa”, *Denver Journal of International Law and Policy*, Vol. 39, No. 2, 2011, pp. 365–366, available at: <https://digitalcommons.du.edu/djilp/vol39/iss2/5/>; M. Taddele Maru, above note 26, p. 120.

62 See AU Model Law, above note 43, Art. 12(1–2).

63 *Ibid.*, Art. 12(3) (emphasis added).

64 See Michel-Cyr Djiena Wembou *et al.*, *Le droit international humanitaire: Théorie générale et réalités africaines*, Collection logiques juridiques, L’Harmattan, Paris, 2000, pp. 303 ff.; Steve Tiwa Fomekong, “La contribution de l’Union africaine au droit international humanitaire”, doctoral thesis, Université Laval, Québec, 2020, pp. 137–140, available at: <https://corpus.ulaval.ca/jspui/handle/20.500.11794/67788>.

65 Kampala Convention, preamble, para. 3.

66 AP I, Art. 17(1): “The civilian population . . . shall be permitted, even on their own initiative, to collect and care for the wounded, sick and shipwrecked, even in invaded or occupied areas. No one shall be harmed, prosecuted, convicted or punished for such humanitarian acts.” This has been interpreted as meaning that the civilian population has an “absolute right” to care for and assist the wounded, sick and shipwrecked. See Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Geneva, 1987, p. 215, para. 713, available at: [www.loc.gov/rr/frd/Military\\_Law/pdf/Commentary\\_GC\\_Protocols.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/Commentary_GC_Protocols.pdf). According to the letter of Article 17(1), and given the field of application of AP I, this right only applies in connection with the wounded, sick and shipwrecked of international armed conflicts.

nothing contradicts the idea that the provisions of the Kampala Convention discussed above also apply to host communities. Those provisions require that the humanitarian and civilian character of the humanitarian assistance and protection that host communities offer to IDPs be respected. This also applies to host communities' places of residence, if they are accommodating IDPs.

The definition of "civilian" lies at the heart of the principle of distinction enshrined in IHL. That principle requires that belligerents "shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives".<sup>67</sup> Because they consist of civilians,<sup>68</sup> IDP host communities are classified as civilian populations<sup>69</sup> and therefore enjoy immunity against attack. This also applies to their places of residence, if they can be classified as civilian objects.<sup>70</sup>

To continue to enjoy protection as civilians, however, the members of a community must not participate directly in hostilities.<sup>71</sup> If they do, they lose the protection they enjoy as civilians for as long as that participation continues.<sup>72</sup> The Kampala Convention requires that States prevent this occurring. States must ensure respect for, and maintenance of, the civilian character of the dwellings of these host communities and of the assistance that they provide to IDPs. The Convention sets out specific measures that States must take to achieve this. In particular, they must safeguard IDP populations against infiltration by armed groups or elements.<sup>73</sup> If they have already infiltrated, States must disarm them and separate them from IDPs.<sup>74</sup> The presence of armed groups or elements within these communities could arouse suspicion regarding the civilian nature of the protection that host communities are providing, and hence expose them to the risk of armed attack.<sup>75</sup> Belligerents may conduct armed attacks against such areas if they realize that enemy combatants have taken refuge in them – i.e., if

67 AP I, Art. 48; Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rules 1, 7, available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul).

68 Civilians are persons who are not members of the armed forces. See ICRC Customary Law Study, above note 67, Rule 5.

69 AP I, Art. 50(2) states that "[t]he civilian population comprises all persons who are civilians".

70 See ICRC Customary Law Study, above note 67, Rule 9; AP I, Art. 52(2–3).

71 For details regarding the concept of direct participation in hostilities, see Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, ICRC, Geneva, 2009, available at: <https://shop.icrc.org/interpretive-guidance-on-the-notion-of-direct-participation-in-hostilities-under-international-humanitarian-law-print-en.html>.

72 *Ibid.*, pp. 65–73.

73 Kampala Convention, Art. 9(2)(g).

74 *Ibid.*

75 See UNHCR and ICRC, *Aide-mémoire: Operational Guidance on Maintaining the Civilian and Humanitarian Character of Sites and Settlements*, Geneva, July 2018, pp. 7–8, available at: [www.refworld.org/docid/5b55c6fe4.html](http://www.refworld.org/docid/5b55c6fe4.html). See also, to a certain degree, UNHCR, *Guidance Note on Maintaining the Civilian and Humanitarian Character of Asylum*, Geneva, December 2018, p. 8, available at: [www.refworld.org/docid/452b9bca2.html](http://www.refworld.org/docid/452b9bca2.html), which applies specifically in the fairly similar case of refugees (the cited version of this reference is more recent than that cited in the original French version of this article, as the earlier version of the reference was no longer available when this article was translated).

they are using those areas as bases, or using their inhabitants as human shields.<sup>76</sup> The presence of armed elements or combatants within host communities also increases the risk of mobilization of members of these communities,<sup>77</sup> physical or sexual violence, and misappropriation of humanitarian aid by members of armed forces or groups.<sup>78</sup>

Having said this, the presence of armed elements where host communities are living does not automatically lead to those locations losing their civilian character. IHL stipulates that “[t]he presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character”.<sup>79</sup> It is important at all times to make a distinction between the character or status of sites or places of residence of host communities as a whole, on the one hand, and the status of the individuals at those locations, on the other. The presence of armed elements within a host community does not deprive that community of the status of a civilian population, nor does it affect the classification of the area where the community lives as civilian property. This means that if combatants are present within host communities, the letter and spirit of the principle of distinction require that measures be taken to distinguish between those combatants and the members of those communities who are entitled to the status of civilian, so as to direct attacks exclusively against the combatants. Furthermore, once the distinction between combatants and civilians has been made, the principle of proportionality<sup>80</sup> requires that the belligerents assess the collateral damage likely to result from any attack on the combatants or military objectives located within host communities, to ensure that the harm which is likely to result from such an attack is not disproportionate to the anticipated military advantage. Even if the attack passes the proportionality test, all necessary precautions<sup>81</sup> must be taken to minimize its effects on IDP host communities.

An indication as to what could be construed as “humanitarian” is contained in the definition of the principle of humanity.<sup>82</sup> That principle, which has been confirmed by the International Court of Justice (ICJ),<sup>83</sup> is the first of the seven Fundamental Principles of the International Red Cross and Red Crescent Movement.<sup>84</sup> One may deduce from that definition that “humanitarian” activities

<sup>76</sup> UNHCR and ICRC, above note 75, pp. 7–8.

<sup>77</sup> See *ibid.*, pp. 11–17; CAR Protection Cluster, *L’impératif d’établir et de maintenir le caractère civil et humanitaire des sites de personnes déplacées internes en RCA: Note d’Orientation*, April 2016, pp. 1–2, available at: [www.globalprotectioncluster.org/\\_assets/files/field\\_protection\\_clusters/Central\\_African\\_Republic/files/note-orientation\\_caractere-civil-sites\\_finale.fr.pdf](http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Central_African_Republic/files/note-orientation_caractere-civil-sites_finale.fr.pdf).

<sup>78</sup> CAR Protection Cluster, above note 77, pp. 1–2.

<sup>79</sup> AP I, Art. 50(3).

<sup>80</sup> See AP I, Art. 51(5)(b); ICRC Customary Law Study, above note 67, Rule 14.

<sup>81</sup> See AP I, Art. 57; ICRC Customary Law Study, above note 67, Rule 15.

<sup>82</sup> ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd edition, Cambridge University Press, Cambridge, 2016 (ICRC Commentary on GC I), para. 811, available at: <https://ihl-databases.icrc.org/ihl/full/GCI-commentary>.

<sup>83</sup> ICJ, *Nicaragua*, above note 55, para. 242.

<sup>84</sup> See Statutes of the Movement, above note 54, preamble.

are those intended to “prevent and alleviate human suffering wherever it may be found” and of which the purpose is to “protect life and health and to ensure respect for the human being”.<sup>85</sup> Such activities include collecting and caring for the wounded, sick and shipwrecked, as provided for in AP I,<sup>86</sup> but also encompass taking in people who have no other refuge or meeting their basic needs, as such activities also aim to alleviate human suffering. It therefore follows that IDP host communities must not be harmed or suffer reprisals for carrying out such activities for IDPs.

However, certain facts or scenarios could threaten the humanitarian nature of the protection offered to IDPs and the places where they have taken shelter, even if they do not call their civilian character into question.<sup>87</sup> This is the case where civilians participate directly in hostilities sporadically while they are living in a host community.<sup>88</sup> Some activities undertaken by civilians in support of a party to the conflict without directly participating in hostilities could also undermine the humanitarian character of places hosting IDPs, without affecting their civilian character.<sup>89</sup> These include propaganda, financing or training activities connected with one of the parties to an armed conflict.<sup>90</sup> It is necessary to prevent such activities from taking place at such locations or to mitigate the potential risks involved, so as to preserve the humanitarian character of the protection provided to IDPs and the locations hosting them and ultimately to ensure effective protection for host communities.

States are required not only to “respect” but also to “ensure respect for” the humanitarian and civilian character of the humanitarian protection provided to IDPs and the locations that are hosting them. The formulations “respect” and “ensure respect for” are borrowed from IHL – as we have already seen, the Kampala Convention draws heavily on that body of law. More specifically, these terms mirror the obligation to respect and ensure respect for IHL.<sup>91</sup> If one applies the ICRC Commentaries to the provisions of the Kampala Convention by analogy, one can argue that “respecting” the humanitarian and civilian character of the protection and humanitarian assistance that host communities provide to IDPs implies both a positive and a negative obligation for States to take all necessary steps to ensure that the behaviour of their entities and of other individuals or groups acting in their name do not lead to violations

85 ICRC Commentary on GC I, above note 82, para. 811. See also Jean Pictet, “Les principes fondamentaux de la Croix-Rouge: Commentaire (I)”, *Revue Internationale de la Croix-Rouge*, Vol. 19, No. 717, June 1979, available at: <https://international-review.icrc.org/fr/articles/les-principes-fondamentaux-de-la-croix-rouge-commentaire>; Maja Janmyr, “Revisiting the Civilian and Humanitarian Character of Refugee Camps”, in David Cantor and Jean François Durieux (eds), *Refuge from Inhumanity? War Refugees and International Humanitarian Law*, International Refugee Law Series, Vol. 2, Brill Nijhoff, Leiden, 2014, pp. 242–243.

86 AP I, Art. 17.

87 UNHCR and ICRC, above note 75, p. 14.

88 *Ibid.*, pp. 14–15.

89 *Ibid.*, p. 15.

90 *Ibid.*, pp. 7, 9.

91 See Art. 1 common to the four Geneva Conventions and to AP I; ICRC Customary Law Study, above note 67, Rule 1.

thereof.<sup>92</sup> Furthermore, the duty to “ensure respect” for the humanitarian and civilian character of humanitarian aid, or to ensure that this character is maintained, implies that States have both a positive and a negative obligation to ensure that other States, non-State entities and individuals for whom they are responsible do nothing to violate or compromise that character.<sup>93</sup>

## Obligations regarding the prevention of arbitrary displacement

At first sight, the title of the Kampala Convention would seem to imply that it only regulates protection and assistance to persons who have already become the victims of forced displacement.<sup>94</sup> In reality, however, the Convention’s scope of application is broader. As well as regulating protection of and assistance for IDPs, it protects all categories of the population against internal displacement.<sup>95</sup> Indeed, one of the explicit objectives of the Kampala Convention is to “[e]stablish a legal framework for preventing internal displacement”.<sup>96</sup> The Convention aims to prevent “the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders”.<sup>97</sup> In other words, “rather than waiting to act until a population has been displaced and has found refuge in another part of the country ..., we should be attacking the causes of displacement”.<sup>98</sup> The Kampala Convention therefore requires States to “[r]efrain from, prohibit and prevent arbitrary displacement of populations”.<sup>99</sup> It is worth

92 ICRC Commentary on GC I, above note 82, paras 144, 120. See also Laurence Boisson de Chazournes and Luigi Condorelli, “Common Article 1 of the Geneva Conventions Revisited: Protecting Collective Interests”, *International Review of the Red Cross*, Vol. 82, No. 837, 2000, p. 69, available at: <https://international-review.icrc.org/fr/articles/common-article-1-geneva-conventions-revisited-protecting-collective-interests>.

93 ICRC Commentary on GC I, above note 82, paras 144, 120, 150. See also Luigi Condorelli and Laurence Boisson de Chazournes, “Quelques remarques à propos de l’obligation des États de ‘respecter et faire respecter’ le droit international humanitaire ‘en toutes circonstances’”, in Christophe Swinarski (ed.), *Études et essais sur le droit international humanitaire et sur les principes de la Croix-Rouge en l’honneur de Jean Pictet*, ICRC, Geneva, 1984, p. 24, available at: <https://archive-ouverte.unige.ch/unige:15023>. However, certain authors maintain that the obligation to “ensure respect” obliges States only to take all measures necessary to ensure respect for the Geneva Conventions on the part of government bodies and of private individuals for which the State is responsible. See Frits Kalshoven, “The Undertaking to Respect and to Ensure Respect in All Circumstances: From Tiny Seed to Ripening Fruit”, *Yearbook of International Humanitarian Law*, Vol. 2, 1999, p. 60, available at: <https://doi.org/10.1017/S1389135900000362>; Tomasz Zych, “The Scope of the Obligation to Respect and to Ensure Respect for International Humanitarian Law”, *Windsor Yearbook of Access to Justice*, Vol. 27, No. 2, 2009, available at: <https://wyaj.uwindsor.ca/index.php/wyaj/article/view/4528>.

94 The full title of the Convention is the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (emphasis added).

95 Maria Stavropoulou, “The Kampala Convention and Protection from Arbitrary Displacement”, *Forced Migration Review*, No. 36, November 2010, p. 62, available at: [www.fmreview.org/DR Congo/stavropoulou.htm](http://www.fmreview.org/DR Congo/stavropoulou.htm).

96 Kampala Convention, Art. 2(b).

97 *Ibid.*, Art. 1(i).

98 Jack M. Mangala, “Prévention des déplacements forcés de population: Possibilités et limites”, *Revue Internationale de la Croix-Rouge*, Vol. 83, No. 844, 2001, p. 1067 (Review’s translation), available at: <https://international-review.icrc.org/fr/articles/prevention-des-deplacements-forces-de-population-possibilites-et-limites>.

99 Kampala Convention, Art. 3(1).

noting that the word “populations” used in this provision is not defined in any way that might limit its scope. One may therefore conclude that the protection that this provision offers covers all populations, without exception, and hence applies to IDP host communities. In particular, this implies anticipating forced displacement by taking the measures necessary to prevent its occurrence. In the specific case of IDP host communities, the aim is to reduce or limit existing internal displacement, by taking measures to prevent host communities being forced to move for whatever reason.

The Kampala Convention imposes an obligation similar to that mentioned above on armed groups. Article 7(5)(a) prohibits armed groups from “[c]arrying out arbitrary displacement”; this means that—like any other category of the population—IDP host communities must not be subjected to arbitrary displacement. Furthermore, the Convention confers upon each member of such a community the individual right to protection against arbitrary displacement.<sup>100</sup> This is described as including (but not being limited to):

- a. Displacement based on policies of racial discrimination or other similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the population;
- b. Individual or mass displacement of civilians in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand, in accordance with international humanitarian law;
- c. Displacement intentionally used as a method of warfare or due to other violations of international humanitarian law in situations of armed conflict;
- d. Displacement caused by generalized violence or violations of human rights;
- e. Displacement as a result of harmful practices;
- f. Forced evacuations in cases of natural or human made disasters or other causes if the evacuations are not required by the safety and health of those affected;
- g. Displacement used as a collective punishment;
- h. Displacement caused by any act, event, factor, or phenomenon of comparable gravity to all of the above and which is not justified under international law, including human rights and international humanitarian law.<sup>101</sup>

The above provisions are, to a certain extent, a reaffirmation of IHL. In particular, they reaffirm the provisions of both treaty and customary IHL, which stipulate that “[t]he displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand”.<sup>102</sup> However, the Kampala Convention does not merely reaffirm this legal principle; it takes it a step further. Firstly, to be considered “forced” within the meaning of IHL—and hence prohibited—displacement of the civilian population has to have been

<sup>100</sup> *Ibid.*, Art. 4(4).

<sup>101</sup> *Ibid.*

<sup>102</sup> AP II, Art. 17(1); ICRC Customary Law Study, above note 67, Rule 129(B).



“ordered”.<sup>103</sup> The Kampala Convention, however, prohibits a wider range of types of forced displacement, whether ordered or not. It prohibits arbitrary displacement, defining the concept in non-exhaustive terms. The fact that the Kampala Convention includes such a non-exhaustive list of acts that are deemed to be prohibited forms of displacement limits the scope for divergent interpretations. This in turn may facilitate achievement of the objectives of the provision prohibiting arbitrary displacement.

Furthermore, whereas IHL simply prohibits States from carrying out forced displacement, the Kampala Convention goes further by requiring States to take the measures necessary to “prohibit” and “prevent” such displacement.<sup>104</sup> This implies that it is not sufficient for States simply to abstain from creating situations that could lead to arbitrary displacement. They must also take the measures necessary to ensure that persons under their responsibility do not cause or create situations that could lead to such displacement. The Convention stipulates that “States Parties shall declare as offences punishable by law acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity”.<sup>105</sup> They must also take the measures necessary to ensure the “accountability of non-State actors[<sup>106</sup>] ... for acts of arbitrary displacement or complicity in such acts”.<sup>107</sup> Expressing this provision in such explicit terms is important, given that the activities of multinationals, private military and security companies and non-State actors involved in exploring and exploiting Africa’s natural and economic resources have caused – and continue to cause – many instances of arbitrary displacement, and host communities are among those displaced.<sup>108</sup> The aim here is to dissuade these entities from causing arbitrary displacement, or to ensure that they do not go unpunished if they do so.

103 See Carlyn Carey, “Internal Displacement: Is Prevention through Accountability Possible? A Kosovo Case Study”, *American University Law Review*, Vol. 49, No. 1, 1999, p. 267, available at: <https://digitalcommons.wcl.american.edu/aulr/vol49/iss1/4/>. For a somewhat opposing viewpoint, see Jan Willms, “Without Order, Anything Goes? The Prohibition of Forced Displacement in Non-International Armed Conflict”, *International Review of the Red Cross*, Vol. 91, No. 875, 2009, available at: <https://international-review.icrc.org/articles/without-order-anything-goes-prohibition-forced-displacement-non-international-armed>. According to Willms, an interpretation based on the objectives of AP II would allow one to argue that IHL prohibits forced displacement regardless of whether it is ordered. She maintains that requiring an order to have been issued could encourage States to use indirect forms of coercion to displace the civilian population. Be that as it may, the corresponding provision of the Kampala Convention, which makes no reference to an order, is much less open to differing interpretations.

104 Kampala Convention, Art. 3(1)(a).

105 *Ibid.*, Art. 4(6).

106 Article 1(n) of the Kampala Convention defines “non-State actors” as private actors who are not public officials of the State, including non-State armed groups, and whose acts cannot be officially attributed to the State.

107 *Ibid.*, Art. 3(1)(i).

108 For examples, see UN Security Council, *Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, UN Doc. S/2002/1146, 16 October 2002, available at: <https://undocs.org/S/2002/1146>; Özden Melik, *Transnational Corporations’ Impunity*, CETIM, 2016, pp. 44–62, available at: [www.cetim.ch/product/transnational-corporations-impunity/](http://www.cetim.ch/product/transnational-corporations-impunity/); Daniëlla Dam-de Jong, *International Law and Governance of Natural Resources in Conflict and Post-Conflict Situations*, Cambridge University Press, Cambridge, 2015, pp. 1–30.

The Kampala Convention stipulates that “States Parties shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, so as to prevent and avoid conditions that might lead to the arbitrary displacement of persons”.<sup>109</sup> It is generally accepted today that breaches of IHRL and IHL are the most frequent cause of internal displacement, especially during armed conflict.<sup>110</sup> If all parties to armed conflict obeyed the fundamental rules of IHL and IHRL, most arbitrary displacement could be avoided.<sup>111</sup> The Kampala Convention takes this into account by citing respect for the rules set out in those bodies of law as one means of preventing the displacement of populations, including IDP host communities. We shall return to this point later.

The Kampala Convention also requires States to “devise early warning systems, in the context of the continental early warning system, in areas of potential displacement”.<sup>112</sup> This involves setting up observation mechanisms to identify areas in which there is a perceptible risk of displacement, monitoring those areas and warning the authorities responsible, so that measures can be taken to prevent displacement.<sup>113</sup> The purpose is to anticipate arbitrary displacement, or to minimize the risk of it occurring. As mentioned above, mass IDP flows can render host communities vulnerable and therefore lead to their

109 Kampala Convention, Art. 4(1).

110 See Valérie Amos, “Preventing Displacement”, *Forced Migration Review*, No. 41, December 2012, available at: [www.fmreview.org/preventing/amos](http://www.fmreview.org/preventing/amos); Cédric Cotter, *Displacement in Times of Armed Conflict: How International Humanitarian Law Protects in War, and Why it Matters*, ICRC, Geneva, 2019, p. 14, available at: <https://shop.icrc.org/displacement-in-times-of-armed-conflict-how-international-humanitarian-law-protects-in-war-and-why-it-matters-pdf-en.html>. For studies of specific cases, see Agnès de Geoffroy, “Fleeing War and Relocating to the Urban Fringe – Issues and Actors: The Cases of Khartoum and Bogotá”, *International Review of the Red Cross*, Vol. 91, No. 875, 2009, available at: <https://international-review.icrc.org/articles/fleeing-war-and-relocating-urban-fringe-issues-and-actors-cases-khartoum-and-bogota>; Nancy Lozano-Gracia, Gianfranco Piras, Ana Maria Ibáñez and Geoffrey J. D. Hewings, “The Journey to Safety: Conflict-Driven Migration Flows in Colombia”, *International Regional Science Review*, Vol. 33, No. 2, 2009, available at: <https://journals.sagepub.com/doi/10.1177/0160017609336998>; Marisa O. Ensor, “Displaced Girlhood: Gendered Dimensions of Coping and Social Change among Conflict-Affected South Sudanese Youth”, *Refuge*, Vol. 30, No. 1, 2014, available at: <https://refuge.journals.yorku.ca/index.php/refuge/article/view/38599>; Gil Loescher, James Milner, Edward Newman and Gary Troeller (eds), *Protracted Refugee Situations: Political, Human Rights and Security Implications*, United Nations University Press, 2008, available at: <https://digitallibrary.un.org/record/646997?ln=en>; Sean Healy and Sandrine Tiller, “Be Near a Road: Humanitarian Practice and Displaced Persons in North Kivu”, *Refugee Survey Quarterly*, Vol. 35, No. 2, 2016, available at: <https://academic.oup.com/rsq/article-abstract/35/2/56/2223323>; Kateryna Ivashchenko-Stadnik, *The Impact of the Current Military Conflict on Migration and Mobility in Ukraine*, Robert Schuman Centre for Advanced Studies, Research Paper No. RSCAS 2015/15, 2015, available at: <https://cadmus.eui.eu/handle/1814/34804>; Patricia Weiss Fagen, *Refugees and IDPs after Conflict: Why They Do Not Go Home*, United States Institute of Peace, Special Report No. 268, April 2011, available at: [www.usip.org/publications/2011/04/refugees-and-idps-after-conflict](http://www.usip.org/publications/2011/04/refugees-and-idps-after-conflict).

111 Jakob Kellenberger, “Root Causes and Prevention of Internal Displacement: The ICRC Perspective”, statement given to the Special Summit on Refugees, Returnees and IDPs in Africa, Kampala, 23 October 2009, available at: [www.icrc.org/en/doc/resources/documents/statement/displacement-statement-231009.htm](http://www.icrc.org/en/doc/resources/documents/statement/displacement-statement-231009.htm); ICRC, *Strengthening Legal Protection for Victims of Armed Conflicts*, Geneva, 2011, p. 22, available at: [www.icrc.org/en/doc/resources/documents/report/31-international-conference-strengthening-ihl-report-2011-10-31.htm](http://www.icrc.org/en/doc/resources/documents/report/31-international-conference-strengthening-ihl-report-2011-10-31.htm).

112 Kampala Convention, Art. 5(5).

113 See Brookings Institution and University of Bern, above note 46, pp. 24, 54–58.

becoming displaced themselves. Furthermore, those communities are not always safe from violence and abuse that may lead to their forced displacement. Early warning systems must therefore be set up within host communities, to ensure that they are not also forced to flee.

From the above, we can see that IDP host communities in the Sahel are covered by a protection regime that is satisfactory overall. Respect for and implementation of the protective measures for which that regime provides would resolve some of the major humanitarian challenges that the region is facing.

## **The benefits of respecting the protection to which IDP host communities are entitled**

Respecting the protection that the above legal provisions confer on IDP host communities would have major advantages. In practice, implementation of those rules in the Sahel region is encountering numerous major challenges, and these are preventing the full realization of those advantages. However, these challenges are not insurmountable.

### **Strengthening the resilience of IDPs and their host communities**

Respecting and implementing the protections to which IDP host communities are entitled strengthens not only their resilience but also that of the IDPs they are hosting. As mentioned above, IDPs depend heavily on host communities for their survival, for access to basic necessities and for access to land. Responding to the needs of host communities allows them to both continue providing for themselves and to help the IDPs they are hosting.<sup>114</sup> Strengthening the protection and assistance provided to IDP host communities hence increases their ability to help reduce the vulnerability of IDPs. Furthermore, where resources are scarce, protecting and assisting host communities would make a major contribution to providing them with the capacity to help IDPs and would hence reduce the burden on the Sahelian countries and the humanitarian organizations operating in the region, if only to a limited degree.

In practice, however, IDP host communities in the Sahel are insufficiently protected, which is limiting their resilience and that of the IDPs they are hosting. Humanitarian aid often seems to be focused on the needs of IDPs in camps and other official sites,<sup>115</sup> at the expense of host communities, which are also in

<sup>114</sup> See ICRC, above note 29, p. 49.

<sup>115</sup> See Elise Shea and Marie-Françoise Sitnam, *Renforcement de la redevabilité envers les populations affectées: Burkina Faso*, Ground Truth Solutions, H2H Network and OCHA, November 2020, pp. 6–7, 22, available at: [www.humanitarianresponse.info/en/operations/burkina-faso/document/burkina-faso-renforcement-de-la-redevabilite-C3%A9-envers-les-populations](http://www.humanitarianresponse.info/en/operations/burkina-faso/document/burkina-faso-renforcement-de-la-redevabilite-C3%A9-envers-les-populations); UNHCR, *Rapport final: Consultations avec les personnes déplacées internes et les communautés hôtes au nom du Panel de haut niveau sur le déplacement interne*, September 2020, available at: [www.sheltercluster.org/burkina-faso/documents/consultations-avec-les-personnes-deplacees-internes-et-les-communautes-hotes](http://www.sheltercluster.org/burkina-faso/documents/consultations-avec-les-personnes-deplacees-internes-et-les-communautes-hotes).

desperate need of such support. This access to assistance explains why IDPs sometimes prefer to move into the camps.<sup>116</sup> But IDP camps – while important – are not ideal when it comes to promoting sustainable solutions. Apart from the fact that they divert the attention of the international community from the needs of other communities affected by internal displacement,<sup>117</sup> studies show that IDPs living in camps seem to be trapped in poverty, because they are less able to develop their social networks and find economic opportunities.<sup>118</sup> In some contexts, it has become clear that IDPs feel safer with host families or when they are directly integrated into the community than they do in a camp.<sup>119</sup> One can therefore argue that “[p]roviding assistance mainly through camps undermines traditional coping mechanisms that can provide safer and more effective aid, and effectively limits the choices available to displaced people”.<sup>120</sup>

Several factors explain the fact that insufficient attention has been paid to the needs of host communities in the Sahel. Firstly, there is the absence of national legislation or policies that give due consideration to the needs of these communities in certain countries of the region. Niger is the only Sahelian country that has a law devoted specifically to internal displacement: Law No. 2018-74 of 10 December 2018 on the Protection and Assistance of Internally Displaced Persons. That law does take proper account of the needs of IDP host communities,<sup>121</sup> as required by the Kampala Convention. Unfortunately, however, the term “host community” (*communauté d’accueil*) has a somewhat restrictive scope under this law, as it does not cover host communities where IDP camps are located.<sup>122</sup> Mali drew up a National Strategy for the Management of Internally Displaced and Repatriated Persons<sup>123</sup> covering the period 2015–17, but that policy contained no provisions specifically aimed at defending the interests of host communities. Burkina Faso has enacted Law No. 012-2014/AN on the Prevention and Management of Risks, Humanitarian Crises and Disasters, which constitutes the principal legal framework concerning internal displacement in Burkina Faso but makes no reference to host communities. This situation hardly ensures optimum visibility for host communities within the legal regime applicable to forced displacement, nor does it ensure a great degree of legal predictability or security as a basis for addressing the needs of these communities in a systematic fashion.

Legislation that takes into account the interests of host communities, and the specific nature of the challenges they face, would not only increase the

116 See E. Shea and M.-F. Sitnam, above note 115, pp. 16 ff.

117 ICRC, *Internal Displacement in Armed Conflict: Facing Up to the Challenges*, Geneva, November 2009, p. 12, available at: <https://shop.icrc.org/internal-displacement-in-armed-conflict-facing-up-to-the-challenges-pdf-en.html>.

118 S. McDowell, above note 34, p. 22; K. Haver, above note 2, pp. 16–22; A. Davies, above note 2, p. 10.

119 A. Davies, above note 2, p. 10.

120 K. Haver, above note 2, p. 5.

121 See Law No. 2018-74, above note 5, Arts 2(6), 17, 21.

122 *Ibid.*, Art. 2(6). See the introduction to this article for details.

123 Ministère de la Solidarité, de l’Action Humanitaire et de la Reconstruction du Nord, *Mali: Stratégie nationale de gestion des personnes déplacées internes et des rapatriés (2015-2017) (et Plan d’actions)*, May 2015, available at: [www.refworld.org/docid/5b3f40a24.html](http://www.refworld.org/docid/5b3f40a24.html).

chances of their needs being explicitly taken into account during the planning and implementation of responses to internal displacement, but would also strengthen confidence in the measures taken. It is therefore important that those States which have not yet done so take the steps necessary to include the provisions of the Kampala Convention in their domestic legislation, including the provisions concerning host communities. In 2018, Mali began drafting a law on protection and assistance for persons displaced within the country, but that process is not yet complete. However, the fact that the draft already takes sufficient account of the needs of IDP host communities is to be welcomed.<sup>124</sup> It is to be hoped that the final version will maintain or even strengthen the protection of host communities that the current draft contains. Burkina Faso should follow the examples of Niger and Mali by adopting domestic legislation on internal displacement that includes all the requirements of the Kampala Convention regarding host communities. In the absence of such legislation, it might be possible to revise Law No. 012-2014/AN mentioned above, so that it offers a more specific and appropriate response to internal displacement in that country. The AU Model Law could be useful in such an endeavour. It would also be possible to call on the expertise of international organizations specialized in this field, such as the Internal Displacement Monitoring Centre (IDMC), the Norwegian Refugee Council (NRC) and the Office of the UN High Commissioner for Refugees (UNHCR), which have already helped States draft laws and policies on internal displacement.<sup>125</sup>

The Sahelian countries lack the resources and the means to carry out regular, exhaustive assessments of the needs of IDPs and their host communities.<sup>126</sup> Humanitarian organizations willing and able to carry out such assessments are generally hampered by the chronic lack of security in these countries.<sup>127</sup> The result is that the needs of populations that have suffered forced displacement are rarely analyzed in anything approaching a comprehensive manner.<sup>128</sup> When such

124 Republic of Mali, *Avant-projet de loi portant protection et assistance aux personnes déplacées internes en République du Mali*, 30 August 2019, Arts 2(5), 21(1), 28, available at: [www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/mali\\_-\\_avant-projet\\_de\\_loi\\_sur\\_la\\_protection\\_et\\_l'assistance\\_des\\_pdis\\_-\\_revision\\_finale\\_-\\_30\\_aout\\_2019.pdf](http://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/mali_-_avant-projet_de_loi_sur_la_protection_et_l'assistance_des_pdis_-_revision_finale_-_30_aout_2019.pdf).

125 See IDMC and NRC, *A Review of the Normative Framework in Kenya relating to the Protection of IDPs*, Geneva, August 2015, available at: [www.internal-displacement.org/publications/a-review-of-the-normative-framework-in-kenya-relating-to-the-protection-of-idps](http://www.internal-displacement.org/publications/a-review-of-the-normative-framework-in-kenya-relating-to-the-protection-of-idps); IDMC and NRC, *Applying the Kampala Convention in the Context of Zimbabwe*, Geneva, February 2015, available at: [www.internal-displacement.org/publications/applying-the-kampala-convention-in-the-context-of-zimbabwe](http://www.internal-displacement.org/publications/applying-the-kampala-convention-in-the-context-of-zimbabwe); IDMC and NRC, *Domesticating the Kampala Convention: Law and Policy Making*, Geneva, July 2014, pp. 28–32, available at: [www.internal-displacement.org/publications/domesticating-the-kampala-convention-law-and-policy-making](http://www.internal-displacement.org/publications/domesticating-the-kampala-convention-law-and-policy-making) (regarding support for the process within Liberia of ratifying and implementing the Kampala Convention).

126 See Clémentine André, “Expert Opinion: Why More Data is Needed to Unveil the True Scale of the Displacement Crises in Burkina Faso and Cameroon”, IDMC, April 2020, available at: [www.internal-displacement.org/expert-opinion/why-more-data-is-needed-to-unveil-the-true-scale-of-the-displacement-crises-in](http://www.internal-displacement.org/expert-opinion/why-more-data-is-needed-to-unveil-the-true-scale-of-the-displacement-crises-in); A. Bilak, above note 3, pp. 41–43; ACAPS, above note 15, p. 5.

127 C. André, above note 126.

128 For instance, the report *Profilage des personnes déplacées internes, région du Sahel, province du Soum* (UNHCR Burkina Faso, above note 8), which was produced following a needs assessment conducted between 20 December 2018 and 14 January 2019, only covers the needs of IDPs, although it does give

assessments are carried out, they generally seem to focus on the needs of IDPs in camps or at other official sites<sup>129</sup> – but the needs of IDPs living with host families, and those of host communities, are no less acute. Observers point out that the official camps, with their massive populations, are only the tip of the iceberg. Needs are often more acute outside those camps, especially in host communities, where local residents – often facing difficulties themselves – are providing food and shelter for the majority of the displaced persons.<sup>130</sup> A complete and up-to-date assessment of the needs of all populations affected by forced displacement – including host communities – is essential in order to make the right decisions and mobilize the resources needed to respond appropriately.

Humanitarian access remains difficult and very limited in the Sahel, because of the lack of security, the presence of explosive remnants of war and improvised explosive devices, and attacks on humanitarians and armed/security forces. In 2020, for example, 318 security incidents were reported in Niger alone, including vehicle hijackings, robberies, attacks on humanitarian workers and kidnappings.<sup>131</sup> Similar incidents have occurred in Burkina Faso and Mali.<sup>132</sup> Increasing violence, curfews and the prohibition of certain practical means of transport, such as motorbikes, are reducing humanitarian access still further.<sup>133</sup> Weapon bearers in the field must comply with the international laws to which they are subject regarding safe and unhindered humanitarian access to populations in need.<sup>134</sup> For those populations, this is a matter of survival. In zones where it is difficult for them to operate, certain international organizations have drawn up agreements with local NGOs that have greater proximity and better access to the population and can carry out humanitarian activities on their behalf.<sup>135</sup> This approach, which makes it possible to overcome

the percentages of IDPs living with host families and in other accommodation. This is also the case with the report *Profilage des personnes déplacées internes dans la commune de Djibo, province du Soum, région du Sahel* (UNHCR Burkina Faso, above note 19). See also Direction Nationale du Développement Social (Mali), International Organization for Migration (IOM) and UNHCR, *Mali – rapport de déplacement (avril 2020)*, Displacement Tracking Matrix (DTM), April 2020 (Mali DTM Report), available at: <https://dtm.iom.int/reports/mali-%E2%80%94rapport-de-d%C3%A9placement-avril-2020>.

129 See Mali Protection Cluster, *Travailler ensemble pour la protection des personnes déplacées internes (PDI) au Mali*, 2018, available at: <https://reliefweb.int/report/mali/travailler-ensemble-pour-la-protection-des-personnes-d-plac-es-internes-pdi-au-mali>. That document sets out the main achievements of the Protection Cluster, which consists of fifty-one member organizations (four linked to the Malian government, nine civil society organizations, twenty-nine NGOs and nine UN agencies) plus thirteen observers and donors. It makes no mention of any measures specifically aimed at host communities.

130 ICRC, above note 117, p. 4. See also F. Z. Giustiniani, above note 61, p. 365.

131 OCHA, above note 14, pp. 10–11, 22; ACAPS, *Humanitarian Access Overview*, March 2018, available at: [www.acaps.org/sites/acaps/files/products/files/humanitarian\\_access\\_overview\\_march\\_2018\\_acaps.pdf](http://www.acaps.org/sites/acaps/files/products/files/humanitarian_access_overview_march_2018_acaps.pdf).

132 ACAPS, above note 131.

133 *Ibid.*

134 See, for example, Kampala Convention, Art. 5(7) and 5(10) concerning States, and Art. 7(5)(g–h) concerning non-State armed groups.

135 For details regarding this approach, see Fidèle Bakyono, “Diagnostic et analyse des stratégies d’intervention des organisations humanitaires dans les zones à risque terroristes: Cas des régions du Sahel, de l’Est, du Centre-Nord et de la Boucle du Mouhoun au Burkina Faso”, master’s diss., Université Laval, Quebec, 2021, pp. 65–67, 75–77, available at: <https://corpus.ulaval.ca/jspui/handle/20.500.11794/68551>.



access problems (at least to some extent), should be encouraged and placed on a more permanent footing. Because they are closer to the population, both geographically and culturally, local organizations have a better understanding of humanitarian issues in the field.<sup>136</sup> Drawing on their knowledge, experience and legitimacy can enhance the effectiveness of international humanitarian organizations. When local and international entities work together, they can significantly increase the survival capacity of vulnerable communities.<sup>137</sup>

Furthermore, the arrival and persistence of the COVID-19 pandemic have intensified needs in the Sahel, which were already increasing. The pandemic is seriously affecting fragile communities in Burkina Faso, Mali and Niger, which were already facing weak governance, deficient infrastructure, a shortage of resources and a lack of humanitarian funding.<sup>138</sup> COVID lockdowns and border restrictions have immobilized economies, disrupted food supply chains and caused problems for humanitarian organizations, which have had to find new ways of reaching people in need.<sup>139</sup> Restrictions continue to affect the means of survival and the food security of many communities.<sup>140</sup> In April 2020, the African agriculture ministers, acting under the auspices of the AU and the UN Food and Agriculture Organization, drew up the *Declaration on Food Security and Nutrition during the COVID-19 Pandemic*, in which they committed themselves to “[w]orking with food and agriculture system traders and transporters, and officials in other sectors and local governments to resolve any bottlenecks affecting the safe movement, transport and marketing of essential people, goods and services in the system”.<sup>141</sup> Despite this, several reports from NGOs working in these three countries reveal that the authorities very frequently force large numbers of trucks carrying food to wait at borders for several days,

136 Casey Barrs, “Preparing for Self-Preservation”, *Forced Migration Review*, No. 53, October 2016, available at: [www.fmreview.org/community-protection/barrs](http://www.fmreview.org/community-protection/barrs); K. Haver, above note 2, p. 30; Simran Singh and Jessie Thomson, “Building Forward: Localization and Decolonization of Aid”, CARE, 10 February 2021, available at: <https://care.ca/2021/02/building-forward-localization-and-decolonization-of-aid/>.

137 C. Barrs, above note 136, p. 64; K. Haver, above note 2, p. 30.

138 See, for example, AU and United Nations Development Programme, *The Impact of the COVID-19 Outbreak on Governance, Peace and Security in the Sahel*, Regional Brief, Addis Ababa, 22 January 2021, available at: <https://au.int/en/documents/20210122/impact-covid-19-outbreak-governance-peace-and-security-sahel> (the cited version of this reference is more recent than that cited in the original French version of this article, as the earlier version of the reference was no longer available when this article was translated).

139 See, for example, Clémentine André, “Expert Opinion: The Sahel: A Protection Crisis Aggravated by the COVID-19 Pandemic”, IDMC, October 2020, available at: [www.internal-displacement.org/expert-opinion/the-sahel-a-protection-crisis-aggravated-by-the-covid-19-pandemic](http://www.internal-displacement.org/expert-opinion/the-sahel-a-protection-crisis-aggravated-by-the-covid-19-pandemic); Julie Coleman, “The Impact of Coronavirus on Terrorism in the Sahel”, International Centre for Counter-Terrorism, The Hague, 16 April 2020, available at: <https://icct.nl/publication/the-impact-of-coronavirus-on-terrorism-in-the-sahel/>.

140 “Food Insecurity in West Africa Could Leave 43 Million at Risk as Coronavirus Hits”, *UN News*, 5 May 2020, available at: <https://news.un.org/en/story/2020/05/1063232>; Organisation for Economic Co-operation and Development, *When a Global Virus Meets Local Realities: Coronavirus (COVID-19) in West Africa*, 11 May 2020, available at: [www.oecd.org/coronavirus/policy-responses/when-a-global-virus-confronts-local-realities-coronavirus-covid-19-in-west-africa-8af7f692/](http://www.oecd.org/coronavirus/policy-responses/when-a-global-virus-confronts-local-realities-coronavirus-covid-19-in-west-africa-8af7f692/).

141 AU, *Declaration on Food Security and Nutrition during the COVID-19 Pandemic*, 16 April 2020, para. x, available at: <https://au.int/en/documents/20200427/declaration-food-security-and-nutrition-during-covid-19-pandemic>.

causing the food to be spoiled, or forcing the convoy to turn back.<sup>142</sup> This disruption to supply chains has meant that many vendors are unable to stock their stalls with food and goods,<sup>143</sup> denying regular and sufficient supplies of food to many people in the Sahel, including host communities. In the face of such restrictions, many businesses are increasingly tempted to resort to contraband.<sup>144</sup> Armed groups operating in the Sahel have been doing very well out of smuggling for several decades, and now they are taking advantage of this situation to boost their resources.<sup>145</sup> To avoid or reduce the associated risks, the Sahelian States must live up to their commitment to resolve the bottlenecks affecting the supply chains for these populations. They must also allow the creation of humanitarian corridors – across borders and within their countries – to facilitate the delivery of food.<sup>146</sup> According to reports from organizations in the field, a corridor has been negotiated in Niger to facilitate the movement of goods between the capital, Niamey, and rural areas of the country.<sup>147</sup> There is a need for more such corridors to be set up, wherever possible, both in Niger and in the other countries of the region.

## Breaking or limiting the cycle of internal displacement

There is a degree of unanimity today that unchecked violence and breaches of IHL and IHRL are among the principal causes of forced displacement.<sup>148</sup> Since the link between breaches of the law and forced displacement appears obvious, it is equally obvious that compliance with the law would considerably reduce – or even eliminate – the forced displacement of populations, including host communities.<sup>149</sup> One can therefore argue that complete respect for the legal protection to which IDP host communities are entitled would substantially reduce the risk that they too will be forced to flee.

Populations in the Sahel, including the communities with which IDPs have taken refuge, are constantly subject to armed attack and to violations of their fundamental rights by various armed entities.<sup>150</sup> The armed and security forces of the region's States are doing their best to prevent some of these attacks, with support from international forces present in the field.<sup>151</sup> However, they are

142 Alexandra Lamarche, *Mounting Hunger in the Sahel: The Unintended Impact of COVID-19 Prevention*, Refugees International, 11 June 2020, available at: [www.refugeesinternational.org/reports/2020/6/8/mounting-hunger-in-the-sahel-the-unintended-impact-of-covid-19-prevention](http://www.refugeesinternational.org/reports/2020/6/8/mounting-hunger-in-the-sahel-the-unintended-impact-of-covid-19-prevention).

143 *Ibid.*

144 *Ibid.*

145 *Ibid.*

146 *Ibid.*

147 *Ibid.*

148 See above note 110 for references on this topic.

149 C. Cotter, above note 110, p. 14.

150 For details, see, for instance, OCHA, *Mali*, above note 8; OCHA, *Burkina Faso*, above note 8; OCHA, *Niger*, above note 8; ACAPS, above note 15, pp. 74–75. For recent statistics concerning attacks in each of these countries, see the Armed Conflict Location and Event Data Project website, available at: <https://acleddata.com/#/dashboard>.

151 For details concerning the international forces present, see the article by Moda Dieng and Amadou G. Mfondi in this issue of the *Review*.

inadequately equipped<sup>152</sup> to prevent the attacks of jihadist groups, which are growing in scale and intensity. In addition to this, the military response of the governments concerned has led to several atrocities;<sup>153</sup> the self-defence groups to which the Sahelian States are resorting in order to make up for their armed and security forces' lack of geographical coverage<sup>154</sup> frequently commit violations.<sup>155</sup> These incidents exacerbate localized violence, and armed extremist groups take advantage of this to recruit from the local population and step up their attacks.<sup>156</sup>

The violence perpetrated by these weapon bearers is causing further internal displacement in the Sahel.<sup>157</sup> Much of the displacement in the region takes the form of to-and-fro movements, with IDPs and their host communities being forced to flee multiple times because of the continuing lack of security and the armed attacks to which they are subjected. In Burkina Faso, for example, people from the villages of Dake and Dou who were sheltering many IDPs have in turn been forced to flee to Dablo, Zambila, Perko, Doffi and Bawenne in order to escape attack.<sup>158</sup> This perpetual, cyclic displacement is contributing to the exponential increase in the number of IDPs in the Sahelian countries, as new waves of displacement add to the previous ones. Burkina Faso has recently been described as one of the countries where the conflict-related displacement crisis is growing fastest.<sup>159</sup> If this trend continues, there is a risk that the Sahelian States will end up overtaking the Democratic Republic of the Congo and Ethiopia to become the African nations with the largest numbers of IDPs.<sup>160</sup>

Helping host communities as suggested above is essential, but it is equally important to take action upstream and to try to prevent violations that could lead to

152 For details on this point, see the article by Niagalé Bagayoko in this issue of the *Review*.

153 See: United Nations, *Report of the International Commission of Inquiry for Mali*, UN Doc. S/2020/1332, 19 June 2020, available at: <https://undocs.org/S/2020/1332>; United Nations, *Joint Force of the Group of Five for the Sahel: Report of the Secretary-General*, UN Doc. S/2020/1074, 2 November 2020, pp. 4 ff., available at: <https://undocs.org/S/2020/1074>; Human Rights Watch, "Burkina Faso: Residents' Accounts Point to Mass Executions", 8 July 2020, available at: [www.hrw.org/news/2020/07/08/burkina-faso-residents-accounts-point-mass-executions](http://www.hrw.org/news/2020/07/08/burkina-faso-residents-accounts-point-mass-executions); Human Rights Watch, "By Day We Fear the Army, By Night the Jihadists": *Abuses by Armed Islamists and Security Forces in Burkina Faso*, 2018, available at: [www.hrw.org/report/2018/05/21/day-we-fear-army-night-jihadists/abuses-armed-islamists-and-security-forces](http://www.hrw.org/report/2018/05/21/day-we-fear-army-night-jihadists/abuses-armed-islamists-and-security-forces).

154 Arzouma Kompaoré, "Kaboré appelle à la 'mobilisation générale contre le terrorisme'", *VOA Afrique*, 8 November 2019, available at: <https://tinyurl.com/bddnbw7p>.

155 Human Rights Watch, "Burkina Faso: New Massacres by Islamist Armed Groups", 23 April 2020, available at: [www.hrw.org/news/2020/04/23/burkina-faso-new-massacres-islamist-armed-groups](http://www.hrw.org/news/2020/04/23/burkina-faso-new-massacres-islamist-armed-groups).

156 ACAPS, above note 15, pp. 4–5.

157 Profile reports regarding displacement in the Sahel all agree that violence and violations of fundamental rights are the main reason for arbitrary displacement, if not the only reason. See, for example, UNHCR Burkina Faso, *Profilage des personnes déplacées internes dans la commune de Djibo*, above note 19; IOM, *Niger: Suivi des urgences*, DTM, July 2021, available at: <https://dtm.iom.int/reports/niger-%E2%80%94suivi-des-urgences-2-22%E2%80%94juin-2021>; ACAPS, above note 15, pp. 4–5; Mali DTM Report, above note 128, p. 6.

158 Government of Burkina Faso et al., *Mission conjointe d'évaluation des besoins des personnes déplacées internes et des communautés hôtes dans le Centre Nord: Rapport final*, 24 July 2019, p. 9, available at: <https://data2.unhcr.org/en/documents/download/70498>.

159 See, for example, NRC, "Burkina Faso Shattered by World's Fastest Growing Displacement Crisis", 28 January 2020, available at: [www.nrc.no/news/2020/january/burkina-faso-shattered-by-worlds-fastest-growing-displacement-crisis/](http://www.nrc.no/news/2020/january/burkina-faso-shattered-by-worlds-fastest-growing-displacement-crisis/).

160 IDMC, above note 12.

those communities becoming displaced and hence could cause additional suffering for populations that are already vulnerable.<sup>161</sup> There is therefore an urgent need to strengthen implementation of the measures to prevent forced movement set out above. Improving compliance with IHL and IHRL is one measure that should be implemented immediately. This is all the more important in view of the fact that breaches of these laws are the most frequent cause of arbitrary displacement in the Sahel. Naturally, this does not preclude simultaneously taking steps to address the underlying causes of forced displacement,<sup>162</sup> which is a longer-term issue.

To improve compliance with the laws governing protection of human rights, there is a need to improve both their dissemination and the imposition of penalties for breaches of those laws. This argument is based on the fact that knowledge of the laws mandating protection is known to be the most important precondition for their efficacy.<sup>163</sup> If these rules are to protect the people they are designed to protect, they must be known, implemented and respected at all times by all who are responsible for applying them or for ensuring compliance with them, especially members of the armed and security forces, political decision-makers, the judiciary, health personnel and media professionals. The public—including host communities—must be made aware of their rights so that they can identify situations in which the authorities and others are not fulfilling their obligations towards them. They must also know what mechanisms they can use to obtain reparation if they believe that their rights have been violated.

The Sahelian States should ensure that the rules related to protection are taught regularly to all officials, to the self-defence groups they use, and to the public, by increasing the number of training sessions and seminars covering IHL and IHRL. The focus should be on those topics of greatest relevance in the Sahel, including the protection of IDPs, women and children. While some effort has been made in this area, it remains insufficient<sup>164</sup> and more must be done. The joint pledge made by the government of Burkina Faso and the Burkinabé Red Cross Society to step up the dissemination of IHL in Burkina Faso between 2019 and 2023<sup>165</sup> is an example of good practice, and is to be welcomed. However, this pledge must be fully transformed into reality in order to achieve its

161 Olivier Bangerter, “Talking to Armed Groups”, *Forced Migration Review*, No. 37, 2011, available at: [www.fmreview.org/non-state/Bangerter](http://www.fmreview.org/non-state/Bangerter).

162 For an analysis of the underlying causes of forced displacement, see J. M. Mangala, above note 98; Jack Mangala Munuma, *Le déplacement forcé de population comme nouvelle dimension de sécurité: Rôle et responsabilités de l’OTAN*, research report submitted to NATO, 2001, available at: [www.nato.int/acad/fellow/99-01/munuma.pdf](http://www.nato.int/acad/fellow/99-01/munuma.pdf). See also the references cited at above note 7.

163 See ICRC, *Bringing IHL Home: Guidelines on the National Implementation of International Humanitarian Law*, Geneva, 19 July 2021, pp. 35–36, available at: [www.icrc.org/en/document/bringing-ihl-home-guidelines-national-implementation-international-humanitarian-law](http://www.icrc.org/en/document/bringing-ihl-home-guidelines-national-implementation-international-humanitarian-law); ICRC, above note 29, p. 9.

164 See Government of Burkina Faso and Burkinabé Red Cross Society, “Diffusion du droit international humanitaire au niveau national à travers la mise en œuvre du Plan d’action national 2019–2023 de mise en œuvre du DIH et de celui de la CEDEAO 2019–2023”, December 2019, available at: <https://rcrcconference.org/app/uploads/2019/12/33IC-Engagement-BF-Diffusion-du-DIH.pdf>, in which the government of Burkina Faso and the Burkinabé Red Cross Society acknowledge that the rules of IHL are still insufficiently well-known in Burkina Faso and jointly undertake to step up the dissemination of those rules.

165 See *ibid.*

stated aim of improving national implementation of IHL by disseminating its provisions.<sup>166</sup>

Working with local organizations and international partners, States could also set up roving teams to train these populations in the basic principles of human rights. Furthermore, in countries like Mali, where it is estimated that barely 10% of the population speaks French (the official language),<sup>167</sup> translating the instruments that protect human rights into local languages could make it easier for people to exercise their rights. States or local and international organizations could also consider producing and distributing short manuals listing the rules with which self-defence groups are required to comply in the course of their actions. These manuals should reflect the breaches of which these groups are most often accused.

Armed groups should regularly instruct their members on the human rights standards they are required to apply, and take the measures necessary to ensure that they do so. Organizations that are currently attempting to persuade these groups to better comply with the law should continue their efforts.<sup>168</sup>

Efforts to promote the laws regarding the protection of human rights should be accompanied by the imposition of penalties for all breaches of those laws. The breaches committed in all the Sahelian countries have only resulted in a very small number of prosecutions up to now.<sup>169</sup> In Mali, for instance, while a number of legal cases have been launched against members of armed groups and the Malian armed forces, they have very rarely led to trials.<sup>170</sup> This has prompted certain commentators to remark that “impunity is all too often the rule”.<sup>171</sup> Bringing prosecutions for abuses is important, not only as a means of dissuading others, but also to make it clear that such acts are unacceptable and thereby promote better compliance with the law.<sup>172</sup> For people to exercise their rights, in particular before the courts, it is also necessary to restore public confidence in the judicial system by resolving a number of notorious problems with that system, especially corruption, inaccessibility and the absence of a judicial framework that

166 *Ibid.*

167 Lawyers Without Borders Canada, *Accès à la justice au Mali: Une réalité à bâtir*, 2016, p. 40, available at: [www.ceci.ca/en/news-events/acces-a-la-justice-au-mali-une-realite-a-batir](http://www.ceci.ca/en/news-events/acces-a-la-justice-au-mali-une-realite-a-batir).

168 Regarding the way to approach this issue, see Vincent Bernard, “Editorial: Engaging Armed Groups”, *International Review of the Red Cross*, Vol. 93, No. 883, 2011, available at: <https://international-review.icrc.org/articles/editorial-engaging-armed-groups>; O. Bangerter, above note 161, pp. 4–6.

169 See, for example, Lawyers Without Borders Canada, above note 167; Human Rights Watch, “By Day We Fear the Army”, above note 153, pp. 43–46.

170 Lawyers Without Borders Canada and International Federation for Human Rights, “Mali: New Project Makes the Fight Against Impunity a Priority”, 4 February 2021, available at: [www.asfcanada.ca/en/medias/news/mali-project-international-cooperation-fight-impunity-2021/](http://www.asfcanada.ca/en/medias/news/mali-project-international-cooperation-fight-impunity-2021/).

171 *Ibid.*; Lawyers Without Borders Canada, *L’Affaire Al Mahdi: Et maintenant? Les enjeux de la lutte contre l’impunité au Mali*, 2017, pp. 8–14.

172 See Anne-Marie La Rosa, “Sanctions as a Means of Obtaining Greater Respect for Humanitarian Law: A Review of their Effectiveness”, *International Review of the Red Cross*, Vol. 90, No. 870, 2008, available at: <https://international-review.icrc.org/articles/sanctions-means-obtaining-greater-respect-humanitarian-law-review-their-effectiveness>; Robert Cryer, “The Role of International Criminal Prosecutions in Increasing Compliance with International Humanitarian Law in Contemporary African Conflicts”, in Heike Krieger and Janice L. Willms (eds), *Inducing Compliance with International Humanitarian Law: Lessons from the African Great Lakes Region*, Cambridge University Press, Cambridge, 2015, available at: <https://tinyurl.com/mwyh2yrk>.

would facilitate access to justice.<sup>173</sup> The efforts of certain international bodies to strengthen the judicial systems of the Sahelian countries are therefore to be welcomed, and should be intensified.<sup>174</sup>

## Promoting the African cultural values of solidarity and hospitality

Protecting host communities will mean that they can continue to host and support IDPs, and hence will help to strengthen and preserve the African traditions of hospitality and solidarity. Hospitality and solidarity are deeply embedded in African traditions and social structures. “Hospitality” refers to receiving a person or welcoming them into one’s home, while “solidarity” generally refers to a mutual duty to provide assistance or cooperation free of charge to other members of the same community. These values are complementary – for instance, giving shelter to someone in distress is a form of solidarity. These two principles form part of the “major laws of African ethics”.<sup>175</sup> Every African people, every ethnic group, expresses and glorifies these values through its own sayings and concepts. In Mali, for example, the concept of *diatiguiya* is widely used to convey the idea that any stranger or visitor is a king, to whom one is duty-bound to offer genuine hospitality.<sup>176</sup> In Niger, there is a popular saying in Kanouri that means “My stranger is my God”.<sup>177</sup>

Certain commentators have expressed doubts as to whether these values are still a social and cultural reality in Africa. They maintain that the hospitality and generosity towards refugees shown by African States and peoples were the product of a specific context related to the post-colonial period, during which the continent was having to cope with an exceptionally large number of refugees.<sup>178</sup>

173 Lawyers Without Borders Canada, above note 167; Abdourahamane Oumarou Ly, *L'accès à la justice au Niger: L'autoreprésentation devant les juridictions*, L'Harmattan, Paris, 2021; Habibou Fofana, “Bringing Justice Closer to the People: An Ethnography of ‘Judicial Distance’ in Burkina Faso”, *Droit et Société*, Vol. 99, No. 2, 2018, available at: [www.cairn-int.info/journal-droit-et-societe-2018-2-page-393.htm](http://www.cairn-int.info/journal-droit-et-societe-2018-2-page-393.htm); Carolyn Logan, PP39: *Ambitious SDG Goal Confronts Challenging Realities: Access to Justice is Still Elusive for Many Africans*, Afrobarometer Policy Paper No. 39, March 2017, available at: <https://afrobarometer.org/publications/pp39-access-to-justice-in-africa>; American Bar Association, *Access to Justice Assessment for Mali*, 2012, p. 40, available at: [www.americanbar.org/content/dam/aba/directories/roli/mali/mali\\_access\\_to\\_justice\\_assessment\\_2012.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/directories/roli/mali/mali_access_to_justice_assessment_2012.authcheckdam.pdf).

174 See the EU Emergency Trust Fund for Africa project “Appui à la justice au Burkina Faso pour renforcer la lutte contre l’impunité au travers d’un système judiciaire plus accessible et efficace”, available at: [https://ec.europa.eu/trustfundforafrica/region/sahel-lake-chad/burkina-faso/appui-la-justice-au-burkina-faso-pour-renforcer-la-lutte-contre\\_en](https://ec.europa.eu/trustfundforafrica/region/sahel-lake-chad/burkina-faso/appui-la-justice-au-burkina-faso-pour-renforcer-la-lutte-contre_en). See also Lawyers Without Borders Canada and International Federation for Human Rights, above note 170.

175 M.-C. Djiena Wembou *et al.*, above note 64, pp. 303 ff (*Review’s* translation). The expression “African customs” refers to the set of unwritten rules, practices, ideologies and traditions that regulate the life and social structure of African communities.

176 Hadiya Wague, “‘Diatiguiya’: Le sens de la cordialité et de l’hospitalité malienne”, *Journal du Mali*, 15 August 2010, available at: [www.soninkara.com/societe/organisation-sociale/diatiguiya-le-sens-de-la-cordialite-et-de-lhospitalite-malienne.html](http://www.soninkara.com/societe/organisation-sociale/diatiguiya-le-sens-de-la-cordialite-et-de-lhospitalite-malienne.html).

177 UNHCR, “Mon étranger est mon Dieu”: L’hospitalité des habitants de Diffa”, video, 26 December 2014, available at: <https://unhcniger.tumblr.com/post/106224240429/mon-etrange-est-mon-dieu-lhospitalite-des>.

178 W. Gunther Plaut, *Asylum: A Moral Dilemma*, Praeger, Westport, CT, 1995; Jeff Crisp, *Africa’s Refugees: Patterns, Problems and Policy Challenges*, UNHCR Working Paper No. 28, August 2000, available at: [www.unhcr.org/research/working/3ae6a0c78/africas-refugees-patterns-problems-policy-challenges-jeff-crisp.html](http://www.unhcr.org/research/working/3ae6a0c78/africas-refugees-patterns-problems-policy-challenges-jeff-crisp.html).



Yet African States and peoples continue to show hospitality to people in distress, including the victims of forced displacement.<sup>179</sup> Despite the sociopolitical and cultural changes that have occurred in African societies, hospitality, good humour and sharing are still to be found in many parts of Africa; the assistance provided by IDP host communities in the Sahel is a prime example. However, to keep the flame of hospitality and solidarity burning brightly, we must give sufficient recognition and attach sufficient value to the fundamental role that these communities play in protecting people in distress. In other words, promoting the contribution of local communities to helping people in need is also a means of promoting the African values and customs of solidarity and hospitality, and hence of preserving them and passing them on to future generations. Maintaining and perpetuating these traditional values is even more important in view of the fact that the States concerned do not have the resources and means to meet the needs of people in distress. In a situation such as this, where there is a scarcity of resources, host community support to IDPs is a valuable complement to the efforts of States, and relieves them of part of the burden.

Measures to promote the life-saving actions of IDP host communities should include highlighting their contribution to national solidarity efforts in all official communications on the humanitarian situation in the Sahelian countries. The media of the countries concerned should also produce documentaries and other reports highlighting the solidarity networks that host communities have set up to support IDPs. Such measures would raise the profile of the fundamental role played by IDP host communities, who would feel appreciated and would be motivated to continue to show solidarity and hospitality. These measures would also draw the attention of government decision-makers and the international community to the needs of these communities and the challenges they face. Increased media output concerning host communities in the Sahel would get their predicament onto the diplomatic agenda of the international community and hence facilitate mobilization of the resources needed to improve their situation. The aim here is to use public communication as a means of pricking consciences and of convincing the international community to support the life-saving work of host communities.<sup>180</sup>

IDPs should also ensure that their behaviour does not undermine the values and customs of hospitality and solidarity. In particular, they need to avoid any

179 J. O. M. Okello, above note 41, p. 361; “Le Niger continuera à servir de pays de transit pour les demandeurs d’asile”, *Europe 1*, 8 July 2018, available at: [www.europe1.fr/international/le-niger-continuera-a-servir-de-pays-de-transit-pour-les-demandeurs-dasile-3704459](http://www.europe1.fr/international/le-niger-continuera-a-servir-de-pays-de-transit-pour-les-demandeurs-dasile-3704459). See also M.-C. Djiena Wembou *et al.*, above note 64, pp. 205 ff; Mutoy Mubiala, “The Contribution of African Human Rights Traditions and Norms to United Nations Human Rights Law”, *Human Rights & International Legal Discourse*, Vol. 4, No. 2, 2010, available at: [www.hrild.org/en/journal/hrild/4-2/the-contribution-of-african-human-rights-traditions-and-norms-to-united-nations-human-rights-law/index.html#page/210/search/](http://www.hrild.org/en/journal/hrild/4-2/the-contribution-of-african-human-rights-traditions-and-norms-to-united-nations-human-rights-law/index.html#page/210/search/); Michel Kouam, “Enjeux éthiques de l’action humanitaire en Afrique”, in Shimbi Kamba Katchelewa (ed.), *L’humanitaire: Un univers à réhabiliter*, Presses de l’Université Laval, Québec, 2011.

180 Regarding this aspect of the role of media and communication in humanitarian action, see Rony Brauman and René Backmann, *Les médias et l’humanitaire: Éthique de l’information ou charité-spectacle*, CFPJ, Paris, 1996; Luc Boltanski, *La souffrance à distance: Morale humanitaire, médias et politique*, Leçons De Choses, Éditions Métailié, Paris, 1993.

behaviour that could dissuade host communities from helping others in future. While hospitality is a “major African law”,<sup>181</sup> one must not abuse it.<sup>182</sup> Those who receive help must respect their benefactors and strive to maintain friendly relations with them, in the interests of preserving traditional African values, as required by African regional instruments.<sup>183</sup>

Running awareness-raising campaigns on the nature and scale of internal displacement, and on the measures required to respond to it, could also promote national solidarity with IDPs and counteract any prejudices regarding displacement.<sup>184</sup> Such measures would also be in line with the AU Model Law, which provides as follows: “Public authorities shall promote public awareness about the causes, impact, and consequences of internal displacement as well as on means of prevention, protection and assistance to internally displaced persons.”<sup>185</sup>

## Preventing or limiting tension and crises involving IDPs and host communities

Protecting host communities and meeting their needs would also help to prevent tensions arising between those communities and IDPs, which in turn could help to maintain peace and prevent the emergence of new conflicts. Where there is a shortage of resources – natural resources, goods, or public services such as health care, education or water – the prolonged presence of IDPs can lead to competition between them and their host communities.<sup>186</sup> Such competition could create or exacerbate tensions, adding them to pre-existing cultural or ethnic problems,<sup>187</sup> all of which are used by jihadists to extend their influence and expand their destabilizing activities. Fortunately, the little information that is available seems to indicate that the vast majority of IDPs have good relations with their host communities.<sup>188</sup> Having said this, there have been cases of tensions arising between IDPs and their host communities.<sup>189</sup>

To anticipate and limit the destabilizing potential of large numbers of IDPs arriving in a host community, it is necessary to allocate more resources to the management of internal displacement. More specifically, it is necessary to support and assist host communities in order to relieve pressure on community resources

181 M.-C. Djiena Wembou *et al.*, above note 64, pp. 303 ff.

182 *Ibid.*, pp. 303 ff. See also Kampala Convention, preamble, para. 3.

183 See African Charter on Human and Peoples’ Rights, Art. 29(4), 29(7); African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/153/Rev2, 11 June 1990 (entered into force 29 November 1999), Arts 11(2)(c), 31(c–d), available at: <https://au.int/en/treaties/african-charter-rights-and-welfare-child>; Charter for African Cultural Renaissance, 24 January 2008, Art. 3(k), available at: <https://au.int/en/treaties/charter-african-cultural-renaissance>; African Youth Charter, 2 July 2006 (entered into force 8 August 2009), Art. 26, available at: <https://au.int/en/treaties/african-youth-charter>.

184 Brookings Institution and University of Bern, above note 46, p. 24.

185 AU Model Law, above note 43, Art. 53(1).

186 ICRC, above note 117, p. 4.

187 ICRC, above note 29, pp. 48–49.

188 Government of Burkina Faso *et al.*, above note 158, pp. 7–8; UNHCR Burkina Faso, above note 8, p. 21.

189 See, for example, Government of Burkina Faso *et al.*, above note 158, pp. 7–8; UNHCR Burkina Faso, above note 8, p. 21.

and hence to eliminate or reduce the tensions inherent in sharing them.<sup>190</sup> The international community should therefore show greater solidarity towards the Sahelian countries, which lack the resources needed to cope with the needs of IDPs and their host communities.<sup>191</sup> Humanitarian organizations working in the Sahel could help raise the awareness of the international community regarding the protection of IDP host communities in the region; in particular, they should produce reports that specifically recognize the contribution that these communities are making and the challenges they face. To date, the reports produced by humanitarian organizations have made very little mention of the situation of these communities, or have alluded to the issue only in passing.<sup>192</sup> Furthermore, while there are many reports on displacement in the Sahelian countries, the present author is not aware of any that specifically focus on the situation and experiences of IDP host communities. Where reports on forced displacement in the Sahel do mention host communities, the topic generally occupies no more than a few lines or, at best, a few isolated paragraphs.<sup>193</sup>

Studies and reports highlighting the contribution of host communities to humanitarian action in the Sahel, their vulnerability, their self-protection strategies and the nature of their relations with IDPs would not only promote the action of these communities but would also draw attention to their situation.<sup>194</sup> Humanitarian agencies could use these studies and reports to design and implement appropriate programmes and policies to support IDP host communities.<sup>195</sup> Ultimately, programmes and policies drawn up in this fashion would be “best practices” that could be replicated in other, similar contexts. This would be especially valuable given the dearth of humanitarian assistance strategies or policies that focus specifically on families and communities hosting IDPs.<sup>196</sup>

<sup>190</sup> See also A. Davies, above note 2, p. 5.

<sup>191</sup> The international funding that the Sahelian countries receive for meeting the humanitarian challenges they face is totally inadequate. For instance, the response plans for the countries of this region are still seriously underfunded: the plan for Burkina Faso is only 24% funded, the plan for Mali 26%, and the plan for Niger only 19%. For details, see OCHA, “Burkina Faso Humanitarian Response Plan 2021”, *Financial Tracking Service*, available at: <https://fts.unocha.org/appeals/1037/summary>; OCHA, “Mali Humanitarian Response Plan 2021”, *Financial Tracking Service*, available at: <https://fts.unocha.org/appeals/1036/summary>; OCHA, “Niger Humanitarian Response Plan 2021”, *Financial Tracking Service*, available at: <https://fts.unocha.org/appeals/1033/summary>.

<sup>192</sup> For instance, there is no report that thoroughly documents the nature of the relationships between IDPs and host communities in any of the Sahelian countries. A survey of OCHA, *Mali*, above note 8; OCHA, *Burkina Faso*, above note 8; and OCHA, *Niger*, above note 8, does indicate that more attention is being paid to host communities by comparison with similar documents published in the past, but there is still room for improvement.

<sup>193</sup> This problem applies not only to the Sahel but also to other regions. See Zoë Jordan, “Displaced in Cities: Who Are the Hosts?”, *Humanitarian Law and Policy Blog*, 12 February 2019, available at: <https://blogs.icrc.org/law-and-policy/2019/02/12/displaced-cities-who-are-hosts/>.

<sup>194</sup> For instance, Fabrice Weissman, “L’éthique de l’action humanitaire”, in Jean-Baptiste Jeangène Vilmer and Ryoa Chung (eds), *Ethique des relations internationales: Problématiques contemporaines*, Presses Universitaires de France, Paris, 2013, pp. 226–227, points out, quite rightly, that NGOs and UN agencies play an essential role in alerting public opinion to crises.

<sup>195</sup> A. Davies, above note 2, p. 8.

<sup>196</sup> *Ibid.*, p. 7.

Raising awareness of issues related to internal displacement as suggested above is also an essential part of promoting community and social cohesion. Managing internal displacement often involves responding to the specific problems of IDPs

through special measures, such as targeted humanitarian aid or facilitated document replacement, that are not available to others. It is therefore crucial for members of the general public and especially those living in communities hosting large numbers of IDPs to understand that such measures are neither politicized nor arbitrary, but rather necessary to place fellow citizens disadvantaged by displacement in a position of legal and material equality.<sup>197</sup>

This can help to prevent or limit frustration, resentment, stigmatization, prejudice or rivalry, all of which provide fertile ground for the growth of tension and crises.

Furthermore, as pointed out earlier, humanitarian access to host communities must be guaranteed and assured. Apart from its unacceptable consequences in humanitarian and legal terms,<sup>198</sup> obstructing humanitarian access exacerbates the vulnerability of IDPs and their host communities.<sup>199</sup> If they are unable to meet their own needs, host communities may stigmatize and reject IDPs, which could lead to tensions and crises involving the two populations. Such a situation could also accentuate any grievances and suspicion towards the authorities that already exist in these communities.<sup>200</sup>

Priority should be given to providing cash assistance. Studies such as those carried out by Ground Truth Solutions in Burkina Faso appear to indicate that there is a widespread preference for this type of assistance.<sup>201</sup> The money provided to IDPs passes into local markets,<sup>202</sup> and as a result, host communities are more inclined to see the presence of IDPs not as a burden or a threat, but as an opportunity. The aim here is to create and maintain economic dependency between IDPs and local communities, in order to promote the feeling or sentiment within each group that the other is essential to them, or at least profitable. Providing cash assistance rather than food aid also avoids the risk of food spoilage. Cash assistance has been used successfully in other similar contexts,<sup>203</sup> and would be worth using more widely in the Sahel.

197 Brookings Institution and University of Bern, above note 46, pp. 24–25.

198 Failure to provide prompt and unhindered humanitarian access in accordance with the rules discussed above may constitute a grave breach of IHL – i.e., a war crime. See ICRC, above note 29, p. 49.

199 *Ibid.*

200 *Ibid.*

201 See E. Shea and M.-F. Sitnam, above note 115, p. 8.

202 See ICRC, above note 29, p. 46.

203 See the Swiss Agency for Development and Cooperation's Cash Transfer Programming website, available at: [www.shareweb.ch/site/Cash-Transfer-Programming](http://www.shareweb.ch/site/Cash-Transfer-Programming); Sarah Bailey and Steve Walsh, "The Use of Cash in Emergency and Post-Emergency Non-Food Item Programs – a Case Study from the Democratic Republic of the Congo", *Journal of Humanitarian Assistance*, 31 May 2007, available at: <https://reliefweb.int/report/democratic-republic-congo/use-cash-emergency-and-post-emergency-non-food-item-programs-case>; Pantaleo Creti and Susanne Jaspars, *Cash-Transfer Programming in Emergencies: A Practical Guide*, Oxfam GB, Oxford, 2006, available at: <https://policy-practice.oxfam.org/resources/cash-transfer-programming-in-emergencies-115356/>.

Finally, it is important to promote and strengthen interaction between IDPs and their host communities. To achieve this, the authorities in all the countries concerned could work with National Red Cross and Red Crescent Societies (National Societies) to conduct community awareness-raising campaigns on peaceful cohabitation in all places where IDPs are being hosted.<sup>204</sup> The national authorities and National Societies could also work with local authorities and the traditional leaders of the communities concerned to promote the organization of sociocultural activities that could strengthen social cohesion. These could include sports competitions, trade fairs or community hygiene and clean-up activities. Apart from their positive effect on relations between IDPs and host communities, the present author believes that activities of this sort would be an excellent opportunity for IDPs to find revenue-earning opportunities. The words of a young man who has been displaced and is currently living with a host family in the south of Lubero (Democratic Republic of the Congo) are a good illustration: “I play football. I started playing with the other players here. They told me how I can adapt to life in the village as a displaced person. I currently have a job carrying water cans, which I found out about thanks to that conversation.”<sup>205</sup>

## Conclusion

The purpose of this article was to advocate for better protection for IDP host communities in the Sahel. It was motivated by the realization that host communities in the Sahel are not receiving the protection and assistance they require to support themselves while at the same time supporting IDPs. The aim was therefore to highlight the protection to which they are legally entitled and how important it is to implement this protection, but also to suggest good practices and solutions that could strengthen their resilience and hence allow them to continue to provide their essential response to internal displacement. From the above analysis, it is clear that IDP host communities in the Sahel are covered by a protection regime which is adequate and satisfactory overall. This legal regime requires not only that the needs of IDP host communities be taken into account when measures are taken with regard to forced displacement, but also that those needs be met as far as possible. Host communities enjoy legal protection against any act likely to compromise their security or their enjoyment of fundamental rights, or to cause them to suffer forced displacement.

Respect for the protective measures identified in this article would not only reduce the vulnerability of IDP host communities in the Sahel but would also strengthen their capabilities, which could be drawn upon to complement other efforts aimed at improving the situation of IDPs, reduce the risks of tension

204 UNHCR Burkina Faso, above note 8, p. 22.

205 Oxfam International, “*We’re Here for an Indefinite Period*”: Prospects for Local Integration of Internally Displaced People in North Kivu, DRC, April 2017, p. 10, available at: [www.oxfam.org/en/research/were-here-indefinite-period](http://www.oxfam.org/en/research/were-here-indefinite-period).

between host communities and IDPs and promote the traditional values of hospitality and solidarity that are so dear to Africa. Currently, however, the violence and violations that IDP host communities are experiencing and the insufficient attention being devoted to the challenges facing these communities mean that it is not possible to take full advantage of these capabilities. To reverse this situation, there is an urgent need for all concerned to better respect human rights, including those of IDP host communities. This can only happen if the corresponding rules are well publicized, so that they become better known and more widely respected.

In view of the chronic disparity between scarce resources and huge needs in the Sahel, it is essential to mobilize the skills and resources of the various sectors and entities involved, in order to take effective action to support IDP host communities in the region. States, international organizations, civil society and the private sector must pool their efforts to constantly encourage better compliance with the law, assess the needs of these communities, devise strategies that will make it possible to respond to those needs effectively and ensure the sharing of best practices. In so doing, it would be advisable to maintain proximity with affected communities and individuals in order to “better understand their needs and protection concerns, recognizing that they are the ‘experts’ on their own situation, and taking their capacities and views into account”<sup>206</sup> when deciding what action to take, and to ensure that they participate meaningfully in measures taken to support them.

From a broader, forward-looking perspective, academia and humanitarian agencies should pay greater attention to the impact of forced displacement on host communities, the experiences and self-protection strategies of these communities and the creation of sustainable solutions. While their importance is acknowledged, these issues are still under-analyzed and hence are insufficiently understood.<sup>207</sup>

206 See also Angela Cotroneo and Marta Pawlak, “Community-Based Protection: The ICRC Approach”, *Forced Migration Review*, No. 53, 2016, available at: [www.fmreview.org/community-protection/cotroneo-pawlak](http://www.fmreview.org/community-protection/cotroneo-pawlak).

207 See A. Davies, above note 2, p. 7; Z. Jordan, above note 193. See also the summary of the conference “Impacts of Refugees and IDPs on Host Communities”, organized by the Thematic Working Group on Forced Migration of the World Bank’s Global Knowledge Partnership on Migration and Development (KNOMAD), 1–2 June 2017, available at: [www.knomad.org/event/impacts-refugees-and-internally-displaced-persons-host-communities](http://www.knomad.org/event/impacts-refugees-and-internally-displaced-persons-host-communities).





# The right to water for internally displaced persons in the Sahel region

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## Abstract

*The number of internally displaced persons (IDPs) has drastically increased over the last five years in the countries of the Sahel region. This situation is linked to the rise of countless armed groups, especially in Mali, Niger and Burkina Faso. The present paper aims to assess the existence and contours of a right to water for IDPs in the Sahel region. In doing so, it examines international humanitarian law and other international law regimes to determine the legal foundations that protect and guarantee IDPs' right to water. The contribution provides the contextual background of armed conflict-induced displacement in the Sahel region, and demonstrates the existence of a right to water for IDPs in the Sahel countries. This right derives not only from international humanitarian law but also from other complementary international rules applicable even in conflict situations. The paper finally discusses and recommends legal and practical ways in which IDPs' right to water can be better realized in the current context of the Sahel region.*

**Keywords:** right to water, internally displaced persons, protection, armed conflict, terrorism, Sahel.

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## Introduction

According to the United Nations (UN) Secretary-General, the total number of internally displaced persons (IDPs) and refugees in the Sahel region reached close to 5 million in 2020.<sup>1</sup> These displacements are the result of the unprecedented security crisis in the region. While it is difficult to trace the origins of the crisis, it has been exacerbated by a proliferation of armed groups in the region,<sup>2</sup> particularly following NATO's military intervention in Libya.<sup>3</sup> These armed groups engage in hostilities with State armed forces and with the multinational forces present in the region, and sometimes even fight each other.<sup>4</sup> The conflict has had numerous, wide-ranging consequences:<sup>5</sup> *inter alia*, State borders in the Sahel region have become more porous, the illicit drugs trade has gained ground in the region,<sup>6</sup> and there has been large-scale civilian displacement,<sup>7</sup> making the conflict cross-border in nature.<sup>8</sup>

IDPs in the Sahel warrant particular attention given the climate conditions,<sup>9</sup> extreme poverty<sup>10</sup> and “natural drought”<sup>11</sup> common in the region, all

- 1 UN Security Council, *Report of the Secretary-General on the activities of the United Nations Office for West Africa and the Sahel*, UN Doc. S/2020/1293, 24 December 2020, p. 7, paras 31 ff. This figure has since increased: see Office of the UN High Commissioner for Refugees (UNHCR), “Grim Milestone as Sahel Violence Displaces 2 Million Inside Their Countries”, statement by UNHCR spokesperson Boris Cheshirkov, 22 January 2021, available at: [www.unhcr.org/news/briefing/2021/1/600a92e4125/grim-milestone-sahel-violence-displaces-2-million-inside-countries.html](http://www.unhcr.org/news/briefing/2021/1/600a92e4125/grim-milestone-sahel-violence-displaces-2-million-inside-countries.html) (all internet references were accessed in February 2022).
- 2 See, in particular, the map created by the Armed Conflict Location and Event Data Project (ACLED), available at: <https://acleddata.com/dashboard/#/dashboard>. See also European Council on Foreign Relations, “Mapping Armed Groups in Mali and the Sahel”, available at: [https://ecfr.eu/special/sahel\\_mapping](https://ecfr.eu/special/sahel_mapping).
- 3 Mathieu Pellerin, “Sahel: Libyan Contagion”, *Politique Étrangère*, Vol. 77, No. 4, 2012; Mohamed Eljarh, *Les défis et enjeux sécuritaires dans l'espace sahélo-sahélien*, 2016, available at: <https://library.fes.de/pdf-files/bueros/fes-pscc/14015.pdf>. See also UN Security Council, *Report of the Assessment Mission on the Impact of the Libyan Crisis on the Sahel Region*, UN Doc. S/2012/42, 18 January 2012, paras 13 ff.
- 4 See ACLED, above note 2; European Council on Foreign Relations, above note 2. In particular, see Laurence Aida Ammour, “Spotlight: How Violent Extremist Groups Exploit Intercommunal Conflicts in the Sahel”, Africa Center for Strategic Studies, 26 February 2020.
- 5 There is a need for water, health care, accommodation, food and financial resources; see UN Office for the Coordination of Humanitarian Affairs, *Humanitarian Needs and Requirements Overview: Sahel Crisis*, April 2021, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/2021%20Sahel%20Crisis%20HNRO%20EN.pdf>.
- 6 Simon Julien, “The Sahel as a Drug Transit Zone: Actors and Political Consequences”, *Hérodote*, Vol. 142, No. 3, 2011; Serigne Bamba Gaye, *Connexions entre groupes djihadistes et réseaux de contrebande et de trafics illicites au Sahel*, 2017, available at: <https://library.fes.de/pdf-files/bueros/fes-pscc/14175.pdf>.
- 7 The Special Rapporteur on the Human Rights of Internally Displaced Persons focuses primarily on people who have been forcibly displaced: see UN General Assembly, *Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons*, UN Doc. A/74/261, 31 July 2019.
- 8 See Alain Antil, “Sahel: The Basis of a Disaster”, *Politique Étrangère*, Vol. 84, No. 3, 2019; see also International Committee of the Red Cross (ICRC), “A Conflict without Borders Continues to Play Out in the Sahel”, news release, 8 July 2020, available at: [www.icrc.org/en/document/conflict-without-borders-continues-play-out-sahel](http://www.icrc.org/en/document/conflict-without-borders-continues-play-out-sahel).
- 9 International Crisis Group, *The Central Sahel: Scene of New Climate Wars?*, Africa Report No. 154, 2020, available at: [www.crisisgroup.org/africa/sahel/b154-le-sahel-central-theatre-des-nouvelles-guerres-climatiques](http://www.crisisgroup.org/africa/sahel/b154-le-sahel-central-theatre-des-nouvelles-guerres-climatiques).
- 10 See, for example, World Bank, *Annual Report 2020*, 2020, available at: <https://openknowledge.worldbank.org/handle/10986/2127>.
- 11 Catherine Baron and Alain Bonnassieu, “Les enjeux de l'accès à l'eau en Afrique de l'ouest: Diversité des modes de gouvernance et conflit d'usages”, *Monde en Développement*, Vol. 156, No. 4, 2011.

of which have been exacerbated by the COVID-19 pandemic.<sup>12</sup> Ensuring that these IDPs have access to water has therefore become one of the most critical, long-standing challenges in the Sahel<sup>13</sup> – water scarcity and the ongoing armed conflicts have increased competition for water resources among local communities, the State and armed groups.<sup>14</sup> The present authors' decision to look at the right to water of IDPs in this region is therefore extremely relevant. Under the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), IDPs are

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.<sup>15</sup>

This definition makes the distinction between IDPs and refugees,<sup>16</sup> and also between forcibly displaced people and voluntarily displaced people who may have left the countryside or moved to a different city for any number of reasons.

- 12 See ICRC, *The Sahel Region: Helping People in Burkina Faso, Chad, Mali, Mauritania, and Niger to Cope with the Cumulative Effects of Conflict, Climate Change, and the COVID-19 Pandemic*, Budget Extension Appeal, Geneva, 6 July 2020, p. 2.
- 13 See UN General Assembly, *Report of the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation*, UN Doc. A/75/208, 21 July 2020, pp. 17, 21; ICRC, *Internally Displaced Persons and International Humanitarian Law*, Geneva, 2017; Nina Birkeland, "International Displacement: Global Trends in Conflict-Induced Displacement", *International Review of the Red Cross*, Vol. 91, No. 875, 2009; Catherine Phuong, *The International Protection of Internally Displaced Persons*, Cambridge University Press, Cambridge, 2005. See also the periodic reports of the UN Secretary-General on the activities of the UN Office for West Africa and the Sahel, particularly UN Doc. S/2016/1057, 14 December 2016. See also Human Rights Watch, *World Report 2020: Events of 2019*, January 2020, pp. 22–65; Amnesty International, *Human Rights in Africa: Review of 2019*, 2020, pp. 12–33.
- 14 Boko Haram's control of the Lake Chad region is a key example of this. See Christian Seignobos, "Boko Haram and Lake Chad: An Extension or a Sanctuary?", *Afrique Contemporaine*, Vol. 255, No. 3, 2015. During his 2020 visit to the internal displacement camps in Burkina Faso, the UN High Commissioner for Refugees went as far as to say that: "[t]here is a dramatic lack of water everywhere, and there are no latrines". See "Burkina Faso: Le patron du HCR, au chevet des déplacés internes à Kaya et Dori", *RFI*, 5 February 2020, available at: [www.rfi.fr/fr/afrique/20200205-burkina-faso-hcr-filippo-grandi-chevet-d%C3%A9plac%C3%A9s-kaya-dori](http://www.rfi.fr/fr/afrique/20200205-burkina-faso-hcr-filippo-grandi-chevet-d%C3%A9plac%C3%A9s-kaya-dori).
- 15 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 23 October 2009 (entered into force 6 December 2012) (Kampala Convention), Art. 1(k).
- 16 One of the main differences between IDPs and refugees is that refugees have crossed an international border; another is the reasons underlying their displacement. See Caroline Lantero, *Le droit des réfugiés entre droits de l'homme et gestion de l'immigration*, Bruylant, Brussels, 2010, pp. 9, 65; Erika Feller, Volker Türk and Frances Nicholson (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, Cambridge University Press, Cambridge, 2003. According to UNHCR, there are close to 1 million refugees in Burkina Faso, Mali and Niger. See the R4Sahel Coordination Platform for Forced Displacements in Sahel, available at: <https://data2.unhcr.org/en/situations/sahelcrisis>. In Africa, issues relating to refugee rights are governed by the Geneva Convention relating to the Status of Refugees, 28 July 1951, and the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 September 1969.

Recognizing the right to water as a fundamental human right has been a long process, both politically and legally.<sup>17</sup> Politically speaking, States have considered the right to water to be a socially driven objective and a soft law, making it a declared yet imprecise right.<sup>18</sup> Legally speaking, the right to water was initially recognized implicitly<sup>19</sup> before being recognized explicitly. The right to water is recognized as an explicit substantive right, but has not really acquired the status of a stand-alone right.<sup>20</sup> It is often invoked in connection with other rights, such as the right to sanitation<sup>21</sup> and the right to an adequate standard of living,<sup>22</sup> and issues are often raised concerning its substance, ownership and effectiveness.<sup>23</sup>

As defined by the Committee on Economic, Social and Cultural Rights (CESCR), the right to water “entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”.<sup>24</sup> Ensuring that water is available means ensuring sufficient and continuous access, while “safe” and “acceptable” means water that is free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person’s health. Accessibility covers not only physical accessibility, which means ensuring that there is water in the immediate proximity and that it is accessible to all sections of the population, but also economic accessibility through non-discrimination, and the accessibility of information relating to water.

When looking at the substance and characteristics of the right to water, the question arises as to whether and to what extent international law protects and

17 Laurence Boisson de Chazournes, “Le droit à l’eau et la satisfaction des besoins humains: Notions de justice”, in Denis Alland *et al.* (eds), *Unity and Diversity in International Law: Essays in Honour of Professor Pierre Marie Dupuy*, Martinus Nijhoff, Leiden, 2014.

18 Christophe Golay, *Droit à l’alimentation et accès à la justice*, Graduate Institute of International and Development Studies, Geneva, 2009, p. 30.

19 Universal Declaration of Human Rights, 10 December 1948, Art. 25(1); International Covenant on Economic, Social and Cultural Rights, 16 December 1966, Art. 11. See also Marie-Catherine Petersmann, *Les sources du droit à l’eau en droit international*, Editions Johanet, Paris, 2013, p. 12.

20 Pierre Thielborger, *The Right(s) to Water*, European University Institute, Florence, November 2010, pp. 82–83.

21 See Human Rights Council, *Report of the Independent Expert on the Issue of Human Rights Obligations related to Access to Safe Drinking Water and Sanitation*, UN Doc. A/HRC/12/24, 1 July 2009. In its General Comment No. 14 on “The Right to the Highest Attainable Standard of Health”, 2000, the Committee on Economic, Social and Cultural Rights (CESCR) stated that it interpreted “the right to health, as defined in article 12.1 [of the International Covenant on Economic, Social and Cultural Rights], as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water”.

22 Stephen C. McCaffrey, “A Human Right to Water: Domestic and International implications”, *Georgetown International Environmental Review*, Vol. 5, No. 1, 1992.

23 In terms of ownership of the right to water, some scholars question the issue without providing a definitive answer. See Pierre-Marie Dupuy, “Le droit à l’eau: Droit de l’homme ou droit des Etats?”, in Marcelo Kohen (ed.), *Promoting Justice, Human Rights and Conflict Resolution through International Law: Liber Amicorum Lucius Caflisch*, Martinus Nijhoff, The Hague, 2007.

24 See CESCR, General Comment No. 15, “The Right to Water (Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)”, UN Doc. E/C.12/2002/11, 20 January 2003, p. 2, para. 2. This same definition was used by the African Commission on Human and Peoples’ Rights (ACHPR): see ACHPR, *Guidelines on the Right to Water in Africa*, adopted at the 26th Extra-Ordinary Session of the ACHPR, Banjul, 16–30 July 2019. See also UNGA Res. 64/292, 28 July 2010.

guarantees the right to water of IDPs in States in the Sahel region and whether this right is respected in practice. This study looks at the law governing armed conflicts and other branches of international law to determine the legal foundations that protect and guarantee the right to water for IDPs. It begins with an overview of the situation of IDPs in the region; it then looks at the central issue of the existence of a right to water for people displaced by armed conflict in the countries in the Sahel, and lastly, it reviews the legal and practical ways in which this right is realized.

## Legal classification of the situations of violence leading to internal displacements in the Sahel States

The Sahel is the region between the Sahara Desert to the north and Sudan to the south. It is a long stretch of territory covering around ten States, with an arid bioclimate.<sup>25</sup> The region has always been a crossroads for trade, exchanges and livestock, and has often been an area of displacement.

While there are numerous reasons for internal displacement, the armed violence that has marred the region for close to a decade is one of the main causes of the massive flows of IDPs in the region,<sup>26</sup> especially in what is known as the Central Sahel, which is the border area between Mali, Burkina Faso and Niger.<sup>27</sup> It is therefore essential to determine the legal classification of the situations of violence in the region, as a legal or practical response to the situation of these displaced people can only be carried out under international humanitarian law (IHL) if that law is applicable to the situation at hand.<sup>28</sup>

However, the legal classification of the situation in the Sahel is not straightforward, as attacks can be sporadic, often no group claims for responsibility for the attacks, and some armed groups are unidentified and lack a formal structure.<sup>29</sup> Assessing the level of violence should make it possible to determine whether or not there is a non-international armed conflict in the

25 See Abdoul Hameth Ba, *Acteurs et territoires du Sahel: Rôle des mises en relation dans la recomposition des territoires*, ENS Éditions, Lyon, 2007.

26 UNHCR, *Sahel Crisis: Responding to the Urgent Needs of Refugees, Internally Displaced, Returnees and Others of Concern*, June 2020, available at: <https://reliefweb.int/report/burkina-faso/sahel-crisis-2020-responding-urgent-needs-refugees-internally-displaced>.

27 International Crisis Group, above note 9.

28 As a general rule, the application of IHL presupposes the existence of an armed conflict. See Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction*, coord. Etienne Kuster, ICRC, Geneva, 2018, p. 49. For a more nuanced position, see Robert Kolb, *Advanced Introduction to International Humanitarian Law*, Edward Elgar, Geneva, 2014, pp. 93 ff.

29 The reasons for the lack of identification are usually strategic: see ACLED, *Unidentified Armed Groups*, 2012, pp. 1–2, available at: [www.jstor.org/stable/resrep03815](http://www.jstor.org/stable/resrep03815). In Burkina Faso, three main groups are operational: Ansarul Islam, created by Malam Ibrahim Dicko, a radical preacher from Soum province in the north of the country; Islamic State in the Greater Sahara, also known as Islamic State in the West Africa Province; and the Group for the Support of Islam and Muslims, which seems to be active in the north of the country, as well as in the east and west. See International Crisis Group, *The Social Roots of Jihadist Violence in Burkina Faso's North*, Africa Report No. 254, 12 October 2017, pp. 3–4.



region.<sup>30</sup> If the conclusion is that there is a non-international armed conflict, the large number of armed groups involved could imply that there are in fact several parallel non-international armed conflicts.<sup>31</sup>

Even if the situation does constitute a non-international armed conflict, the question remains as to whether the conflict is governed by Article 3 common to the 1949 Geneva Conventions and Additional Protocol II (AP II). This question is of key importance to the present study. Common Article 3 does not provide a definition of a non-international armed conflict and affords only very limited protection to civilians. AP II, however, sets out more decisive criteria for its application: AP II applies to

all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.<sup>32</sup>

It is true that most of the armed groups in the Sahel region do not always exercise this kind of control; this is because they are extremely mobile and their activities are cross-border in nature.<sup>33</sup> However, it is important to point out that AP II does not rule out the possibility of an armed group exercising control over a given portion of territory while also conducting cross-border activities. Even if the control they exercise is often weak, these groups have managed to carry out sustained military operations. This suggests that they meet the criteria set out in AP II. In addition, a smaller number of them do indeed exercise undeniable control over certain stretches of territory.<sup>34</sup> In some cases, this control is exercised at water access points, where the armed groups have established a form of governance system for managing the use of water. Determining the type of non-international armed conflict that each armed group is involved in would require a case-by-case analysis. Yet a broader interpretation of the criteria set out in AP II would

30 For Burkina Faso, for instance, see the analysis by Geneva Academy, “Non-International Armed Conflicts in Burkina Faso”, *RULAC*, available at: [www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-burkina-faso](http://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-burkina-faso). For information on how such an assessment can be carried out, see Sylvain Vité, “Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations”, *International Review of the Red Cross*, Vol. 91, No. 873, 2009; see also N. Melzer, above note 28, pp. 3 ff.

31 See the overview of the situation in each of these countries on the RULAC website, available at: [www.rulac.org/](http://www.rulac.org/).

32 Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978) (AP II), Art. 1(1).

33 Giovanni Zanoletti, “Sahel: Pourquoi prendre les armes? Une revue de littérature”, coord. Elodie Riche, Agence Française de Développement, *Papiers de Recherche*, No. 134, July 2020.

34 This is the case most notably in Mali, and during some periods for some of the armed groups active in the north of Burkina Faso and in Niger. For a long time, this was also the case for Boko Haram in Nigeria.

suggest that a good number of the hostilities in the region fall within the definition laid down in this instrument.<sup>35</sup>

While each country is different, the situation is similar across the Sahel States affected by these conflicts. In Mali,<sup>36</sup> Burkina Faso<sup>37</sup> and Niger,<sup>38</sup> for example, there are several non-international armed conflicts in which the national armed forces are fighting against insurgent – and particularly Islamist – groups. While the intervention of foreign forces in a non-international armed conflict could affect its classification as such,<sup>39</sup> it would appear that this has not been the case in the Sahel.<sup>40</sup>

Ultimately, as there is no fighting between State armed forces and the hostilities are not conducted without a State's consent when they cross into the territory of that State,<sup>41</sup> the conflicts in the Sahel remain non-international armed conflicts. In addition to the hostilities between armed groups and State forces, there are also non-international armed conflicts between these insurgent groups.<sup>42</sup> In addition to these more conventional conflicts, there has been a rise in inter-community violence, particularly in Mali and Burkina Faso, with some situations of violence reaching such a level of intensity and organization as to qualify as non-international armed conflicts.<sup>43</sup>

The overview provided above does not reflect the full complexity of the situation on the ground. As the aim of this study is not to provide an in-depth classification of the conflicts in the Sahel region, we will conclude that, while the causes of the internal displacements in the Sahel are certainly more complex, the

35 Julia Grignon, *L'applicabilité temporelle du droit international humanitaire*, Schulthess, Zurich, 2014, pp. 146, 168.

36 Diakonia International Humanitarian Law Centre, *Qualification juridique de la situation au Mali et droit international applicable*, Note juridique, October 2019, pp. 9–16.

37 See Geneva Academy, “Burkina Faso”, *RULAC*, available at: [www.rulac.org/browse/countries/burkina-faso](http://www.rulac.org/browse/countries/burkina-faso).

38 See Geneva Academy, “Niger”, *RULAC*, available at: [www.rulac.org/browse/countries/niger](http://www.rulac.org/browse/countries/niger).

39 Some scholars believe that the intervention of international forces in a conflict is enough to trigger the application of the law of international armed conflicts. On this issue, see Jérôme de Hemptinne, *Les conflits armés en mutation*, Pedone, Paris, 2020, pp. 135–190. The UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) has a robust mandate that enables it to engage in fighting with armed groups in the country; see UNSC Res. 2531, 29 June 2020. The same is true of the G5 Sahel Joint Force, a multinational force made up of troops from Burkina Faso, Mali, Mauritania, Niger and Chad. Its mandate is to “address the impact of terrorism and transnational organized crime”.

40 Diakonia International Humanitarian Law Centre, above note 36, pp. 12–16. The ICRC supports this stance: see N. Melzer, above note 28, p. 89. Concerning the intervention of multinational forces, see, for example, Vincent Bernard, “Editorial: Multinational Operations and the Law – Great Expectations and Great Responsibilities”, *International Review of the Red Cross*, Vol. 95, No. 891–892, 2013.

41 Within international rules, there is some dispute concerning the definition of a non-international armed conflict that involves State forces fighting against an insurgent group in the territory of another State without that State's consent. Some scholars believe that due to the lack of consent, such a conflict is an international armed conflict between the State initially caught in the hostilities with the armed group and the non-consenting State to which the initially non-international armed conflict has spread. For more in-depth information on the criteria for an armed conflict to become international, see Dietrich Schindler, *Le droit international humanitaire et les conflits armés internes internationalisés*, Cambridge University Press, Cambridge, 2010.

42 Diakonia International Humanitarian Law Centre, above note 36, pp. 13–14.

43 *Ibid.*, pp. 16–18.

multiple violations of human rights in the armed conflicts in question are the main factor driving these displacement.<sup>44</sup> Those who have been internally displaced for reasons other than the armed conflicts are not covered by IHL, although they are still protected by international human rights law. However, where the link between climate change, on the one hand, and violent extremism and inter-community conflict in the region, on the other,<sup>45</sup> can be established, these displacements will be included in this analysis, in order to show the inevitable interconnection between the various causes of displacement.

We will now look at the legal aspects of the international protection of the right to water for IDPs.

## The existence of a right to water for internally displaced persons

The right to water for IDPs is recognized implicitly in IHL and also more generally by international human rights law and other branches of international law.

### Implicit recognition in international humanitarian law

Strictly speaking, the purpose of IHL is not to set out individual rights in an abstract and generalized manner.<sup>46</sup> As such, the *explicit* recognition of the right to water within IHL is limited *ratione personae*, meaning that it is only explicitly granted to prisoners of war<sup>47</sup> and detainees.<sup>48</sup> IDPs are therefore not explicitly granted a specific right to water under IHL, and any search for a clear and explicit affirmation of this right in the *corpus juris* of IHL would be in vain. This lack of an explicit and specific recognition of the right to water for IDPs has been replaced with an implicit recognition of this right, by way of the general protection afforded to civilian populations and to certain objects used for civilian purposes during armed conflicts.

44 For example, some displacements that may appear at first glance to be the result of weather events would not be governed by IHL. However, even in these circumstances, the choice of areas for displacement and the number of displaced people are strongly affected by the dangerous security situation in the region.

45 International Crisis Group, above note 9, paras V, VI. See also UN Security Council, above note 1, para. 72.

46 On the centrality of the notion of people protected under IHL, see Marco Sassòli, *International Humanitarian Law: Rules, Controversies and Solutions to Problems Arising in Warfare*, Edward Elgar, Northampton, MA, 2019, pp. 231 ff.

47 Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950), Arts 20(2), 29(3); Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I), Art. 54(2–3); Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rule 118, available at: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1>.

48 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) (GC IV), Arts 89, 127; AP II, Art. 5(1)(b); ICRC Customary Law Study, above note 47, Rule 118.

Firstly, this implicit recognition of the right to water for IDPs is justifiable because IDPs are considered to fall within the category of civilians.<sup>49</sup> This interpretation stems from the provisions of IHL concerning the prevention of displacements of civilian populations, which therefore also apply to IDPs.<sup>50</sup> Under the principle of non-discrimination, including IDPs in the definition of civilian populations means that all protections and guarantees afforded to civilian populations, including the right to water, must be extended to IDPs as well. However, in the current context of internal displacements in the Sahel region, including all IDPs in the category of civilians could be problematic—it could undermine the efficacy of the protection afforded to IDPs, since in some instances the civilian population may be brimming with combatants or civilians directly involved in the hostilities,<sup>51</sup> and this may blur the distinction between civilians and people who are regularly taking part in the hostilities.<sup>52</sup> In any event, the presence of combatants and people directly participating in hostilities within the civilian population—with the exception of individuals with a continuous combat function—does not remove the protection afforded to civilians under IHL.<sup>53</sup>

Secondly, IDPs' right to water may also stem from the general protection afforded to objects indispensable to the survival of the civilian population, from the protection afforded to the natural environment and from the principle of humanity.<sup>54</sup> As regards the general protection afforded to certain civilian objects, under Article 14 of AP II it is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, including drinking water installations and supplies and irrigation works.<sup>55</sup> This provision is aimed specifically at drinking water and irrigation resources, thereby directly protecting water and, in turn, the right to access it, not only for personal consumption<sup>56</sup> (i.e., drinking water) but also to meet basic needs (i.e., irrigation

49 See GC IV, particularly Arts 4, 27. Other key provisions in this regard are AP I, Arts 51, 75; AP II, Arts 4, 5; ICRC Customary Law Study, above note 47, Rules 1, 7; N. Melzer, above note 28, p. 262.

50 IHL expressly prohibits parties to an armed conflict from forcibly displacing civilians, regardless of whether it is an international or non-international armed conflict, unless the security of the civilians in question is threatened or the displacement is required by military imperatives. GC IV, Arts 49, 147; AP I, Art. 85(4)(a); AP II, Art. 17; ICRC Customary Law Study, above note 47, Rule 129. See also AP I, Arts 51(7), 78(1); AP II, Art. 4(3)(e).

51 This practice is prohibited under IHL; see AP I, Art. 51(7); ICRC Customary Law Study, above note 47, Rule 97.

52 The jihadist armed groups in the region can rarely be identified. They often mix with the population, which can make the work of the State armed forces difficult and sometimes result in violations of the principle of distinction.

53 See N. Melzer, above note 28, p. 95.

54 See Mara Tignino, *Water During and After Armed Conflicts: What Protection in International Law?*, Brill, Leiden, 2016, pp. 10 ff; see also ICRC Customary Law Study, above note 47, Rule 118.

55 Article 14 of AP II states that it is “prohibited to attack, destroy, remove or render useless ... objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works”.

56 See CESCR, above note 24, para. 2. The World Health Organization's recommended minimum for survival is 20 litres per person per day. To fulfil people's right to water, States should provide at least 50–100 litres per inhabitant per day; see World Health Organization, *Guidelines for Drinking-Water Quality*, 4th ed., 2017, p. 84.

and other water-dependent needs). In Africa, this includes the use of water for agriculture and other subsistence-related purposes.<sup>57</sup>

The right to water for IDPs is also protected through the generally recognized protection of the natural environment,<sup>58</sup> particularly in connection with the principle of precaution during armed conflicts.<sup>59</sup> Indeed, the *lato sensu*<sup>60</sup> natural environment is the ultimate water source. Parties to a conflict have an obligation to take care to “protect the natural environment against widespread, long-term and severe damage” while carrying out their military operations.<sup>61</sup> This obligation includes the protection of water resources.<sup>62</sup> Water resources are also covered specifically in Article 15 of AP II, which prohibits attacks on hydraulic works such as dams.<sup>63</sup> These rules are all derived from the fact that the natural environment is considered civilian in nature. The interests and needs of civilian populations, including IDPs, are the cornerstone of this protection-based approach.<sup>64</sup>

Lastly, and more indirectly, the right to water for people who have been internally displaced as a result of an armed conflict stems from certain cardinal principles of IHL, particularly the principle of humanity.<sup>65</sup> The principle of humanity, which constitutes one of the two sides of IHL—the other being the principle of military necessity—is based on human dignity. This is the legal minimum of protection afforded to all people who are not directly participating in hostilities under common Article 3(1), and can thus be applied to IDPs, thereby forming one of the bases for this group’s right to water in the context of an armed conflict. This is because access to water is undeniably one of the “elementary considerations of humanity”,<sup>66</sup> since it is intrinsically linked to both

57 ACHPR, above note 24, Part 3, Guidelines 12 ff.

58 See ICRC, *Guidelines on the Protection of the Natural Environment in Armed Conflict*, Geneva, 2020; see also Michael Bothe *et al.*, “International Law Protecting the Environment during Armed Conflict: Gaps and Opportunities”, *International Review of the Red Cross*, Vol. 92, No. 879, 2010; Alexandre Kiss, “Les protocoles additionnels aux conventions de Genève de 1949 et la protection des biens de l’environnement”, in Christophe Swinarski (ed.), *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, ICRC, Geneva, 1984.

59 ICRC Customary Law Study, above note 47, Rule 44.

60 See the *travaux préparatoires* of the Additional Protocols to the Geneva Conventions, particular A. Kiss, above note 58, pp. 181–182.

61 See International Law Commission (ILC), *Protection of the Environment in Relation to Armed Conflicts: Draft Principles Provisionally Adopted by the Drafting Committee*, UN Doc. A/CN.4/L.937, 2019, Principle 13(2).

62 Mara Tignino, “Le régime de protection des ressources naturelles en temps de conflit armé et ses faiblesses”, in Société Française pour le Droit International, *Le droit international face aux enjeux environnementaux: Colloque d’Aix-en-Provence*, Pedone, Paris, 2010.

63 Article 15 reads: “Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population.”

64 See ILC, above note 61, Principle 8.

65 For the principle of humanity, see R. Kolb, above note 28, pp. 78–81.

66 This is the expression used by the International Court of Justice (ICJ) in its judgment on the *Corfu Channel* case: see ICJ, *Corfu Channel (United Kingdom v. Albania)*, Judgment, 9 April 1949, *ICJ Reports* 1949, p. 22: “Such obligations [to inform] are based, not on the Hague Convention of 1907, No. VIII, which is applicable in time of war, but on certain general and well-recognized principles,

life and dignified living conditions. Access to water is without a doubt an indispensable condition for the life and survival of all people.

The obligation to respect the dignity of IDPs specifically can also be used as a foundation for their right to water. Article 17 of AP II, which relates directly to the forced movement of civilians, stipulates that “all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition”.<sup>67</sup> The references to hygiene, health and nutrition implicitly include the need to access water as part of this package of guaranteed rights.<sup>68</sup>

Now that we have analyzed how IDPs’ right to water is both explicitly and implicitly protected by IHL, we will turn to the additional protection provided under human rights law.

### Additional recognition under international human rights law

The application of IHL during an armed conflict does not mean that international human rights law cannot also be applied. In times of armed conflict, IHL provides a special legal framework for protecting civilian populations, while other branches of law, such as international human rights law, serve as generally applicable systems of law.<sup>69</sup> Here, we will focus on international human rights law as a norms-based driver of the right to water in international law. This right is recognized in international human rights law, since all human beings must be able to access water in any region of the world.<sup>70</sup>

Although human rights law protects all individuals, this does not prevent there from being a specific system of laws for certain categories of individuals. In terms of the international legal instruments applicable to internal displacements, it is worth mentioning the Kampala Convention, which is the only international legal instrument concerning IDPs that is applicable to and binding

namely: elementary considerations of humanity, even more exacting in peace than in war”. See also ICJ, *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Judgment, 5 February 1970, *ICJ Reports 1970*, p. 32 (“principles and rules concerning the basic rights of the human person”); Pierre-Marie Dupuy, “Les ‘considérations élémentaires d’humanité’ dans la jurisprudence internationale de la Cour internationale de Justice”, in René-Jean Dupuy (ed.), *Droit et justice: Mélanges en l’honneur de Nicolas Valticos*, Pedone, Paris, 1999.

67 AP II, Art. 17: “1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.”

68 See CESCR, above note 24, p. 2, para. 2.

69 See UN Office of the High Commissioner for Human Rights (UN Human Rights), *International Legal Protection of Human Rights in Armed Conflict*, New York and Geneva, 2011; Louise Doswald-Beck and Sylvain Vité, “International Humanitarian Law and Human Rights Law”, *International Review of the Red Cross*, Vol. 33, No. 293, 1993.

70 L. Boisson de Chazournes, above note 17, p. 968.



on most of the States in the Sahel region.<sup>71</sup> The Kampala Convention sets out precise obligations aimed at guaranteeing that displaced people have access to water and other vital supplies, regardless of whether the displacement is forced and whether it is linked to an armed conflict. The protection of IDPs' right to water is both explicitly and implicitly laid down in the Convention, as in addition to being explicitly mentioned, it is linked to the right to dignity and the right to a sufficient standard of living.

In terms of the explicit recognition of this right, the Kampala Convention makes reference to applicable humanitarian law in this regard<sup>72</sup> and very specifically sets out obligations in the case of internal displacement linked to an armed conflict. For instance, Article 7(5)(c) directly requires armed groups to respect IDPs' right to water. Article 9(2)(b) requires States Parties to provide IDPs, regardless of the cause of their displacement, with adequate humanitarian assistance, including food and water, with the least possible delay. Furthermore, the Convention prohibits States Parties from subjecting IDPs to starvation (thus echoing Article 14 of AP II), which represents an implicit protection of the right to water.<sup>73</sup>

More implicitly, the protection of the right to water as part of the right to dignity and the right to a sufficient standard of living is covered throughout the Kampala Convention, with the aim of ensuring a minimum of dignity for IDPs. Article 3(1)(c) of the Convention requires States Parties to "respect and ensure respect for the principles of humanity and human dignity of internally displaced persons", and Article 3(1)(j) requires them to "ensure assistance to internally displaced persons by meeting their basic needs". As noted above, the Convention also requires States Parties to provide "adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services".<sup>74</sup> The principle of protecting and assisting IDPs, particularly with regard to their access to water and to dignified living conditions, stems from the UN *Guiding Principles on Business and Human Rights*, the legal force of which has been confirmed by the consensus on their adoption.<sup>75</sup> In Africa, the same protection-based approach has been adopted through several subregional legal instruments.<sup>76</sup>

While the recognition of the right to water covers all individuals, the CESCR's General Comment No. 15 on the right to water goes further and

71 Burkina Faso since 5 July 2012, Mali since 7 November 2012, and Niger since 10 May 2012. For details of the other States' ratification dates, see African Union, "List of Countries which Have Signed, Ratified/ Acceded to the Kampala Convention", 18 June 2020, available at: <https://tinyurl.com/yu8azckd>.

72 Kampala Convention, Art. 3(1)(f).

73 *Ibid.*, Art. 4(5).

74 *Ibid.*, Art. 9(2)(b).

75 The Human Rights Council approved the *Guiding Principles on Business and Human Rights* in Resolution 17/4 on 16 June 2011.

76 See, for example, the Protocol on the Protection and Assistance to Internally Displaced Persons, adopted by the International Conference on the Great Lakes Region on 30 November 2006. For more in-depth insight into the origins of and reasons for the Protocol, see Norwegian Refugee Council, International Displacement Monitoring Centre and International Refugee Rights Initiative, *The Great Lakes Pact and the Rights of Displaced People: A Guide for Civil Society*, September 2008, available at: [www.refworld.org/docid/48d390a42.html](http://www.refworld.org/docid/48d390a42.html)

directly mentions IDPs, stating that IDPs, like refugees and asylum-seekers, must have access to adequate water whether they stay in camps or in urban and rural areas.<sup>77</sup> More recently, the UN Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation has reaffirmed the substantive aspects of the right to water and sanitation for IDPs, stating:

All forcibly displaced persons are equally entitled to the human rights to safe drinking water and sanitation irrespective of their current location and the status bestowed on them, and even in cases where they are considered ineligible for international refugee protection. Access to water and to sanitation is not only a fundamental human right for human survival and health but also for living life in dignity.<sup>78</sup>

The changes leading to the international recognition of the right to water have also come from other branches of international law, such as international environmental law and international law on the protection of waterways. Some conventions adopted as part of these branches of international law recognize the right to water as a human right and are particularly relevant for this study, as they have been adopted by States in the Sahel region, which are no doubt acutely aware of the importance of water and the need to ensure universal access to it.<sup>79</sup> It is therefore not surprising that some consider the right to water to be part of customary international law.<sup>80</sup>

In light of the above, we can conclude that IDPs in the Sahel region enjoy a right to water under the international law applicable to their situation. This right is recognized both implicitly and explicitly in IHL, international human rights law and other branches of international law. Yet the text-based recognition of the right to water is not always enough to ensure that it is applied in practice. The right to water must not remain an illusory, theoretical principle – to paraphrase the European Court of Human Rights (ECtHR)<sup>81</sup> – but rather must be a “concrete right”. We will therefore now look at how effectively the right to water is realized in the context of IDPs in the Sahel.

77 See CESCR, above note 24, para. 16.

78 See UN General Assembly, *Report of the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation*, UN Doc. A/HRC/39/55, 2018, paras 9–10. The ACHPR also specifically mentions IDPs’ access to water and requires States to ensure that water is supplied in displacement, migrant and refugees camps. See ACHPR, above note 24, Guideline 25.

79 Charter of the Waters of the Senegal River, 2002; Water Charter of the Niger Basin, 2008; Water Charter of the Lake Chad Basin, 2012. On this issue, see Henri Smets, “Le droit à l’eau potable en droit interne”, *Revue Européenne de Droit de l’Environnement*, No. 4, 2003; L. Boisson de Chazournes, above note 17, pp. 967–970.

80 Mara Tignino, “Water, International Peace and Security”, *International Review of the Red Cross*, Vol. 92, No. 879, 2010; Mara Tignino, “L’eau, la guerre et le droit”, *Recherche/droit*, available at: [www.unige.ch/campus/files/8014/7246/8160/campus108\\_recherche4\\_2RE4.pdf](http://www.unige.ch/campus/files/8014/7246/8160/campus108_recherche4_2RE4.pdf). For more in-depth information, see Mara Tignino, *L’eau et la guerre: Éléments pour un régime juridique*, Collection de l’Académie de Droit International Humanitaire et des Droits Humains, Bruylant, Brussels, 2011, p. 489.

81 ECtHR, *Muhammad and Muhammad v. Romania* (Grand Chamber), 2020, para. 122; ECtHR, *Takus v. Greece*, 2012, para. 63; ECtHR, *Geleri v. Romania*, 2011, para. 48.

## Implementation of the right to water for internally displaced persons

We will start by looking at the obstacles hindering the effective implementation of the right to water for IDPs in the Sahel region, and then put forward some solutions.

### Obstacles hindering the effective implementation of the right to water for internally displaced persons

Most of the obstacles hindering the effective implementation of the right to water are either practical or legal in nature.

#### *Practical obstacles*

First of all, the security situation in the Sahel region means that numerous water points, which tend to be people's main source of water, have become harder to access. Armed groups in the region do not only attack the State armed forces; they also target basic State services, community services and anything relating to public institutions.<sup>82</sup> In Mali, some areas of Niger and the north of Burkina Faso, for instance, the fighting caused all State technical teams to flee the region, resulting in a major deterioration in water installations, which have been destroyed, pillaged or left to ruin. This has affected traditional water supply circuits run by the public authorities.<sup>83</sup>

Furthermore, the climate in the region has made access to water a major issue, and armed groups do not hesitate to take control of water points in order to support their operations. In some cases, these groups have set up a form of governance system to manage how water is used in the villages and on the land.<sup>84</sup> They have been able to do this because State armed forces have withdrawn and there is a lack of basic social services in many of these areas. In these instances, only people who have pledged allegiance to the armed groups are given access to the water points controlled by those groups. As IDPs are fleeing the ill-treatment of these groups and the way of life they impose, they are excluded *de facto* from having access to these water points. And when it comes to using any State or community services that may be left, IDPs tend to avoid any contact or collaboration with State or community representatives for fear of reprisals by the armed groups.<sup>85</sup>

82 A. Antil, above note 8; International Crisis Group, *Burkina Faso: Stopping the Spiral of Violence*, Africa Report No. 287, 20 February 2020, p. 10.

83 Vincent Bonnacase and Julien Brachet, "Les 'crises sahéliennes' entre perceptions locales et gestions internationales", *Politique Africaine*, Vol. 130, No. 2, 2013.

84 Observatoire de la Démocratie et des Droits de l'Homme, *Burkina Faso: Risque d'un nouveau Rwanda? Bilan de la Violence au Burkina Faso*, 2020, p. 12.

85 See, among others, International Crisis Group, *Sidelining the Islamic State in Niger's Tillabery*, Africa Report No. 289, 3 June 2020, pp. 11 ff.

Secondly, the difficulties that IDPs in the region experience in accessing water are made worse by the deep impact of drought and climate change. In a drought situation, in which access to water is never certain, IDPs face increased difficulties in accessing water. In response to this situation, the African Commission on Human and Peoples' Rights (ACHPR) has said that States are required to put in place appropriate adaptation measures to enhance the resilience of water infrastructure, particularly with regard to extreme weather events. The Commission has also said that, in some circumstances, fulfilling the right to water involves implementing public policies aimed at protecting the most vulnerable people.<sup>86</sup> These are all things that can create legal hurdles.

### *Legal obstacles*

Legal obstacles can arise when identifying those responsible for fulfilling the right to water and determining the extent of their obligation. Firstly, while the State takes primary responsibility for ensuring the right to water, armed groups may also fall within this category. The issue of whether armed groups can be forced to respect human rights remains to be clarified,<sup>87</sup> but there appears to no longer be any doubt that they are subject to the rules of IHL.<sup>88</sup> As such, we could quite easily consider that the provisions of IHL concerning the right to water of IDPs place a related obligation on armed groups.<sup>89</sup> This position is all the more justifiable since, as we have seen, some of the armed groups operating in the Sahel region exercise State-like control, enabling them to apply these provisions.<sup>90</sup> This affirmation in principle must not, however, hide the complexity of the problem – in practice, several of these armed groups do not exercise any real control over the areas in which they operate, and such groups often cannot be located to ensure that they fulfil this responsibility.

The second legal issue relates to the extent of the obligations stemming from the recognition of the right to water. The State is considered the main entity responsible for fulfilling the right to water, but what is the extent of the State's obligation in the context of drought and a dangerous security situation that has considerably reduced the State's presence in the region? The answer to this question depends in large part on the origin and type of the obligation, and calls for a distinction to be made between the need for abstention by the responsible

<sup>86</sup> ACHPR, above note 24, Guideline 31.

<sup>87</sup> Ludovic Hennebel and Hélène Tigroudja, *Traité de droit international des droits de l'homme*, Pedone, Paris, 2018, p. 451; Zakaria Daboné, *Le droit international public relatif aux groupes armés non étatiques*, Schulthess, Geneva, 2012, p. 419. See also Anne-Catherine Fortas, *La surveillance de l'exécution des arrêts et décisions des Cours européenne et interaméricaine des Droits de l'Homme: Contribution à l'étude du droit du contentieux international*, Pedone, Paris, 2015.

<sup>88</sup> Jann K. Kleffner, "The Applicability of International Humanitarian Law to Organized Armed Groups", *International Review of the Red Cross*, Vol. 93, No. 882, 2011.

<sup>89</sup> See also Kampala Convention, Art. 7(5)(c).

<sup>90</sup> A. Antil, above note 8, pp. 95–96.

entity<sup>91</sup> and the need for action.<sup>92</sup> In terms of abstention, an obligation to fulfil the right to water only makes sense if there are sufficient water resources. In this case, the obligation entails, for instance, not depriving an IDP of water and not subjecting that person to starvation. However, where there is a need for action, there may be objective limits that prevent the State from effectively fulfilling its obligation and realizing the right to water. Furthermore, even without the worsening security situation in these countries, the supply of drinking water has never been totally ensured.<sup>93</sup>

In this regard, the extent of the State's obligation must be viewed in terms of the concept of progressive realization, which is usually associated with economic, social and cultural rights.<sup>94</sup> The Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation has said that the rights to water and sanitation cannot be realized over a short period of time and often depend on the availability of resources and their usage; States are therefore responsible for taking measures to ensure that these rights are progressively realized.<sup>95</sup> However, progressive realization must not be a pretext for avoiding obligations. The strict distinction between political rights, on the one hand, and economic, social and cultural rights, on the other—a distinction based on the concept of progressive realization—has become a topic of dispute, since human rights are now recognized as being interdependent.<sup>96</sup> Nevertheless, some aspects of the right to water constitute minimum core obligations requiring an immediate guarantee. The local context should also be taken into account when determining these minimum core obligations, since the scope of the obligation towards each individual can vary from one context to the next.<sup>97</sup> As we have seen, this minimum obligation should cover an individual's water needs for their personal and domestic use and for subsistence purposes.<sup>98</sup> For women and young girls, for example, the right to water includes the right to basic sanitation to ensure a level of bodily hygiene that is adapted to their specific needs. The same goes for young children and infants, owing to their vulnerability.

In Burkina Faso, for instance, access to drinking water, particularly in rural areas, remains problematic, while the rate of access to proper sanitation is just above 38% in urban areas and, in 2018, was just 15% in rural areas.<sup>99</sup> Given that Sahel

91 On prohibiting attacks on water resources, see Ameer Zemmali, "The Protection of Water in Times of Armed Conflict", *International Review of the Red Cross*, Vol. 35, No. 308, 1995.

92 For a human rights' perspective, see UN General Assembly, above notes 7 and 13.

93 In Burkina Faso, for example, the coverage rate is estimated to be 52% in rural areas and 89% in urban areas; see Programme National d'Approvisionnement en Eau Potable, *Rapport national, bilan annuel 2019*, March 2020.

94 See International Covenant on Economic, Social and Cultural Rights, Art. 2(1); see also L. Hennebel and H. Tigroudja, above note 87, pp. 1196 ff.

95 UN General Assembly, above note 13, p. 2, para. 3.

96 L. Hennebel and H. Tigroudja, above note 87, p. 1198; see also Carlos Miguel Herrera, *Les droits sociaux*, PUF, Paris, 2009.

97 UN General Assembly, above note 13, p. 10, para. 32.

98 ACHPR, above note 24.

99 See Organisation for Economic Cooperation and Development, *Report on Official Development Assistance*, 2019, p. xv.

States struggle to provide widespread access to water, realization of the right to water for IDPs is plagued with difficulties. Nevertheless, the State is required to use the maximum resources possible in order to realize the right to water, with the most vulnerable people taking priority. This involves the principles of effective use of the “maximum of the available resources” and “maximum allocation and usage”.<sup>100</sup> The State’s obligations to ensure transparent management of available resources and to combat practices such as corruption and embezzlement are particularly important in this regard. We know that these problems are widespread in the States in the Sahel region. As an example, in Burkina Faso, the Emergency Plan for the Sahel has faced criticism because its implementation only strengthened the population’s perception that the funds were being poorly managed. Practices like these feed into the narrative of the armed groups, which seek to discredit State institutions in the eyes of the population.<sup>101</sup>

Let us now look at some possible solutions for a more effective realization of the right to water.

## Solutions for the effective realization of the right to water for internally displaced persons

There are both legal and operational measures that can be taken to ensure the effective realization of the right to water for IDPs. We will now look at these two types of measures in turn.

### *Legal measures*

Firstly, the legal framework safeguarding IDPs in the States of the Sahel region needs to be strengthened. This can be achieved by incorporating international legal instruments specifically aimed at protecting IDPs into domestic law. In some of the Sahel States, some of the obligations set out in the Kampala Convention have already been transposed into domestic law.<sup>102</sup> However, this legislation is insufficient, and there is an urgent need to adopt a comprehensive and inclusive law specifically concerning IDPs.<sup>103</sup> Domestic legislation implementing the Kampala Convention must go hand in hand with a national policy for the management of IDPs.

Integrating these international rules into domestic legislation will provide an institutional and legal guarantee of IDPs’ rights. This, in turn, will help to ensure the justiciability of these rights within the domestic judicial system and

100 UN General Assembly, above note 13, p. 2, para. 5 ff.

101 Observatoire de la Démocratie et des Droits de l’Homme, above note 84, p. 12.

102 For Burkina Faso, for example, see Act No. 012-2014/AN on the Prevention and Management of Risks, Humanitarian Crises and Disasters, 22 April 2014.

103 See Sanwé Médard Kiéno, *Étude de la compatibilité de la législation Burkinabè à la convention de Kampala*. See Article 12 of Niger’s Constitution: “Each individual has the right to life, to health, to physical and moral integrity, to a healthy and sufficient food supply, to drinking water, to education and instruction in the conditions specified by the law.” See also Niger’s Law No. 2018-74 on the Protection and Assistance of Internally Displaced Persons, 10 December 2018.



other mechanisms. Some national judicial authorities have, for example, made direct reference to the UN *Guiding Principles on Internal Displacement* (Guiding Principles) when handing down their decisions; the Constitutional Court of Colombia is one example of this.<sup>104</sup> In Sri Lanka, IDPs have cited the Guiding Principles in order to call for larger food rations, smaller but more regular food supplies, clean water and greater personal security.<sup>105</sup> The Constitutional Court of South Africa has also recognized the right to water, making reference to an international instrument.<sup>106</sup> The ECtHR has often made reference to the Guiding Principles and has made them its own. One example is the *Dogan et al. v. Turkey* case, in which the judge made reference to Principles 18 and 28, relating to States' obligation to guarantee dignified living conditions for displaced people.<sup>107</sup> The right to water should be clearly established in the national constitutions of Sahel States, and the legal status and practical implications of this right should be reflected in domestic water-related legislation.<sup>108</sup> These legal instruments should establish the principle of water as a public good and also lay down the major principles governing access to water, including the need to take into consideration the most vulnerable people.

Another way in which rules-based mechanisms can be strengthened is through criminal sanctions for violations of the right to water of IDPs, particularly within the context of an armed conflict. IHL does not directly classify violations of the right to water as grave breaches of the Geneva Conventions. The Rome Statute of the International Criminal Court (ICC) partly fills this gap, as it considers certain attacks on the environment and other types of acts that could undermine the right to water of civilians as war crimes.<sup>109</sup> In non-international armed conflicts, certain violations of the right to water can fall within the category of grave breaches under common Article 3.<sup>110</sup>

Other violations of the laws and customs of war that are applicable to non-international armed conflict and that constitute war crimes are also relevant here. The main ones are pillaging, the destruction of civilian objects and the contamination of water resources.<sup>111</sup> In this regard, it is worth indicating that when submitting the request for an arrest warrant to be issued against President

104 UN General Assembly, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin: Addendum: Mission to Colombia*, UN Doc. A/HRC/4/38/Add.3, 2007, paras 41, 42. See also Supreme Court of India, *Virendra Gaur v. State of Haryana*, 1995 (2) SCC 577, 1994; High Court of Rajasthan, *L. K. Koolwal v. State of Rajasthan*, AIR 1988 Raj, 1986, p. 146.

105 Elizabeth Ferris, "Assessing the Impact of the Principles: An Unfinished Task", *Forced Migration Review*, December 2008, p. 10.

106 Constitutional Court of South Africa, *Mazibuko and Others v. City of Johannesburg and Others*, 2009.

107 ECtHR, *Dogan et al. v. Turkey*, Appl. No. 8803/02, Judgment, 29 June 2004, para. 154.

108 In Senegal, new water legislation was adopted in 2008 and new sanitation legislation in 2009, namely Law No. 2008-59 on the Organization of the Public Drinking Water Service and the Collective Sanitation of Domestic Wastewater, 24 September 2008, and the 2009 Sanitation Code.

109 Rome Statute of the International Criminal Court (Rome Statute), 1998, Art. 8(2)(b)(iv) on grave breaches.

110 For example, violence to life (depriving someone of water) or dignity.

111 See AP II, Art. 14; AP I, Arts 54, 55.

Omar Al Bashir of Sudan, the Prosecutor's Office of the ICC made reference to the deprivation of the means of survival of the Fur, Masalit and Zaghawa civilian populations by government forces in Darfur. The accusations included the contamination of water resources, but under the crime of genocide.<sup>112</sup> The Pre-Trial Chamber did not, however, deem that there were reasonable grounds to believe that such contaminations were a core feature of the government forces' attacks and did not uphold the accusation of genocide in this regard.<sup>113</sup> The decision nonetheless highlighted the gravity of attacks on water resources in a drought situation<sup>114</sup> and shows that acts which violate the right to water can lead to prosecution.

Nevertheless, as the ICC's competence is additional to that of the Sahel States, it is the States that have primary responsibility for setting out a legal framework to sanction (i.e., criminal, civil and administrative sanctions) violations of the right to water.<sup>115</sup> These legal texts should also sanction the forcible displacement of civilian groups, which is the trigger that leads to all other violations of their rights.<sup>116</sup> This approach to internal displacement in an armed conflict is a key component of IHL. The Kampala Convention adopts the same approach by laying down provisions aimed at preventing forced displacements regardless of the grounds.<sup>117</sup> However, these legal solutions need to go hand in hand with operational measures.

### *Operational measures*

As mentioned above, legal solutions alone are not enough; operational measures are also needed to ensure that IDPs are better cared for and their basic needs, such as water and sanitation, are met. This is first and foremost the responsibility of the State in which the forced displacement took place. It is important to underline that, from a legal standpoint, the existence of an armed conflict does not in any way release the State from its responsibility to safeguard individuals' rights and ensure that they are realized.<sup>118</sup> It is therefore essential to re-deploy basic social services in affected areas, and the actions of States should include a non-military dimension as well as a military one. In the medium term, this could even entail fostering a dialogue with the armed groups in order to spare civilians the effects

112 ICC, *The Prosecutor vs. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09, 2009.

113 *Ibid.*, Decision on Application for Warrant, 4 March 2009, paras 91–98.

114 See, in particular, *ibid.*, Dissenting Opinion of Judge Usacka.

115 Niger's Law No. 2018-74, above note 103, Art. 35, stipulates: "A prison sentence of no less than five years and no more than ten years and a fine of two million francs will be handed down to anyone who: 1) violates the rights of internally displaced people to live in satisfactory conditions of dignity, security, sanitation, nutrition, water, health and shelter in particular."

116 S. M. Kienou, above note 103, pp. 8 ff. See also Law No. 2018-74, above note 103, which sets out criminal sanctions for perpetrators of forced displacements (Art. 31).

117 See above note 50.

118 See UN Human Rights, above note 69, pp. 76–78; see also Hans-Joachim Heintze, "Recoupement de la protection des droits de l'Homme et du droit international humanitaire (DIH) dans les situations de crise et de conflit", *Cultures & Conflits*, No. 60, 2005.

of the conflicts in the region wherever possible.<sup>119</sup> However, the actions of the State alone are undoubtedly not enough. Alongside the State's response, it is important to involve other stakeholders, such as humanitarian organizations and international organizations.

### *The role of non-State humanitarian and security organizations*

When it comes to the contribution of non-State humanitarian and security organizations in realizing the right to water for IDPs, the work of the International Committee of the Red Cross (ICRC) in the Sahel region warrants particular attention. The ICRC's right of humanitarian initiative, which is recognized both in international conventions—common Article 3 in the case of non-international armed conflicts—and through its long-standing international practice, means that it has a privileged position in this regard.<sup>120</sup> It is therefore not surprising that the ICRC has a strong presence in the region.

The work of such organizations must take a comprehensive approach. While particular attention should be paid to IDPs, it is important that the humanitarian response covers all individuals made vulnerable by the armed conflict. (Some people are unable to flee the effects of the conflict precisely because of their vulnerability—the elderly, sick people, etc.) This comprehensive approach, which is prioritized by the ICRC,<sup>121</sup> also has the advantage of preventing tensions between displaced people and local communities,<sup>122</sup> and it thereby ensures that the needs of displaced people can be more broadly met, as the majority of these individuals are hosted by local people themselves rather than in displacement camps.<sup>123</sup> This approach has also been adopted by the International Law Commission. Furthermore, neutral humanitarian organizations can serve as a bridge for dialogue with States and can convince armed groups to accept humanitarian aid, including water supplies for people in areas under the armed groups' control. In the same vein, the role of peacekeeping missions, such as MINUSMA in Mali, can include the provision of water to IDPs. The mandate of protecting the civilian population can easily be interpreted in this way.<sup>124</sup>

119 International Crisis Group, above note 82, p. 29.

120 Although the ICRC has a broader mandate, both in international and non-international armed conflicts (such as those in the Sahel), its right of humanitarian initiative is clearly recognized in common Article 3, which expressly mentions the ICRC as a humanitarian organization.

121 Jakob Kellenberger, "The ICRC's Response to Internal Displacement: Strengths, Challenges and Constraints", *International Review of the Red Cross*, Vol. 91, No. 875, 2009, pp. 476–478.

122 These tensions sometimes arise because local people think that people in displacement camps are in a better situation due to the State and international aid they receive. When there is widespread poverty, these frustrations among the local community are understandable.

123 In Burkina Faso, for instance, in 2019, 59% of displaced people lived in the host community, 35% in individual housing, 4% in makeshift housing and 1% in collective centres: see UNHCR, *Burkina Faso: Évaluation en temps réel de l'opération de l'UNHCR et du Gouvernement sur les personnes déplacées internes 2019*, 2019, p. 3.

124 The obligation for parties to an armed conflict to comply with IHL implies an obligation to afford civilians with due protection, in particular by guaranteeing their fundamental rights, including the right to water; see ICRC Customary Law Study, above note 47, Rule 139. The obligation of multinational peacekeeping forces to ensure compliance with IHL also implies that those peacekeeping forces should ensure that

Moreover, the G5 Sahel Joint Force, whose mandate includes aspects of “development” in addition to military action,<sup>125</sup> could be used for this type of rapid response.<sup>126</sup>

In addition, water should be a key component of the structural response, with a view to restoring peace and returning IDPs to their homes. In the Sahel region, the likelihood of having access to water is a decisive factor in IDPs’ decisions to return home. The issue of returning home was highlighted by the ACHPR in the case of *Sudan Human Rights Organization and Centre on Housing Rights and Evictions (COHRE) v. Sudan*.<sup>127</sup> The case relates to almost exactly the same events as those cited above in relation to the arrest warrant for President Al Bashir before the ICC. In the ACHPR case, the claimants, who were from Darfur, were victims, *inter alia*, of the destruction of water infrastructure and the poisoning of certain wells. Noting a series of violations – including of the right to water – by Sudan’s head of State, the ACHPR considered that the restoration of water infrastructure was one of the measures to be taken by the State and was a condition for the safe and dignified return of IDPs.<sup>128</sup>

In Botswana, where water is not as scarce as it is in Darfur and the Sahel, the courts came to the same conclusion concerning the return of the indigenous Bushmen population. They considered that access to water was one of the conditions relating to the Bushmen’s right to return to their ancestral lands.<sup>129</sup> As such, in a situation of armed conflict like that in the Sahel, the right to water and the protection of water resources should be an important component of any peace deals with armed groups.<sup>130</sup>

## Conclusion

We can make two conclusive remarks based on the above analysis. Firstly, while IHL does not *stricto sensu* confer a right to water on IDPs directly and explicitly, the inclusion of this group in the category of civilians means that IHL safeguards their right to water indirectly and implicitly through the general protection afforded to civilians and civilian objects during armed conflicts. We can therefore

civilians’ fundamental rights, including the right to water, are fulfilled: see ICRC, *International Humanitarian Law*, Handbook for Parliamentarians No. 25, 2016, pp. 30–31. See also ICRC, “Internally Displaced Persons and International Humanitarian Law”, fact sheet, Geneva, 2017, available at: <https://www.icrc.org/en/document/internally-displaced-persons-and-international-humanitarian-law-factsheet>; Inter-Parliamentary Union and UNHCR, *Internal Displacement: Responsibility and Action*, Handbook for Parliamentarians No. 20, 2013, available at: <http://archive.ipu.org/PDF/publications/Displacement-e.pdf>.

125 See Convention on the Creation of the G5 Sahel Joint Force, 19 December 2014, Arts 4, 5.

126 See ILC, above note 61, Principle 8.

127 ACHPR, *Sudan Human Rights Organization and Centre on Housing Rights and Evictions (COHRE) v. Sudan*, 279/03–296/05, 2009.

128 *Ibid.*, para. 229.

129 Court of Appeal of Botswana, Ruling of 27 January 2011 Upholding the Decision of 21 July 2010.

130 See ILC, above note 61, Principle 23; see also Global High-Level Panel on Water and Peace, *Think-Tank Roundtable Report: The Protection of Water During and After Armed Conflicts*, Geneva, 2016, p. 11.

affirm that the right to water of IDPs in the Sahel States is – as a guarantee made to all civilian populations – a fundamental right, and that States have primary responsibility for ensuring compliance with and the realization of this right, although the armed groups and other parties involved in the conflict share this responsibility.

Secondly, since IHL, international human rights law and other relevant branches of international law can be jointly applied in times of armed conflict – and in the absence of an explicit and direct protection of the right to water for IDPs under IHL – the right to water is also recognized and protected under international human rights law and, above all, by way of the humane treatment to which all human beings are entitled. As such, the right to water of IDPs is firmly anchored in the *corpus juris* of IHL and international human rights law.

However, this indisputable anchoring in international law alone is not enough to ensure that the right to water is satisfactorily realized, not only because of certain legal obstacles but also, and above all, because of several practical barriers, such as the dangerous security situation and the objective limits on water resources within the States concerned. All stakeholders therefore need to work to provide a coordinated humanitarian response to these challenges. This response must be based on the key principles of non-discrimination, equal access to information and the involvement of IDPs themselves. In a context like the Sahel, the situation of women and young girls must be treated with the utmost care, not only because of their specific water, hygiene and sanitation needs, but also because, more often than not, there is a certain division of roles that means that they are more vulnerable than other family members when trying to access water. These issues, which are interesting in and of themselves, cannot be developed further within the limited framework of this analysis and should be the subject of a more in-depth analysis in subsequent studies.



## Interview with His Excellency Mr Abdou Abarry

### Permanent Representative of Niger to the United Nations

*Ambassador Abdou Abarry, Permanent Representative of Niger to the United Nations (UN), presented his credentials to UN Secretary-General António Guterres on 4 June 2019. Mr Abarry had previously been the Special Representative of the Chairperson of the African Union (AU) Commission and AU Head of Office in the Democratic Republic of the Congo since 2014. Prior to that, he headed the AU Liaison Office to the Economic Community of West African States in Abuja, Nigeria, beginning in 2011.*

*A career diplomat, Mr Abarry was Ambassador to Belgium from 2003 to 2011, accredited concurrently to Greece, Luxembourg and the Netherlands; he also had accreditation to the UN Offices in Geneva and Vienna, the European Union Commission and the African, Caribbean and Pacific Group of States. He was Diplomatic Adviser to the President of the Republic of Niger and Director-General of State Protocol from 1999 to 2003, and served as a Counsellor at Niger's Permanent Mission in New York from 1992 to 1997.*

*Mr Abarry holds a master's degree in international relations from the Ecole Supérieure d'Administration et des Carrières Juridiques de Lomé, in Togo, and earned a diploma from the International Relations Institute of Cameroon. He has received honorific distinctions including the Chevalier de l'Ordre National du Mérite du Niger (1999), Grand-Croix de la Couronne du Royaume de Belgique (2011), Commandeur de l'Ordre National du Niger (2014) and Officier de la Légion d'Honneur Française (2014).*

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***By way of introduction, could you elaborate on the role and responsibilities you exercise in the UN Security Council on behalf of your country, Niger, which has been an elected member since January 2020? What are the main topics you have been keen to highlight under this mandate so far? Is there any progress or are there any achievements that you would like to bring to the attention of our readers?***

As part of this mandate, which comes nearly forty years after the previous one, Niger is defending and promoting consideration of the challenges faced by developing countries, such as those in the Sahel. More specifically, Niger is highlighting four major challenges that are particularly acute in the Sahel.

First, there is the challenge of peace and security. The Sahel countries are facing multiple security threats, including violent extremism, terrorism and organized crime. These threats are exacerbated by instability in Libya, armed conflicts in Mali and the proliferation of armed groups, armed gangs and weapons throughout West Africa. In fact, the Sahel is now one of the most troubled regions in the world, and one of our main objectives is to draw the attention of the international community in general, and of the Security Council in particular, to this state of affairs.

Second, Niger is drawing the attention of the international community to the impact of these security threats on the development of the Sahel countries. The substantial funding that our countries are having to allocate to the fight against these threats is a precious resource that could be devoted to social and economic sectors such as education, health and agricultural development. The persistence of security threats and the urgency of addressing them mean that these important growth-producing sectors are not receiving the attention we would like to give them, which has implications for the development of our countries.

Third, there is the need to protect women and girls—especially girls. Women and young people make up nearly 52% of our population, and they are major pillars of our development. The security context described above exposes them to many forms of violence and abuse, including armed attacks, sexual violence, hostage-taking and deprivation of the right to education. It is therefore urgent that we provide effective protection for these groups.

Fourth, Niger is helping to raise the international community's awareness of the impact of climate change on peace and security. In particular, we argue that climate change is a source of instability and of security challenges.

***The UN Security Council first discussed the effects of climate change and environmental degradation as an unconventional threat to peace and security in 2007. Since then, the subject has been discussed on many occasions, and the president of the Security Council has referred to it in several statements relating to the Sahel. In September 2020, when you held the presidency of the Security Council, Niger organized a ministerial meeting on the humanitarian consequences of environmental degradation, in which International Committee***

***of the Red Cross [ICRC] president Peter Maurer participated. In your opinion, what is the link between climate change and the maintenance of international peace and security, and more specifically, how does this link translate to the Sahel region?<sup>1</sup>***

It is no longer possible to deny that climate is affecting development in several regions of the world, exacerbating humanitarian and security crises. In the Sahel, where this is especially the case, climate change has intensified competition for shrinking land, fodder and water resources. This has stoked tensions between herders and farmers, and hampered peacebuilding and development in the region.

The shrinking of Lake Chad and of rivers such as the Niger owing to high temperatures and lack of rain, coupled with a population explosion, is also generating conflicts between farming and herding communities over control of these scarce resources in many countries of the central Sahel, the Central African Republic and the Democratic Republic of the Congo. Terrorists are exploiting the conflict between herders and farmers to perpetrate their atrocities, taking advantage of tensions between populations.

We therefore see a direct link between the management of increasingly scarce natural resources and the question of peace and security. These issues are becoming more acute in the Sahel region, despite many of our partners still being reluctant to recognize the problem. But if there is one thing on which the Security Council agrees, it is that this is a dramatic reality in the Sahel region and the Lake Chad Basin. Numerous recent studies have shown that “climate change and conflict dynamics create a feedback loop in which the impacts of climate change create additional pressures, while conflict undermines the capacity of communities to cope”.<sup>2</sup>

***Why do you believe it is important for climate change to be on the Security Council agenda as a threat to peace and security within the meaning of the UN Charter? How would you answer the criticisms of those who consider climate change a development matter rather than a security issue, claiming that responsibility for discussing and remedying it lies not with the Security Council but with specialized bodies such as the Intergovernmental Panel on Climate Change or the Conference of the Parties to the United Nations Framework Convention on Climate Change? How does the work of the UN Security Council strengthen this broader institutional framework aimed at combating climate change?***

Climate change and land degradation are no longer an exclusively environmental matter. They form part of a broader vision that closely links environmental

1 See, for example, “Statement by the President of the Security Council”, UN Doc. S/PRST/2020/7, 28 July 2020, available at: <https://undocs.org/en/S/PRST/2020/7> (all internet references were accessed in November 2021).

2 Kalla Ankourao, “Statement by the Minister for Foreign Affairs, Cooperation, African Integration and Nigeriens Abroad of the Niger”, UN Doc. S/2020/929, 23 September 2020, Annex 4, available at: <https://undocs.org/S/2020/929>.

objectives with economic and social development objectives, and hence with the common goals of peace, stability and collective security. Climate change is thwarting States' development efforts, forcing us to make a connection between peace and stability on the one hand and climate change on the other. To those who are still slow to reconcile these two realities, I would respond by taking the example of the current COVID-19 pandemic, which is forcing us to change the paradigm. COVID-19 has been declared a threat to international peace and security,<sup>3</sup> despite the existence of the World Health Organization and other entities specialized in health. This pandemic is fundamentally changing the balance of nations and the international community. Climate change is also a pandemic; it is slower, but it is more dangerous because there is no vaccine against it. Just as we did with the COVID-19 pandemic, we must see climate change as a threat to peace and security, and this must not be a divisive issue. We must work even harder to translate our knowledge into concrete policies. It is important to understand the causes, effects and complexity of climate change in order to combat them, because our aim is not simply to manage conflicts: we have a fundamental responsibility to prevent them.

In short, we believe that there is a direct link between climate change and peace and security. We therefore consider it important that the international community in general and the Security Council in particular take ownership of this issue. One of our current projects is to integrate this topic into all of our training modules and peacekeeping operations, so that we can address the consequences of climate change for peace and security while there is still time.

***Niger and others have described the intersecting dynamics of conflict and climate change in the Sahel region as a “feedback loop”: instability undermines the ability of communities to cope with climate hazards, which in turn exacerbates tensions and thus increases the risk of new conflicts.<sup>4</sup> Can you tell us more about this topic, including the most significant humanitarian effects of climate change in the Sahel and how insecurity and instability are exacerbating them? How can humanitarian action mitigate these effects and reduce security problems in the Sahel?***

Our leaders have always endeavoured to highlight the impact of climate change and environmental degradation on food and nutritional security, taking the Sahel as an example. In a region where the vast majority of the population depends on agriculture, the temperature increase of 2°C by 2050 that experts are predicting could, if we are not careful, lead to a 95% increase in the number of

3 See, for example, UNGA Res. 74/270, “Global Solidarity to Fight the Coronavirus Disease 2019 (COVID-19)”, 3 April 2020, available at: <https://undocs.org/en/A/RES/74/270>; UNGA Res. 75/4, “Special Session of the General Assembly in Response to the Coronavirus Disease (COVID-19) Pandemic”, 9 November 2020, available at: <https://undocs.org/en/A/RES/75/4>; “Le coronavirus demeure toujours une menace à la paix et à la sécurité internationales”, *ONU Info*, 9 September 2020, available at: <https://news.un.org/fr/story/2020/09/1076812>.

4 K. Ankourao, above note 2.

malnourished people in West Africa, together with a 15–25% reduction in food production. Humanitarian assistance is therefore becoming essential, especially since Niger is hosting many refugees and has many internally displaced persons.

Moreover, we cannot continue to invest a considerable part of our budget in maintaining security while simultaneously dealing with the disastrous consequences of climate change. When poor populations like those in the Sahel are confronted with undernourishment and the impact of rising temperatures, we cannot continue to invest in security and at the same time hope to stem the phenomenon of rising temperatures, which impedes access to food resources and the intensification of food production. This phenomenon is aggravated by demographic factors. When more than half of the population are in need of food, and the resources available to meet their needs are insufficient, this can lead to tensions, crises and even conflict. At this point I would like to pay a heartfelt tribute to all the humanitarians who are risking their lives by working alongside us to alleviate suffering. The ICRC, for example, has always been a major humanitarian partner in the Sahel and Lake Chad regions, and we would like to thank them for their fruitful collaboration on helping people in need.

*In addition to its humanitarian consequences, the conduct of hostilities has a devastating effect on the resilience of communities and their ability to adapt to climate change, through direct attacks on the natural environment, destruction of land, and greenhouse gas emissions resulting from damage to industrial infrastructure, for instance.<sup>5</sup> Niger has drawn the attention of the Security Council to the destruction of the natural environment in armed conflicts and the need for greater respect for international humanitarian law [IHL] in order to limit environmental degradation in the Sahel.<sup>6</sup> In your opinion, why are IHL rules on environmental protection important, and what kind of action should be taken in the region to raise awareness of and compliance with these rules?*

I can use my recent experience as a representative of the African Union in the Democratic Republic of the Congo to illustrate the link between environmental degradation and conflict. When you look at Virunga Park, which was once one of the most important wildlife reserves in the world and is now decimated by the armed groups that have infested the region, you quickly understand the link between the activities of these armed groups and protection of the environment. The same situation obtains in the Sahel, particularly in the “three-border” region – that is, the borders between Burkina Faso, Mali and Niger. This is the location of the W National Park, one of the most important animal reserves in the region. In terms of biodiversity, this is the only park of its type in these three

5 ICRC, *When Rain Turns to Dust: Understanding and Responding to the Combined Impact of Armed Conflicts and the Climate and Environment Crisis on People's Lives*, Geneva, 2020, available at: <https://shop.icrc.org/when-rain-turns-to-dust-pdf-en>.

6 Abdou Abarry, “Letter from the Permanent Representative of the Niger to the United Nations Addressed to the Secretary-General”, UN Doc. S/2020/882, 1 September 2020, available at: <https://undocs.org/S/2020/882>.

countries. When armed groups commit abuses in such an area, this automatically leads to the destruction of animal species and the illegal exploitation of natural species in defiance of international environmental rules – hence the need for the UN system to promote IHL in all armed interventions. In particular, this area of IHL must be reflected in the mandates of peacekeeping operations. Measures to improve our understanding of the correlation between conflict and the impact of climate change are essential.

The natural environment is essential to the survival of the civilian population. Destroying or damaging critical infrastructure is a threat to the environment, and can have devastating effects on environmental health. Climate-related problems are exacerbating the effects on communities that depend on these environments. We are becoming increasingly aware of our dependence on the environment for survival, which means that protecting the environment during armed conflict can no longer be an afterthought. For this reason, we have always advocated inclusion of IHL in the operations manuals of our armies. We encourage increased IHL training for public authorities, to give them a sound understanding of the effects of armed conflict on the environment and of the rules that can limit the impact of armed conflict on the environment – if they are applied.

Environmental protection needs to be addressed globally. The impact of environmental destruction and destruction of industrial infrastructure goes far beyond the region or area in which they occur. We must unite to face the effects of this destruction wherever necessary. Teaching IHL is a priority issue and one where the ICRC can count on Niger's sincere and wholehearted support.

***Niger has described the “triple impact”<sup>7</sup> of climate change, conflict and the COVID-19 pandemic in the Sahel. How has this global health crisis contributed to both highlighting and exacerbating the climate and environmental crisis, the conflicts and the peacekeeping problems in this region? Are there lessons to be learned from the COVID-19 pandemic that could strengthen the response to unconventional crises such as the climate crisis?***

As I indicated earlier, the current pandemic has shown that our multilateral system is no longer fit for purpose. The COVID-19 pandemic is not just a health issue – it has been a real challenge for the entire international system. We have drawn conclusions from what has happened, and must now recognize that what was adequate seventy-five years ago has been put to the test and found wanting. Now is the time for a paradigm shift. The pandemic has brought to light a new set of threats to international peace and security that were not previously apparent to anyone. Climate change is another form of COVID-19. It may be slower, but unlike the disease there is no vaccine against it. This means that if we wait any longer before we react, it will be too late. We are therefore using the platform

7 K. Ankourao, above note 2.

that the Security Council offers us to highlight the situation in the Sahel, in light of the humanitarian and security risks caused by climate change.

We would like to transpose this approach and the new attitude that we advocate vis-à-vis the pandemic to the issue of climate change. The deterioration of the climate situation in the Sahel also affects the ecosystems and environment of neighbouring countries such as Benin, Côte d'Ivoire and Togo. We believe that we must be prepared for the impact of this climate change; that is why we are drawing the attention of the international community to the link between the issues of climate change, peace, security and development in the Sahel. We are also highlighting how this link could affect other nations that currently consider themselves safe but could be exposed to the same phenomenon if we do not take the precautions needed to contain it. Within the Security Council, we are using our voice – however small it may be – to draw the attention of the international community to the need for joint and concerted action to stem the effects of climate change, of the sort we have been forced to undertake in response to the COVID-19 pandemic.

***The UN Secretary-General recently highlighted the funding gaps for climate action, in particular the unequal distribution of funds between mitigation and adaptation. He urged donors and development banks to invest more in climate change adaptation, with a view to helping communities build resilience to climate hazards, while continuing to support existing mitigation approaches such as reducing carbon emissions.<sup>8</sup> What do you think about this? What strategy for redistributing climate action funding would you recommend to help the Sahel cope more effectively with the combined effects of climate change and conflict?***

At the risk of repeating myself, I would say that the effects of climate change have no borders. No development action can be envisaged and none of the Sustainable Development Goals can be achieved without building resilience and providing predictable funding to countries in difficulty, in order to help them restore natural capital responsibly. The failure of one member of the international community in this area will inevitably have an impact on the rest of that community. I believe that the Secretary-General of the UN, as usual, is taking a visionary approach in this direction and, as a leader, I would dare to suggest that this could work as it has with regard to the fight against the COVID-19 pandemic.

We all share responsibility for managing environmental issues collectively in order to achieve the Sustainable Development Goals. Without better adaptation and resilience-building strategies, and above all, without funding to responsibly manage and restore our natural capital, climate change in West Africa and the Sahel will continue to be a significant risk factor. I think that here too, COVID

8 António Guterres, "Remarks to the Security Council High-level Open Debate on the Maintenance of International Peace and Security: Climate and Security", 23 September 2021, available at: [www.un.org/sg/en/node/259487](https://www.un.org/sg/en/node/259487).



has shown us the way forward. The COVAX initiative, which has enabled the international community to pool its efforts and ensure that discoveries made mainly in the global North can benefit the countries of the South, could be duplicated so that we can show more solidarity, coherence and partnership, and revitalize multilateralism. We could follow the example of action on COVID-19 as regards the fair distribution of funds and the benefits of research, in order to help those countries that are the weakest financially and are most exposed to climate change to face these challenges, in their own interests and in the interests of the international community.

***At the Security Council's recent high-level open debate on climate and security, Niger cited as an example the work done by the Climate Commission for the Sahel Region [CCSR] to strengthen the resilience of local communities.<sup>9</sup> Could you tell us more about the achievements of this body and other regional initiatives launched by the African Union and the Sahel to address climate change? How do they tie in with the Security Council's discourse on climate and security, and how could UN agencies support and strengthen them in order to improve the effectiveness and coordination of collective action on climate change?***

First of all, I would like to note and welcome the commitment of the former president of Niger, His Excellency Mr Mahamadou Issoufou, in his role as chairman of the CCSR. His chairmanship of the Commission is one of the strategic legacies he has bequeathed to us. Under his leadership and commitment, the issue of climate change has emerged in Niger as a categorical imperative. We have no choice but to fight this phenomenon with our limited means. Niger has always been very aware of the impact of climate change on the lives and existence of communities. This is why President Issoufou has been so committed to this issue—a commitment that has allowed us to achieve positive results, including the establishment of a working group made up of experts from the member countries of the Commission, the drafting and approval of the diagnostic report on climate change in the Sahel, and the establishment of the Commission's ministerial body.

To become operational, the CCSR has adopted the Sahel Region Climate Investment Plan [SR-CIP 2018–2030], with an overall budget of approximately \$440 billion. The objective of the plan is to contribute to global efforts to mitigate greenhouse gas emissions, enhance the adaptation capacity and resilience of the Sahelian population, and support the livelihoods of that population. The development and adoption of this investment plan was accompanied by a mobilization and advocacy strategy, a monitoring and evaluation plan and an institutional framework. A six-part priority programme has also been developed for the period 2020–25, to boost climate investment in the Sahel.

9 Brigi Rafini, “Statement by the Prime Minister of Niger, Brigi Rafini”, UN Doc. S/2021/198, 23 February 2021, Annex 8, available at: <https://undocs.org/en/S/2021/198>.

Other achievements of the CCSR include holding the first conference of heads of State and government of the member States of the Commission, which took place on 25 February 2019. That conference was preceded by four meetings of the joint working group and three meetings of the environment ministers of the member countries. It was followed by a round table in Niamey for the financing of the SR-CIP and the Priority Programme for Catalysing Climate Investments in the Sahel [PPCI 2020–2025]. During the same conference, member countries agreed to set up a permanent secretariat that will be responsible for coordinating and monitoring implementation of the SR-CIP and the PPCI in the Sahel.

The CCSR also organized a meeting of Sahel leaders under the chairmanship of Issoufou Mohamadou in September 2019 in New York. The meeting was attended by eminent personalities and international organizations, including the Secretary-General of the UN.<sup>10</sup>

It should be stressed that these measures were in line with Niger's commitment to implementing a number of national programmes, one of the most emblematic being Operation Green Sahel. This operation consisted of regreening and reforestation programmes in Niger, aimed at stemming the encroachment of the desert into arable land. The work carried out in this context has had a positive impact, contributing to the regeneration of vegetation cover. We drew on our successful experiences at the national level to take action at the regional level, when Niger was president of the CCSR. We have also used national experience and good practice to draw the attention of the international community to the need to come together to address the devastating effects of climate change.

***During the high-level debate in February 2021, Niger stressed the need to shift the focus regarding those regions most affected by the climate crisis and its effects on security – such as the Sahel – from their vulnerabilities to their regional potential in terms of “natural, demographic and cultural assets”.<sup>11</sup> Could you explain this paradigm shift? How can we ensure that the Sahel countries become key players in the fight against the climate crisis and the risks it poses to security, for example through technological innovation and the creation of sustainable jobs in the energy and agriculture sectors?***

As Niger's former prime minister Brigi Rafini so aptly pointed out at a Security Council meeting on the links between climate change and security on 21 February 2021, “too often the narratives and discourses about such areas are limited to challenges and vulnerabilities. They ignore the opportunities and potential of those regions in terms of natural, demographic and cultural assets.”<sup>12</sup>

10 “La Commission Climat Pour la Région du Sahel s’est dotée d’un plan d’investissement climat (PIC-RS 2018-2030) d’un coût global d’environ 440 milliards de dollars”, *Tam Tam Info*, 7 November 2020, available at: <https://tinyurl.com/2s37wpnz>.

11 *Ibid.*

12 B. Rafini, above note 9.

We can take a totally different view of the situation in the Sahel. For example, the groundwater in this area constitutes the world's largest subterranean water reserves, but it is difficult to access this water because of a lack of technological resources. We can reverse this situation. In particular, we can use advanced technology to extract this groundwater, overcoming our challenges related to water scarcity, as several countries in the Middle East have done. These countries are just as dry, and also lack surface water, but they have succeeded in mastering the technology of extracting subterranean products. They are producers of food, and some of them process and even export it.

Like these countries, we have the capacity to capitalize on such opportunities through technological innovation and sustainable job creation, particularly in key sectors such as energy and agriculture. In Niger, we have the 3N Initiative [Nigériens Nourishing Nigériens] which is well known in the humanitarian and scientific communities. This initiative is to be encouraged, as it aims to achieve food self-sufficiency by combining innovation in the areas of agriculture, seed and fertilizers. It has shown that insufficient rainfall need not be a barrier, and that we can extract and control groundwater to boost production capacity in Niger. This programme has helped ensure that Niger is no longer classified as a country facing acute food difficulties. Poor rainfall leads to poor harvests, which deprive people of food and have a serious impact on economic growth.

We wish to send the following message to all African countries: what appears to be to our disadvantage could actually be an asset. We have the resources. It is up to us to deploy our own efforts and those of the international community to make good use of our water resources, so as to reverse the trend whereby we discuss the Sahel only in terms of challenges, lack of resources and difficulties. I think it is now time for the governments of the Sahel to use technology to make better use of our resources, so that agricultural production not only feeds our populations properly but can also be exported. We can achieve this ambition, as long as it is supported by a firm commitment and a consistent political vision. The essential leverage effect for this scaling-up requires the promotion of appropriate regional initiatives. We must move forward united, with our eyes open.

***What are the main obstacles that the G5 Sahel faces in its efforts to protect the civilian population? How can the resolutions that its member States adopted at the latest G5 Sahel summit help to remove these obstacles?***

Cross-border terrorism and organized crime prompted the heads of State of the G5 Sahel [Burkina Faso, Chad, Mauritania, Mali and Niger] to create the G5 Sahel Joint Force in 2017. Examples include Boko Haram, whose actions have spread beyond Nigeria to all the countries of the Lake Chad Basin. The Joint Force is composed of approximately 5,000 men and is drawn from the armed forces of each of the five countries.

The countries of the Sahel are following the example of those of the Lake Chad Basin, which have set up the Multinational Joint Task Force to deal with Boko Haram. In a similar fashion, we have pooled our efforts on the basis of an expression of genuine political will. Realizing that no one country can confront terrorism on its own, we have agreed to develop a common approach to stem this scourge. The establishment of the G5 Sahel and the Joint Force is first and foremost the expression of a political will that is to be welcomed. A review of the Joint Force's operations so far has shown it to be effective. Its kinetic ground missions have neutralized and captured suspected terrorists, freed hostages and aided people who are crossing borders to protect themselves against retaliation by armed groups and gangs.

However, quite apart from the complexities inherent in the asymmetry of these operations, obstacles are still preventing this force from becoming fully operational – including logistical and, especially, financial obstacles. While the situation is not yet fully under control, the action taken so far by the Joint Force, with the support of international forces such as the Barkhane Force and cooperation with the United States and European countries, is allowing us to gradually overcome the terrorist threat in the Sahel.

One cannot talk about the fight against terrorism in the Sahel without mentioning the dramatic situation that has prevailed in Libya for nearly ten years. The fragility of our States has been exacerbated by the security consequences of the situation in that country. This, combined with the intensification of climate change, has had an impact on the ability of our States to take sole responsibility for operations. The situation is further complicated by the lack of real commitment by the international community to the countries of the Sahel as regards the fight against terrorism, in contrast with what we have seen in other parts of the world such as the Middle East. It is taking a long time to distribute the promised funds that were supposed to be allocated to the G5 Sahel countries. Certainly, many countries are supporting military operations by providing equipment and intelligence, but what we really need is a support office capable of providing predictable and sustainable resources and support, in particular through voluntary contributions that could feed a fund dedicated to supporting both offensive activities and the development activities that will be integrated into the priority investment programme of the G5 Sahel. It was for this reason that the N'Djamena Summit requested the setting-up of a UN office dedicated to the G5 Sahel Joint Force. We believe that assessed contributions as a source of funding, within the framework of participation in such an office, would accelerate the ramp-up and empowerment of the Joint Force. Discussions on the creation of this office are currently under way in the Security Council. Implementing this measure would ensure the availability of predictable resources and thus provide certainty as to the financing of the military and development activities of the G5 Sahel.

***Niger currently co-chairs the Informal Expert Group on Climate and Security of Members of the Security Council. Founded in 2020, this group is tasked with***

***examining the operational challenges that UN missions face as a result of the security crisis, and proposing solutions. As this is a very recent initiative, could you tell us what this new body has been doing during its first year of existence? What are the current challenges? To what extent will this group improve the situation of people in the Sahel?***

As noted above, one of Niger's objectives within the Security Council is to highlight the link between climate change and peace and security issues. It is in line with this objective that we have been co-chairing the Informal Expert Group on Climate and Security of Members of the Security Council since 2020. Through this role, we hope to enhance understanding of security risks related to climate change and thereby boost the effectiveness of the Security Council in fulfilling its mandate to maintain international peace and security.

Our first meeting, in 2020, addressed the situation in Somalia, when Germany was co-chairing. We have already held two meetings this year on the Sahel and South Sudan – which face environmental and security challenges almost identical to those in Somalia – and are currently drawing up the programme of work for the rest of 2021. Our goal is to increase the visibility of environmental issues and promote better consideration of them in the context of activities aimed at maintaining peace and security. We wish to ensure that those members of the Security Council who are still hesitant become fully aware of the existence of a link between these two types of issue. We are pleased that when he so kindly met with us, President Joe Biden decided that the United States would join the Group. This represents a significant step forward as regards the United States' engagement on the climate question. We hope that the United States' approach will stimulate the interest of other actors, so that the issue of the link between climate change on the one hand and peace and security on the other ceases to be a peripheral matter, and all States see it as an issue for the Security Council. The aim is to ensure that activities related to maintaining international peace and security take account of climate change issues.

***Has your experience as an elected member of the Security Council influenced the importance or interest that Niger attaches to IHL and humanitarian issues? Without asking you to indulge in crystal-ball-gazing, do you think that one can expect knowledge of IHL to have increased in Niger by the end of your mandate?***

Serving on the Security Council for two years as an elected member has strengthened Niger's interest in IHL and humanitarian issues. Niger has also played a leadership role in promoting better consideration of current humanitarian issues. As previously noted, in 2020, Niger co-chaired the Informal Expert Group on Climate and Security of Members of the Security Council with Germany, which at that time was also an elected member of the Security Council. At the end of Germany's term of office, Niger continued to co-chair the Group with Ireland.

But Niger's interest in IHL and humanitarian issues is not new, and it will remain as strong as ever when our time on the Security Council comes to an end.

Niger appreciates the importance of IHL and will continue not only to promote dissemination of the rules that this body of law sets out, but also to support humanitarian action for people in need.

***Would you like to add anything for our readers?***

Human suffering has no borders and no ideological affiliation. It challenges us all as human beings. The promotion of security and well-being must therefore remain one of the principal concerns of the international community. It should in no way be politicized.

Finally, I would like to pay a heartfelt tribute to the ICRC and to all humanitarian actors for the tremendous work they do every day to defend human dignity, nature and the values of humanity.





# The importance of food systems in a climate crisis for peace and security in the Sahel

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## Abstract

*Conflicts are increasingly analysed as exhibiting a stealth complexity in which triggers and consequences are intricately linked to climate, environmental degradation and the struggle to control a finite pool of natural resources. The climate crisis is a multifaceted reality and, against this background, many pressing priorities compete with each other. The disruptive effect of climate variability and change on food systems is particularly acute and constitutes a direct and tangible threat to livelihoods globally. The objective of this paper is to demonstrate and discuss the importance of food systems under a climate crisis in exacerbating conflicts in the Sahelian region and propose interventions beyond and complementary to the usual military and security solutions. We demonstrate for the Sahel that (i) climate hazards are frequent and exposure to climate variability is high, (ii) hotspots of high climate variability and conflict exist, and (iii) impact pathways by which climate exacerbates food systems that can lead to conflicts are documented in the literature. While these three findings suggest clear links between conflict and climate, we find that (iv) current peace indices do not include climate and food systems indicators and therefore provide an uncomplete picture, and (v) food systems programming for climate adaptation has so far not explicitly considered peace and security outcomes. Furthermore, we propose that food systems programming that truly tackles the climate crisis should take more explicit account of peace and security outcomes in conflict-affected areas.*

**Keywords:** Sahel, food systems, peace, security, conflict, climate.



## Introduction

Analysing conflicts in the 21st century reveals a paradigm shift. In the past, violence, in its different manifestations, seemed to be rooted in political, geostrategic or ideological frameworks. However, this vision is changing. Conflicts are increasingly complex,<sup>1</sup> and their triggers and consequences are intricately linked to climate,<sup>2</sup> environmental degradation<sup>3</sup> and the struggle to control a finite pool of natural resources.<sup>4</sup> More and more, the scientific literature confirms that climate change triggers or aggravates security threats,<sup>5</sup> such as food insecurity, which are linked to different types of conflicts.<sup>6</sup> The current scientific literature does not display an exact consensus on the interface between climate and conflict. Yet, there is a generally accepted view that climate is a threat multiplier. The United Nations Security Council debates its impact on peace,<sup>7</sup> but failed to pass a resolution on climate change and security because of the use of veto, whilst the Biden administration has made it official that “climate change will be the center of [U.S.] national security and foreign policy”,<sup>8</sup> despite the fact that exact mapping of this relationship remains elusive. Systemic and highly contextual lenses are needed to capture the whole set of direct and indirect channels and

- 1 Christian Almer and Stefan Boes, “Climate (Change) and Conflict: Resolving a Puzzle of Association and Causation”, *SSRN Electronic Journal*, 2012.
- 2 Daniel Abrahams and Edward R. Carr, “Understanding the Connections Between Climate Change and Conflict: Contributions from Geography and Political Ecology”, *Current Climate Change Reports*, Vol. 3, No. 4, 2017; Tor A. Benjaminsen *et al.*, “Does Climate Change Drive Land-use Conflicts in the Sahel?”, *Journal of Peace Research*, Vol. 49, No. 1, 2012; Ole Magnus Theisen, Nils Petter Gleditsch and Halvard Buhaug, “Is Climate Change a Driver of Armed Conflict?”, *Climatic Change*, Vol. 117, No. 3, 2013; Katharine J. Mach *et al.*, “Climate as a Risk Factor for Armed Conflict”, *Nature*, Vol. 571, 2019; Marshall B. Burke *et al.*, “Warming Increases the Risk of Civil War in Africa”, *PNAS*, Vol. 106, No. 49, 2009.
- 3 Clionadh Raleigh and Henrik Urdal, “Climate Change, Environmental Degradation and Armed Conflict”, *Political Geography*, Vol. 26, No. 6, 2007.
- 4 Hanne Seter, Ole Magnus Theisen and Janpeter Schilling, “All About Water and Land? Resource-Related Conflicts in East and West Africa Revisited”, *GeoJournal*, Vol. 83, No. 1, 2018; Nam Nguyen, Diego Osorio and Peter Läderach, “Policy Note 1: The Role of Climate and Food Systems Science in Conflict Prevention and Peacebuilding”, CGIAR Climate Security Webinar Series, August 2020, available at: <https://hdl.handle.net/10568/110941> (all internet references were accessed in April 2022); Claudia W. Sadoff, Edoardo Borgomeo and Dominick de Waal, *Turbulent Waters: Pursuing Water Security in Fragile Contexts*, Report, World Bank, Washington, DC, 2017; Christopher K. Butler and Scott Gates, “African Range Wars: Climate, Conflict, and Property Rights”, *Journal of Peace Research*, Vol. 49, No. 1, 2012.
- 5 Nina von Uexkull *et al.*, “Civil Conflict Sensitivity to Growing-Season Drought”, *PNAS*, Vol. 113, No. 44, 2016; Halvard Buhaug *et al.*, “Climate Variability, Food Production Shocks, and Violent Conflict in Sub-Saharan Africa”, *Environmental Research Letters*, Vol. 10, No. 12, 2015.
- 6 H. Seter, O. M. Theisen and J. Schilling, above note 4, p. 2; Nam Nguyen *et al.*, “Policy Note 4: Climate Security in the Sahel”, CGIAR Climate Security Webinar Series, November 2020, available at: <https://hdl.handle.net/10568/110944>.
- 7 United Nations Security Council, Chair’s Summary of the Open Debate of the Security Council Held on 25 January 2019 on the Subject “Addressing the Impacts of Climate-Related Disasters on International Peace and Security”, UN Doc. S/2019/113, 7 February 2019.
- 8 White House Briefing Room, “Remarks by President Biden Before Signing Executive Actions on Tackling Climate Change, Creating Jobs, and Restoring Scientific Integrity”, *Speeches and Remarks*, 27 January 2021, available at: <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/01/27/remarks-by-president-biden-before-signing-executive-actions-on-tackling-climate-change-creating-jobs-and-restoring-scientific-integrity/>.

feedback loops across different existing risks and insecurities to accurately represent the highly intertwined relationships across the entire climate–security nexus.

Often, the poorest and most marginalized groups in society are overexposed to climate hazards and suffer the most from the impact of social, economic and political insecurity.<sup>9</sup> The climate crisis is a multifaceted reality and, against this background, many pressing priorities, such as food security, adaptation, mitigation, economic growth and development, compete with each other. The disruptive effect of climate variability and change on food systems is particularly acute and constitutes a direct and tangible threat to livelihoods globally.<sup>10</sup> Food is a basic human need, and climate variability and change place it at risk for millions of people, which translates into potential pathways to conflict and violence. One can conclude that in the large spectrum from conflict prevention to peacebuilding, disruption of food systems and the ensuing devastating consequences for food security register as key elements within any conflict analysis or policy. This raises a fundamental question: Does current peace and conflict thinking integrate climate and food systems viewpoints? The answer is no or not enough. From a systemic perspective, the intricate linkages between climate, food systems and conflict call for a dynamic integration of diverse sources of knowledge to develop new strategies that address the root causes.<sup>11</sup> The strained resilience of vulnerable populations, exposed to higher risks of disease, insecurity, hunger and violence, requires new approaches to counter those trends.<sup>12</sup> Additionally, beyond the humanitarian realm,<sup>13</sup> the institutional security architecture overseeing climate dynamics,<sup>14</sup> and the policies it generates, should be adjusted to address the complexity of conflicts rooted in the lethal combination of climate and environmental changes and faulty governance.<sup>15</sup> Food systems in a climate crisis are a key component for the 21st century's peace and security operations, policy and finance.

The semi-arid transitional zone between the Sahara Desert and the savannas to the south, known as the Sahel, is one of the most fragile regions in the world.<sup>16</sup> The Organisation for Economic Co-operation and Development (OECD) comprehensively assesses the fragility of states in relation to political,

9 Clionadh Raleigh *et al.*, “Introducing ACLED: An Armed Conflict Location and Event Dataset: Special Data Feature”, *Journal of Peace Research*, Vol. 47, No. 5, 2010.

10 Ana Maria Loboguerrero *et al.*, “Perspective Article: Actions to Reconfigure Food Systems”, *Global Food Security*, Vol. 26, 2020.

11 Peter Läderach *et al.*, “Food Systems for Peace and Security in a Climate Crisis”, *The Lancet Planetary Health*, Vol. 5, No. 5, 2021.

12 H. Buhaug *et al.*, above note 5.

13 Bingying Liu, “Why the Climate Crisis is a Humanitarian Emergency”, *OCHA Exposure*, 27 January 2021, available at: <https://unocha.exposure.co/why-the-climate-crisis-is-a-humanitarian-emergency>.

14 Florian Krampe, *Climate Change, Peacebuilding, and Sustaining Peace*, Policy Brief, Stockholm International Peace Research Institute (SIPRI), Stockholm, 2019; Florian Krampe and Malin Mobjörk, “Responding to Climate-Related Security Risks: Reviewing Regional Organizations in Asia and Africa”, *Current Climate Change Reports*, Vol. 4, No. 4, 2018.

15 Tarek Ghani and Robert Malley, “Climate Change Doesn’t Have to Stoke Conflict”, *Foreign Affairs*, 28 September 2020, available at: <https://www.foreignaffairs.com/articles/ethiopia/2020-09-28/climate-change-doesnt-have-stoke-conflict>.

16 Laura Freeman, “Environmental Change, Migration, and Conflict in Africa: A Critical Examination of the Interconnections”, *Journal of Environment & Development*, Vol. 26, No. 4, 2017.

societal, security, environmental and economic fragility. The OECD characterizes all Sahelian countries bar Senegal as either fragile or extremely fragile.<sup>17</sup> There is a microcosm of localized conflict driven by natural resource scarcity and ethnic identities.<sup>18</sup> An overwhelming majority of conflicts along the semi-arid regions arise locally.<sup>19</sup> Increasingly variable seasonal weather cycles have pushed traditional herders and farmers of different ethnic groups towards the edge of their communal resilience.<sup>20</sup> The impact of climate variability on basic subsistence conditions first became apparent during the devastating twenty-five-year drought in the Sahel from 1968 to 1993, which destabilized rural livelihoods and sparked a major humanitarian crisis.<sup>21</sup> Food systems, including agriculture and livestock, are heavily reliant on sufficient precipitation, meaning that variability and climate extremes will contribute to crop failures and livestock deaths, causing economic losses and undermining food security<sup>22</sup> and may exacerbate tensions and conflicts.<sup>23</sup>

The objective of this paper is to demonstrate and discuss the importance of food systems under a climate crisis in exacerbating conflicts in the Sahelian region and propose interventions beyond and complementary to the usual military and security solutions. We firstly present climate hazard and exposure maps, climate and conflict hot spots maps and describe pathways on how climate exacerbates food systems and increases the potential for conflict and grievances. Secondly, we analyse existing peace indices, their shortcomings in addressing the climate and food systems dimension and how they compare to indices of food security, climate exposure and vulnerabilities, to showcase the importance for peace. Thirdly, we present examples of current research and development (R&D) in agricultural and food systems activities and their potential to strengthen resilience, peace and security across the Sahel. We conclude by classifying R&D agriculture and food systems activities according to their drivers of conflict.

## Results Chapter 1: Climate and food system drivers of conflict

### Sahel: A climate-stressed region

Agriculture and livelihoods in the Sahel are dangerously exposed to a plethora of climate hazards. To understand the extent to which different hazards occur across the Sahel under future climates, we mapped their occurrence using a combination

17 OECD, *State of Fragility 2020*, Report, OECD Publishing, Paris, 2020; Marie Trémolières, Olivier J. Walther and Steven M. Radil, *The Geography of Conflict in North and West Africa*, Report, OECD Publishing, Paris, 2020.

18 Carl-Friedrich Schleussner *et al.*, “Armed-Conflict Risks Enhanced by Climate-Related Disasters in Ethnically Fractionalised Countries”, *PNAS*, Vol. 113, No. 33, 2016.

19 K. J. Mach *et al.*, above note 2, p. 2; M. B. Burke *et al.*, above note 2, p. 2.

20 M. Trémolières, O. J. Walther and S. M. Radil, above note 17.

21 Epule Epule *et al.*, “The Causes, Effects and Challenges of Sahelian Droughts: A Critical Review”, *Regional Environmental Change*, Vol. 14, No. 1, 2014.

22 N. von Uexkull *et al.*, above note 5, p. 2.

23 M. B. Burke *et al.*, above note 2, p. 2.



of geospatial data and modelling approaches. We considered a total of four hazards, namely, drought, high temperatures, waterlogging, and precipitation extremes. Drought was calculated using the Thornthwaite aridity index (THAI) and the number of days with water stress (NDWS). Heat stress was computed using the number of days above 40°C (HTS, crops), the thermal–humidity index (THI, for cattle)<sup>24</sup> and the heat index (HI, for humans).<sup>25</sup> Waterlogging was computed as the number of days in which the soil is above field capacity (NDWL) using a simple water balance model<sup>26</sup> driven by daily meteorological data and soil hydrological properties (from SoilGrids1km).<sup>27</sup> Finally, precipitation extremes are calculated as the interannual coefficient of variation (CV) of total annual precipitation. All hazards were computed for the 2030s (2020–2049) for the representative concentration pathway 8.5 (RCP 8.5) using daily bias-corrected climate model data<sup>28</sup> with input daily historical data from Funk *et al.*<sup>29</sup> for precipitation and Funk *et al.*<sup>30</sup> for temperatures. For each hazard indicator we finally calculated the long-term average (2020–2049).

Figure 1 shows the overlay between all hazard indicators (Figure 1A), as well as specific combinations between these hazards (heat–drought in Figure 1B; drought–extremes in Figure 1C). For the spatial overlays, each indicator was first classified in four categories or stress levels (0: mild or no stress; 1: moderate; 2: severe; 3: extreme). For any pixel that contains either cropland (derived from MapSPAM),<sup>31</sup> cattle (derived from Gilbert *et al.*)<sup>32</sup> or human populations (derived from WorldPop.org, 2020), two indices were calculated: (i) the hazard score, corresponding to the average all six hazard indices and (ii) the hazard count, corresponding to the number of hazards that were in the severe and extreme categories. This resulted in the two geospatial layers that are plotted simultaneously in Figure 1A (using a bivariate choropleth map). For Figs. 1B and 1C heat stress (drought stress) was computed as the average of HTS, THI and HI (THAI and NDWS).

- 24 Jaber Rahimi *et al.*, “Will Dairy Cattle Production in West Africa be Challenged by Heat Stress in the Future?”, *Climatic Change*, Vol. 161, No. 4, 2020.
- 25 Colin Raymond, Tom Matthews and Radley M. Horton, “The Emergence of Heat and Humidity Too Severe for Human Tolerance”, *Science Advances*, Vol. 6, No. 19, 2020; Claudia Di Napoli *et al.*, “ERA5-HEAT: A Global Gridded Historical Dataset of Human Thermal Comfort Indices from Climate Reanalysis”, *Geoscience Data Journal*, Vol. 8, No. 1, 2021.
- 26 Peter G. Jones and Philip K. Thornton, “Croppers to Livestock Keepers: Livelihood Transitions to 2050 in Africa due to Climate Change”, *Environmental Science & Policy*, Vol. 12, No. 4, 2009.
- 27 Tomislav Hengl *et al.*, “SoilGrids1km — Global Soil Information Based on Automated Mapping”, *PLoS One*, Vol. 9, 2014.
- 28 Carlos Navarro-Racines *et al.*, “High-Resolution and Bias-Corrected CMIP5 Projections for Climate Change Impact Assessments”, *Scientific Data*, Vol. 7, 2020.
- 29 Chris Funk *et al.*, “The Climate Hazards Infrared Precipitation with Stations—A New Environmental Record for Monitoring Extremes”, *Scientific Data*, Vol. 2, 2015.
- 30 Chris Funk *et al.*, “A High-Resolution 1983–2016  $T_{\max}$  Climate Data Record Based on Infrared Temperatures and Stations by the Climate Hazard Center”, *Journal of Climate*, Vol. 32, No. 17, 2019.
- 31 Liangzhi You *et al.*, *Spatial Production Allocation Model (SPAM) 2010 v. 1.0*, Dataset, International Food Policy Research Institute (IFPRI) and International Institute for Applied Systems Analysis (IIASA), Washington, DC, 2014.
- 32 Marius Gilbert *et al.*, *Global Cattle Distribution in 2010 (5 Minutes of Arc)*, Dataset, Université Libre de Bruxelles/Food and Agriculture Organization, 2018; Marius Gilbert *et al.*, “Global Distribution Data for Cattle, Buffaloes, Horses, Sheep, Goats, Pigs, Chickens and Ducks in 2010”, *Scientific Data*, Vol. 5, 2018.

Fig. 1 - Colour online, B/W in print

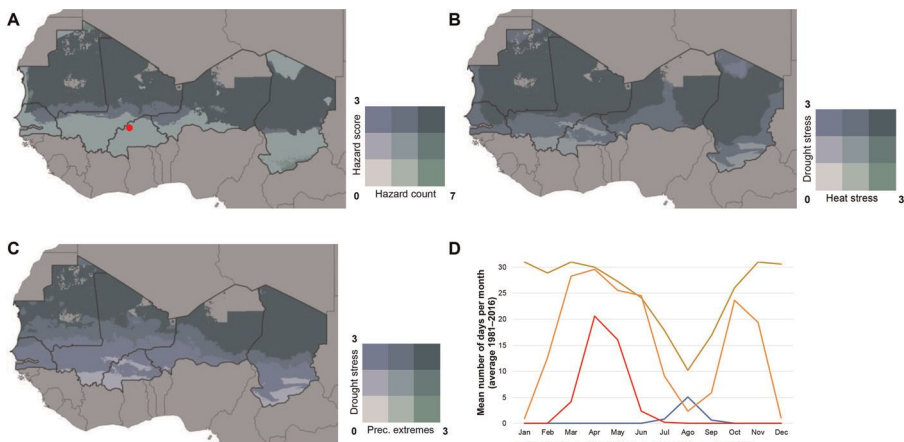


Figure 1. Geographic distribution of climate hazards across the Sahel. (A) Overlay of seven climate hazard variables in 2030 (representative concentration pathway (RCP) 8.5); (B) overlay between heat and drought stress occurrence in 2030 (RCP 8.5); (C) overlay between precipitation (Prec.) variability and drought stress occurrence in 2030 (RCP 8.5); and (D) long-term historical (1981–2016) average seasonal variation of heat, drought and waterlogging stress for an example location in Burkina Faso. Grey areas in panels A–C are either outside the Sahel or have no reported crops, livestock, or human population.

A substantial proportion of the Sahel shows co-occurrence of all the hazards analysed except waterlogging (dark blue and blue-green areas in Figure 1A). Especially for Mauritania, Mali, Niger and Chad, all these hazards have a severe intensity. Only in southern Chad is moderate waterlogging experienced. Drought and, to a lesser extent, excess water play an important role in determining crop productivity across the region because most (about 95%) of Sahelian food production occurs under rainfed conditions.<sup>33</sup> Across the Sahel, drought can affect up to 80% of the total geographic area and up to 50% of the arable land in any given year. Productivity reductions can be in the range 30–50%,<sup>34</sup> and crop failures are a common problem.<sup>35</sup> Temperature-driven reductions in crop photosynthesis and crop reproductive capacity can also negatively impact crop production.<sup>36</sup> We find that most of the Sahel experiences the co-occurrence of severe and extreme heat and drought stress (Figure 1B). A smaller,

33 Liangzhi You *et al.*, “What is the Irrigation Potential for Africa? A Combined Biophysical and Socioeconomic Approach”, *Food Policy*, Vol. 36, No. 6, 2011; Hua Xie *et al.*, “Can Sub-Saharan Africa Feed Itself? The Role of Irrigation Development in the Region’s Drylands for Food Security”, *Water International*, Vol. 43, No. 6, 2018.

34 Oscar Rojas, Anton Vrieling and Felix Rembold, “Assessing Drought Probability for Agricultural Areas in Africa with Coarse Resolution Remote Sensing Imagery”, *Remote Sensing of Environment*, Vol. 115, No. 2, 2011; Wonsik Kim, Toshichika Iizumi and Motoki Nishimori, “Global Patterns of Crop Production Losses Associated with Droughts from 1983 to 2009”, *Journal of Applied Meteorology and Climatology*, Vol. 58, No. 6, 2019.

35 B. Parkes, A. Challinor and K. Nicklin, “Crop Failure Rates in a Geoengineered Climate: Impact of Climate Change and Marine Cloud Brightening”, *Environmental Research Letters*, Vol. 10, No. 8, 2015.

36 Edmar I. Teixeira *et al.*, “Global Hot-Spots of Heat Stress on Agricultural Crops due to Climate Change”, *Agricultural and Forest Meteorology*, Vol. 170, 2013; Sharon M. Gourdjji, Adam M. Sibley and David

yet substantial, proportion of the region also experiences dangerous combinations of drought and precipitation extremes (Figure 1C).

Figure 1D provides an overview of the typical seasonal pattern of heat, drought and waterlogging stress using a representative location. In these climate-stressed areas, the West African monsoon brings seasonal rains starting around May and ending in September or October, whereas the rest of the year is extremely dry. Heat stress affects people and livestock during the dry months, but especially around April–May. The total number of days with temperatures above 40°C in these two months is about thirty-five days. Crops are planted around late May when the rains start, and temperatures allow farmers to work the land. However, many dry days at the start of the rainy period can lead to crop failure, with only a proportion of farmers able to re-plant. During the growing season (June–September) seasonal drought affects crops. During grain filling heat stress can affect crops, with up to twenty to twenty-five days with temperatures above 35°C. Heat stress can also at times affect farmers' harvesting activities through temperature discomfort.

These processes are driven by climate variability, which makes an impact on crop performance under often sub-optimal farm management and socio-economic vulnerability.<sup>37</sup> As a result, food and nutritional insecurity and poverty are highly prevalent across the rural population,<sup>38</sup> which can increase pressure on existing tensions and conflicts.<sup>39</sup>

## Climate and conflict hotspots in the Sahel

Conflict and climate variability are both processes with a spatial dimension and are independently linked to a number of complex and different drivers. Seter<sup>40</sup> highlights that quantitative frameworks for understanding the climate–conflict nexus are underdeveloped. In an analysis of climate and conflict in East Africa, O'Loughlin *et al.*<sup>41</sup> note that while the association between temperature and precipitation variability is statistically significant, climate variables alone do not adequately consider the range of contributing factors and thus offer only moderate predictive value. Nevertheless, with 8379 total reported conflict events and 28,483 reported fatalities in the period 1997–2020 (2324 events and 6973 fatalities in 2020 alone), violence in the six Sahelian countries is clearly a prominent issue.<sup>42</sup> Mali,

B. Lobell, "Global Crop Exposure to Critical High Temperatures in the Reproductive Period: Historical Trends and Future Projections", *Environmental Research Letters*, Vol. 8, No. 2, 2013.

37 Emily Boyd *et al.*, "Building Resilience to Face Recurring Environmental Crisis in African Sahel", *Nature Climate Change*, Vol. 3, 2013.

38 Thomas Reardon, Peter Matlon and Christopher Delgado, "Coping with Household-Level Food Insecurity in Drought-Affected Areas of Burkina Faso", *World Development*, Vol. 16, No. 9, 1988; Michael J. Mortimore and William M. Adams, "Farmer Adaptation, Change and 'Crisis' in the Sahel", *Global Environmental Change*, Vol. 11, No. 1, 2001.

39 H. Buhaug *et al.*, above note 5, p. 2.

40 Hanne Seter, "Connecting Climate Variability and Conflict: Implications for Empirical Testing", *Political Geography*, Vol. 53, 2016.

41 John O'Loughlin *et al.*, "Climate Variability and Conflict Risk in East Africa, 1990–2009", *PNAS*, Vol. 109, No. 45, 2012.

42 C. Raleigh *et al.*, above note 9.

with around one-third of the events and fatalities (3659 events and 10,430 fatalities) over the period 1997–2020, shows the greatest conflict prevalence, followed (in terms of fatalities) by Chad and Niger (7529 and 4462, respectively). The question is, however, to what extent these conflict events are associated with climatic conditions, including specific associations with extreme events?

Using data from the Armed Conflict Location & Event Data (ACLED) project dataset, we developed an analysis to assess where the occurrence of violent events corresponded to areas of high climate variability. The basic premise of this analysis was to help understand whether climate variability could be a factor in precipitating violence due to the secondary effects of climate variability on food systems (e.g. lower agricultural productivity, unstable food supply, reduced accessibility to markets). Climate variability is measured using the long-term (1981–2015) CV of annual rainfall, computed as the ratio between the standard deviation and the mean of the long-term rainfall. The occurrence of violent events is assessed by counting the number of fatalities falling in each cell of a gridded surface at approximately 55 x 55 km resolution (0.5 degrees). Areas where high numbers of fatal events coincide with high levels of climate variability are then coded as “moderate”, “high” and “extreme” based on geometrical intervals calculated by minimizing the sum of the squares between each of the three classes.

State governance mechanisms were always low or minimal (in modern state terms), partly due to environmental and geographical challenges, partly due to colonization. However, progressing climate variability and change are threat multipliers that can further exacerbate drivers and mechanisms of conflict throughout the food systems. The majority of the hotspot areas fall within a band of medium levels of precipitation variability (15–25%) along the southern boundary of the Sahel (Figure 2). This association is particularly prevalent in southern Senegal, central Mali, and continues along the southern border of Niger and traversing south-central Chad. The Mali war (2012–present), the Chadian civil war (2005–2010), Tuareg rebellion in Niger (2007–2009), the Boko Haram insurgency (2009–present) and the Casamance conflict (1982–2014) are amongst the main conflict events in these conflict–climate hotspots. The area around Lake Chad is of particular relevance as the most extreme cluster of fatal violent events and the subject of United Nations censure in 2020. This area is, likewise, an area of high climate variability and is a known centre of drought and other observable impacts of climate change.

While there are violent events occurring throughout the range of observed climatic variation, and the causes of conflict are varied, the concentration of violent events in areas of high climate variability does suggest that climate and conflict are linked. In most Sahelian countries, where conflict arises because of armed clashes between government military forces and insurgent groups, climate has the potential to exacerbate food insecurity, poverty and famine even further. In the Lake Chad area, for instance, the climate conditions compound the challenges of internally displaced peoples and these groups are then more readily targeted by a variety of armed groups. In addition to political or socio-economic marginalization, these conditions also have the potential for negative feedback loops that result in even more conflict, as families are disrupted, and rural youth

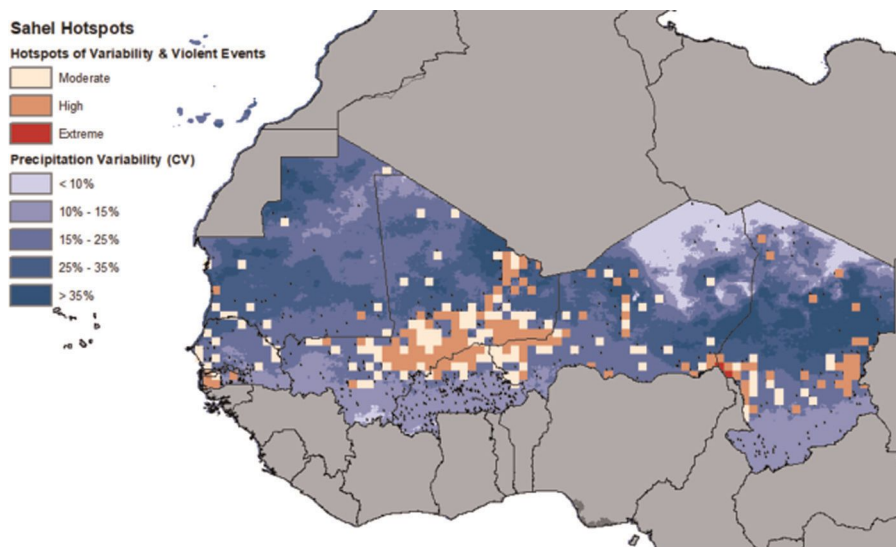


Figure 2. Co-occurrence of climate variability and conflict.

are drawn in or forcefully recruited into different terrorist and insurgent groups. Building an evidence base to identify the specific actions that increase resilience to climate variability and change and enhance food security and nutrition, and make communities more resilient to conflict, is therefore needed.

### Pathways through which climate and conflict relate

Previously we have mentioned the importance of socio-economic and political factors in the outbreaks of conflict where climate hazards can act as threat multipliers. An emerging question is what do the pathways through which climate and conflict relate look like and where should we place the intermediate role of food systems?

We observe that environmental scarcity is fuelled by climate variability and change and can cause rent-seeking behaviour and competition, creating conflict and violence over scarcer resources.<sup>43</sup> In addition, many political ecology scholars started stressing the importance of other drivers such as instability, poor governance and other location-specific social and political factors as confounding elements that could explain the resource scarcity–conflict nexus.<sup>44</sup> Also, food

43 Thomas F. Homer-Dixon, “Environmental Scarcities and Violent Conflict: Evidence from Cases”, *International Security*, Vol. 19, No. 1, 1994; Vally Koubi, “Climate Change and Conflict”, *Annual Review of Political Science*, Vol. 22, 2019; Clionadh Raleigh and Dominic Kniveton, “Come Rain or Shine: An Analysis of Conflict and Climate Variability in East Africa”, *Journal of Peace Research*, Vol. 49, No. 1, 2012.

44 Jon Barnett and W. Neil Adger, “Climate Change, Human Security and Violent Conflict”, *Political Geography*, Vol. 26, No. 6, 2007; Clionadh Raleigh, Andrew Linke and John O’Loughlin, “Extreme Temperatures and Violence”, *Nature Climate Change*, Vol. 4, No. 2, 2014.

security has been suggested as an important driver connecting climate change to conflict.<sup>45</sup> The complex relationship is represented in Figure 3, presenting the aforementioned factors in greater detail. In the next paragraphs, we explain in detail how this complexity unravels across the identified drivers with specific examples from the Sahel region.

In the most recent reviews of the scattered literature on the mechanisms connecting climate change and conflict it appears that there is wide agreement about climate and conflict being linked through economic outcomes and migration.<sup>46</sup> Scheffran *et al.*<sup>47</sup> outlined that climate can indirectly affect the likelihood of conflict outbreaks through multiple channels such as water scarcity, crop failures, human migration and institutional effectiveness. Specifically, in agricultural households, climate variability and extreme weather events are likely to affect incomes through reduced agricultural outputs,<sup>48</sup> as is displayed in Figure 3. Existing empirical research suggests that adverse climate impacts affecting food and livestock prices in sub-Saharan Africa can lead to low-level political violence, for example, protests and riots, specifically in urban areas where cheap substitutes are absent.<sup>49</sup> Additionally, climate-induced migration can burden competition over resources such as land, employment, education, health care and social services and possibly cause ethnic tensions.<sup>50</sup> Conflicts in the Sahel are usually in connection with many different intertwined institutional drivers, among which governance, discrimination against groups with weaker political and economic positions, and ethnic and religious factors all come into play (see Figure 3, “Institutional Drivers” box), with climate change increasingly acting as an amplifier that contributes to trigger violence.<sup>51</sup> Elite exploitation is another mediating mechanism discussed in studies on climate–conflict links.<sup>52</sup>

45 Cullen Hendrix and Henk-Jan Brinkman, “Food Insecurity and Conflict Dynamics: Causal Linkages and Complex Feedbacks”, *International Journal of Security & Development*, Vol. 2, No. 2, 2013; Charles P. Martin-Shields and Wolfgang Stojetz, “Food Security and Conflict: Empirical Challenges and Future Opportunities for Research and Policymaking on Food Security and Conflict”, *World Development*, Vol. 119, 2019; Clionadh Raleigh, Hyun Choi and Dominic Kniveton, “The Devil is in the Details: An Investigation of the Relationships between Conflict, Food Price and Climate Across Africa”, *Global Environmental Change*, Vol. 32, 2015.

46 V. Koubi, above note 43, p. 11; Edward Miguel, Shanker Satyanath and Ernest Sergenti, “Economic Shocks and Civil Conflict: An Instrumental Variables Approach”, *Journal of Political Economy*, Vol. 112, No. 4, 2004.

47 Jürgen Scheffran *et al.*, “Climate Change and Violent Conflict”, *Science*, Vol. 336, No. 6083, 2012.

48 Ereto Dal Bó and Pedro Dal Bó, “Workers, Warriors, and Criminals: Social Conflict in General Equilibrium”, *Journal of the European Economic Association*, Vol. 9, No. 4, 2011.

49 V. Koubi, above note 43, p. 11; Jean-François Maystadt and Olivier Ecker, “Extreme Weather and Civil War: Does Drought Fuel Conflict in Somalia through Livestock Price Shocks?”, *American Journal of Agricultural Economics*, Vol. 96, No. 4, 2014; C. Raleigh, A. Linke and J. O’Loughlin, above note 44, p. 11.

50 Michael Brzoska and Christiane Fröhlich, “Climate Change, Migration and Violent Conflict: Vulnerabilities, Pathways and Adaptation Strategies”, *Migration and Development*, Vol. 5, No. 2, 2016; Rafael Reuveny, “Climate Change-induced Migration and Violent Conflict”, *Political Geography*, Vol. 26, No. 6, 2007.

51 Ahmadou Aly Mbaye, “Climate Change, Livelihoods, and Conflict in the Sahel”, *Georgetown Journal of International Affairs*, Vol. 21, 2020.

52 C. Raleigh and D. Kniveton, above note 43, p. 11.



Fig. 3 - Colour online, B/W in print

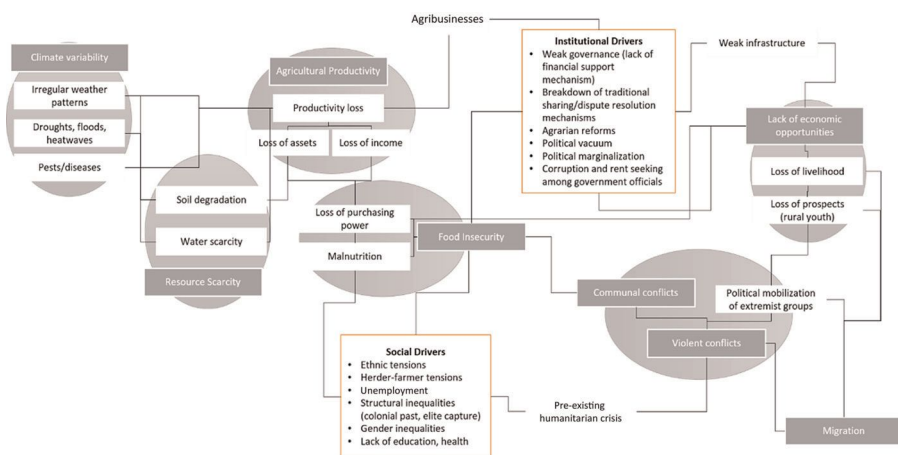


Figure 3. Pathways showing climate and food system dynamics as drivers of conflict.

In the Sahel, many case studies have investigated communal violence, encompassing farmer–herder (pastoralist) events, sometimes escalating into insurgent activities. Communal conflict is more likely in wetter periods than in drier periods, where increasing water scarcity, and largely pre-existing poverty and ethnic divisions can serve as key drivers.<sup>53</sup> For example, in South Sudan, “droughts led to increasing crop failure, shrinking availability of pasture, both of which have resulted in forced migration for cattle herders to locations with more abundant resources; however, these places are already occupied and consequently led to violent conflict”.<sup>54</sup> This trend is exacerbated by cattle-rustling and ethnic tensions, as well as the interaction with persisting social problems, which are outlined in more detail in Figure 3, in the “Social Drivers” box. The vulnerability of herders is seeded in these drivers.

Looking at more insights from the region, for example, in Sudan, commercial farming (in Figure 3, Agribusinesses) displaced peasants and pastoralists. Also there is the Darfur conflict, which is partly driven by ethnic disputes, “with mounted pastoralists (mostly Arab tribes supported by the government) preying on non-Arab refugees displaced from their farming lands by drought, linked to climate change”<sup>55</sup> as well as due to the development of commercial farming in the Nile basin.<sup>56</sup> In northern Mali and Niger, Tuareg communities have

53 Hanne Fjelde and Nina von Uexkull, “Climate Triggers: Rainfall Anomalies, Vulnerability and Communal Conflict in Sub-Saharan Africa”, *Political Geography*, Vol. 31, No. 7, 2012; Cullen Hendrix and Idean Salehyan, *Climate Shocks and Political Violence: Annual Convention of the International Studies Association*, San Diego, 2012; C. Raleigh and D. Kniveton, above note 43, p. 11.

54 Tamela Knight, “Climate Change and Violent Conflicts”, *Peace Review*, Vol. 25, No. 1, 2013.

55 Jeffrey McNeely, “Climate Change, Natural Resources, and Conflict: A Contribution to the Ecology of Warfare”, in Gary Machlis, Thor Hanson, Dravko Špirić and Jean McKendry (eds), *Warfare*, Springer, Dordrecht, 2011.

56 Ashok Swain, “Challenges for Water Sharing in the Nile Basin: Changing Geo-Politics and Changing Climate”, *Hydrological Sciences Journal*, Vol. 56, No. 4, 2011.



occupied the zone for a long time and follow a history of rebellions against colonizers and central governments, being an example of political marginalization contributing to onsets of conflicts as well as the potential exacerbating effect that desertification can have.<sup>57</sup> In another case study in the inland delta of the Niger river in Mali, it was found that the main mechanisms are related to structural factors that could be considered as the main drivers behind local conflicts. The drivers are the dominance of agricultural reform bringing restricted mobility for pastoralists, political negligence and rent seeking, and corruption among officials.<sup>58</sup> The agricultural mismatch is argued to result from an ongoing process of pastoral marginalization and wider underestimation of pastoral productivity as well as pastoralists' contribution to the national economy.<sup>59</sup> An example from Northern Cameroon shows also the effects of farmer and herder conflict and how this can have negative feedback effects due to the conflict.<sup>60</sup> Such effects are reduced income and negative effects on livelihoods leading to families taking out their children from school as payment becomes difficult. Further costs for court cases to resolve conflict are high, and the lack of financial means can lead to food insecurity and issues if hospital costs need to be paid.<sup>61</sup> Finally, in Northwest Cameroon, Mbih<sup>62</sup> shows that historical and political–ecological factors from colonial administrations are the main cause of conflict, as well as religious and ethnic difference. In Cameroon, “wealthy livestock owners have been involved in communal land grabbing and the irrational use of the commons while taking advantage of the complicated and weak land tenure policy”.<sup>63</sup>

In summary, functioning food systems and food security in the region are critical intermediate components through which the exacerbating effect of climate variability and change on conflict can be alleviated, as well as being complemented by reducing poverty and providing resilience to weak institutions. We suggest that the impact of climate mitigation and adaptation efforts complementing interventions strengthening food systems and their climate resilience can have a compounding effect on the ultimate degree of success of

57 J. McNeely, above note 55, p. 13; Tor A. Benjaminsen, “Does Supply-induced Scarcity Drive Violent Conflicts in the African Sahel? The Case of the Tuareg Rebellion in Northern Mali”, *Journal of Peace Research*, Vol. 45, No. 6, 2008.

58 T. A. Benjaminsen *et al.*, above note 2, p. 2.

59 Tor A. Benjaminsen and Boubacar Ba, “Farmer–Herder Conflicts, Pastoral Marginalisation and Corruption: A Case Study from the Inland Niger Delta of Mali”, *The Geographical Journal*, Vol. 175, No. 1, 2009; Tor Arve Benjaminsen, Faustin P. Maganga and Jumanne Moshi Abdallah, “The Kilosa Killings: Political Ecology of a Farmer–Herder Conflict in Tanzania”, *Development and Change*, Vol. 40, No. 3, 2009; Angelo Bonfiglioli and Carol Watson, *Pastoralists at a Crossroads: Survival and Development Issues in African Pastoralism*, Report, NOPA, Nairobi, 1992; Ced Hesse and James MacGregor, *Pastoralism: Drylands' Invisible Asset? Developing a Framework for Assessing the Value of Pastoralism in East Africa*, Issue Paper No. 142, IIED, London, 2006.

60 Valentine Asong Tellen, Juliana Adjem Anchang and Martin Shu, *Conflicts Over Land and Pasture in North West Cameroon: Listening to the Voices of Farmers and Grazers*, Working Report, Pan African Institute for Development – West Africa (PAID-WA), Buea, Cameroon, 2016.

61 *Ibid.*, p. 13.

62 Richard Mbih, “The Politics of Farmer–Herder Conflicts and Alternative Conflict Management in Northwest Cameroon”, *African Geographical Review*, Vol. 39, No. 4, 2020.

63 *Ibid.*, p. 14.

peacebuilding efforts and should therefore be embedded in current security operations to prevent conflicts and contribute to peace.

## **Results Chapter 2: How do existing peace indicators capture climate security for the Sahel?**

Many measures and indices of peace and security have been developed throughout the years. The Global Peace Index (GPI), by the Institute for Economics & Peace (IEP), for instance, is an annual measure of negative peace (NP) – the absence of violence – ranking 163 states and territories according to their peacefulness levels. States are evaluated using both quantitative and qualitative methods covering three criteria (ongoing domestic and international conflict, societal safety and security, and militarization) and twenty-three indicators.<sup>64</sup>

The IEP also produces a measure of positive peace (PP), the Positive Peace Index (PPI).<sup>65</sup> The PPI is composed of eight main pillars: well-functioning government, sound business environment, acceptance of the rights of others, free flow of information, high levels of human capital, low level of corruption and equitable redistribution of resources. The IEP defines PP as a proxy for the country-level socio-economic resilience, or in other words the buffer against which instabilities and risks are mitigated and neutralized for a sustained peaceful society.

Positive peace, defined as “the attitudes, institutions & structures that create and sustain peaceful societies”<sup>66</sup> and NP, defined as “the absence of violence or fear of violence”,<sup>67</sup> are assumed to be complementary and mutually reinforcing dynamics. The most peaceful countries are bound to have high PP, as good governance, social and institutional infrastructure, and systems can reduce the chance of the insurgence of tensions and insecurities. On the other hand, NP contributes to the stability of national institutions and systems that contributes to PP. Therefore, there exists a positive correlation between the two measures of peace. Furthermore, the IEP argues that PP and NP in combination lead to sustainable peace, after which a state is highly unlikely to fall into future conflicts.

The IEP has only recently started recognizing the growing threat of environmental change to security. The 2019 GPI report notes that although long-term quantitative data on the interactions between climate change and peace are lacking, “climate change can indirectly increase the likelihood of violent conflict through its impacts on resource availability, livelihood, security and migration”.<sup>68</sup> The report also notes that “in 2017, 61.5 percent of total displacements were due to climate-related disasters, while 38.5 percent were caused by armed

64 IEP, *Global Peace Index 2020: Measuring Peace in a Complex World*, IEP, Sydney, June 2020, available at: [https://www.visionofhumanity.org/wp-content/uploads/2020/10/GPI\\_2020\\_web.pdf](https://www.visionofhumanity.org/wp-content/uploads/2020/10/GPI_2020_web.pdf).

65 *Ibid.*, p. 54.

66 *Ibid.*

67 *Ibid.*

68 IEP, *Global Peace Index 2019: Measuring Peace in a Complex World*, IEP, Sydney, June 2019, p. 3, available at: <https://www.visionofhumanity.org/wp-content/uploads/2020/10/GPI-2019web.pdf>.

conflict”,<sup>69</sup> asserting that climate-induced migration is likely to become a source of both internal and international conflict, as internal migration may lead to competition for resources and tension between neighbouring communities, and the host states of international migrants may not have the institutions and mechanisms in place to receive large numbers of climate migrants.<sup>70</sup>

In 2020, the IEP also launched an Ecological Threat Register, which estimates the likelihood of the occurrence of ecological risks for 157 independent states and territories until 2050. These threats include population growth, water stress, food insecurity and specific climate hazards. In their inaugural report, the IEP shows that 141 countries will be exposed to at least one ecological threat by 2050 and that more than half of these countries are in sub-Saharan Africa. The report also clearly recognizes that ecological threats and climate change “pose serious challenges to global development and peacefulness”.<sup>71</sup> Despite the increased acknowledgement of the role that climate can exert on violence, conflicts and insecurity, neither the GPI nor the PPI accurately measures the change, variability and impact of climate or relate these to their NP and PP indicators.<sup>72</sup>

Table 1 shows the ranking of the top twenty most peaceful ( $GPI \leq 20$ ) countries in Africa across resilience (PPI), climate risks, socio-economic existing insecurities, and coping capacity to climate impacts. Table 1 shows that thirteen out of the top twenty most peaceful countries in Africa and eight out of nine countries in the Sahel are exposed to medium (red) or high risks (dark red) of natural hazards. The Gambia is the only country in the Sahel with a low risk of natural hazards (white cell). Of these countries, eighteen have medium or high exposure to floods (nine in the Sahel); twelve have medium or high exposure to drought (six in the Sahel). Exposure to floods and droughts is widespread among both groups of countries although higher risks are seen in Sahelian countries. However, the coping capacity of countries both in the Sahel and Africa is not currently strong enough to face those phenomena. A total of nineteen out of the twenty most peaceful countries in Africa and nine out of nine in the Sahel have a medium or low coping capacity, with Mauritius being the only country with a high level of coping capacity. This shows that low levels of climate resilience do not match the high level of exposure to climate hazards even in these countries. The significant exposure to climate risks also does not match the strength of institutions and systems that ought to buffer existing insecurities (PP). Only six out of the twenty most peaceful countries in Africa, as measured by the GPI, have high levels of PP (white cells) while Senegal is the only country with high levels of PP in the Sahel. We can then observe that there is an overall trend in Africa of countries being considerably exposed to climate risks while not having high levels of coping capacity and socio-economic resilience (PP) and this trend is considerably worse in the Sahel.

69 *Ibid.*, p. 15.

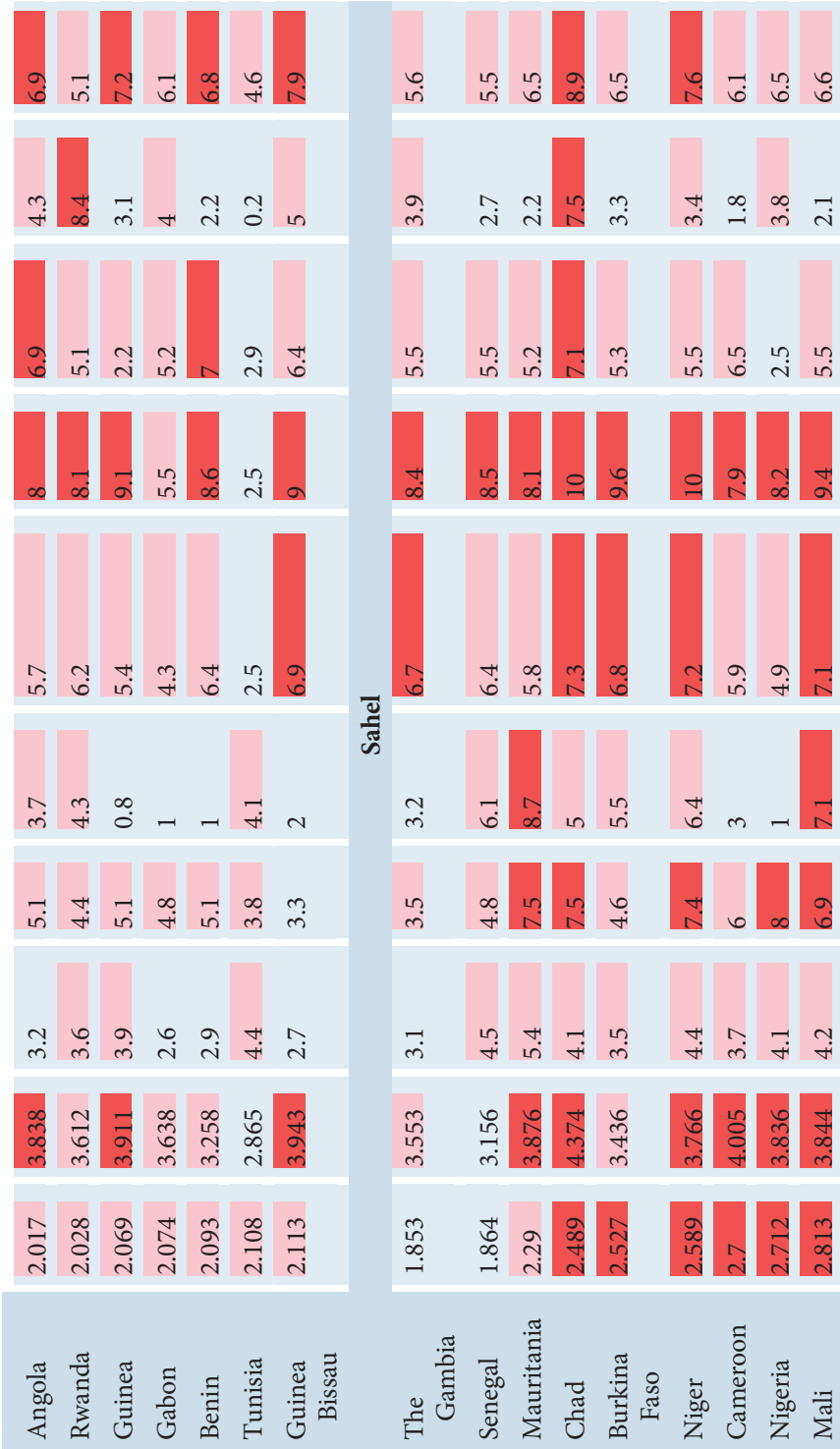
70 *Ibid.*

71 IEP, *Ecological Threat Register 2020: Understanding Ecological Threats, Resilience and Peace*, IEP, Sydney, September 2020.

72 Edward D. Lee *et al.*, “Scaling Theory of Armed Conflict Avalanches”, *Physical Review E*, Vol. 102, No. 4, 2020.

Table 1. Indicators of coping capacity, socio-economic resilience and existing climate-vulnerable risks in the twenty most peaceful countries in Africa and in the Sahel

Country	GPI (2021)	PPI (2022)	Natural hazards	Flood	Drought	Socio- economic vulnerabilities	Poverty	Inequality	Food security	Lack of coping capacity
	1-5	1-5	0-10	0-10	0-10	0-10	0-10	0-10	0-10	0-10
Score	Africa									
Mauritius	1.592	2.572	3.7	0.1	0.8	2	1.9	3.8	1.8	2.8
Ghana	1.715	2.986	3.8	4.9	1.5	5.3	7	5.9	1.3	5.1
Botswana	1.753	2.686	2.8	4.8	5.5	4.5	5.4	6.7	7.3	4.6
Sierra Leone	1.813	3.576	4	4.6	1	7	9.1	5.7	6.6	6.9
Tanzania	1.892	3.503	5.2	5.8	5.2	5.9	8.3	5.7	6	6.3
Malawi	1.909	3.627	4.6	5.3	5.9	6.7	8.6	6.2	4.1	6.4
Equatorial Guinea	1.915	4.077	2.9	4.4	3.4	4.2	6.2	x	7.5	7.3
Namibia	1.927	3.081	4.5	6.1	9.2	5.5	7	7.2	5.1	5
Eswatini	1.955	3.657	2.5	4.2	5.1	5.5	6.5	7.5	3.7	5.5
Madagascar	1.963	3.663	6.2	7.2	4.7	5.9	8.7	4.4	9.2	7
Zambia	1.964	3.594	3.6	5.5	4.4	6.2	7.8	7.6	7.5	6
Liberia	1.998	3.718	4	6.2	0.5	7.3	8.9	5.7	8.6	7.8
Morocco	2.015	3.177	4.6	5.8	5.2	4.4	5.9	4.9	0.4	4.7



The colouring is based on the specific scale used by the 2021 GPI,<sup>73</sup> the 2022 PPI<sup>74</sup> and the 2022 INFORM Risk Index<sup>75</sup> to establish low, medium or high levels of peace and risk. Dark red is used for low levels of peace of the GPI (above 2.35) and the PPI (above 3.66); light red for medium levels of peace of the GPI (between 1.9 and 2.35) and the PPI (between 3.18 and 3.66); white for high levels of peace of the GPI (below 1.9) and the PPI (below 3.18). In the rest of the indicators, extracted from the INFORM Risk Index, dark red shows high risk (above 6.66), light red shows medium risk (between 3.33 and 6.66) and white shows low risk (below 3.33).

Table 1 also reports the level of other existing insecurities present in the twenty most peaceful countries in Africa and in the Sahel. The results show that in Africa, eighteen countries experience medium or high levels of socio-economic vulnerabilities, including eighteen countries with medium or high levels of poverty, fourteen with medium or high levels of food insecurity, and eighteen with medium or high levels of inequality. Similarly, in the Sahel, all nine countries have medium or high levels of socio-economic vulnerabilities and high levels of poverty; eight countries have medium or high levels of inequality; and four countries have medium or high levels of food insecurity.

In summary, high exposure to climate impacts, high socio-economic insecurities that are vulnerable to climate impacts, and low preparedness and resilience to climate shocks suggest that even the most peaceful countries are not safe in the context of a climate crisis (see Table 2 for the level of natural hazard preparedness of the most resilient countries). This is because climate can exacerbate existing risks and insecurities that can lead to the insurgence of tensions, fragility and conflicts. The speed and likelihood of the occurrence of insecurities and conflicts might depend on how big climate impacts are and on how strong the multiplier effect of climate on other insecurities is. Nonetheless, the most common measures of peace and security do not adequately address the role of the climate crisis. To ensure that policy makers are correctly informed on the widespread risks, it is, therefore, imperative to thoroughly review the way peace and security are measured. More explicit understanding of the level of exposure to climate hazards and their impact on existing insecurities must become an integral part of the measurement of peace and security.

### **Results Chapter 3: The importance of investing in climate adaptation of food systems to ensure peace and security**

Agricultural R&D is central for sustainable food systems and can be a critical driver for peace and security. An effective R&D system allows: (1) the development and piloting of targeted innovations that address existing needs and constraints; (2) the deployment of such innovations at the scale required to contribute to poverty alleviation, food security and overall economic growth. Based on a compilation of 376 individual estimates of internal rates of return (IRR –the annual rate of

73 Institute for Economics & Peace, *Global Peace Index 2021: Measuring Peace in a Complex World*, Sydney, June 2021, available at: <https://www.visionofhumanity.org/wp-content/uploads/2021/06/GPI-2021-web-1.pdf>.

74 Institute for Economics & Peace, *Positive Peace Report 2022: Analysing the Factors that Build, Predict and Sustain Peace*, Sydney, January 2022, available at: <https://www.visionofhumanity.org/wp-content/uploads/2022/02/PPR-2022-web-1.pdf>.

75 European Commission, *INFORM Risk Index 2022*, available at: <https://drmkc.jrc.ec.europa.eu/inform-index/INFORM-Risk/Results-and-data/moduleId/1782/id/433/controller/Admin/action/Results>.



Table 2. *Level of natural hazard preparedness of the most resilient countries as ranked by the 2019 PPI*

Country	PPI	DRR
Rank/Score	1-50	1-10
<b>Africa</b>		
Mauritius	1	3.3
Botswana	2	5.6
Tunisia	3	6.4
Namibia	4	4.3
Morocco	5	5.6
Ghana	6	3.4
South Africa	7	3.9
Senegal	8	4.7
Rwanda	9	3
Gabon	10	6.7
Lesotho	11	8.4
Tanzania	12	3.5
Algeria	13	3.5
Benin	14	5.5
Eswatini	15	4.4
Gambia	16	3
Burkina Faso	17	3.2
Malawi	18	4
Zambia	19	3.5
Djibouti	20	5.5
<b>Sahel</b>		
Senegal	8	4.7
Gambia	16	3
Burkina Faso	17	3.2
Mali	32	4.9
Niger	33	5.3

*Continued*

TABLE 2.  
Continued

Country Rank/Score	PPI 1-50	DRR 1-10
Cameroon	34	2.6
Nigeria	35	2.8
Mauritania	38	4.8
Chad	47	x

The values in red are lower than the average. The ranking scores are estimated by the authors using the 2019 PPI<sup>76</sup> and the 2021 INFORM risk data (disaster risk reduction; DRR).<sup>77</sup>

growth for an investment) for agricultural R&D, Pardey *et al.*<sup>78</sup> report a median IRR of 35% (standard deviation = 38.5%) across sub-Saharan African countries. Sahelian countries (range 30–100%), and especially Chad and Burkina Faso (with IRR > 60%), show the largest returns. For CGIAR research, a recent analysis reported a mean cost–benefit ratio of 1:12, compared to an average of 1:10 of non-CGIAR research.<sup>79</sup> These figures provide a clear picture of the substantial returns on investment for agricultural R&D. The problem is that overall agricultural R&D investment is very low in sub-Saharan Africa (3.9% of the global total).<sup>80</sup> Furthermore, the IRR or investment return figures do not specifically separate R&D for climate change adaptation, nor do they provide an indication of the social contribution to peacebuilding and security. Agricultural R&D activities vary widely by type (i.e. applied research, basic research, extension, or combinations of these) and also in terms of region and farming system targets. Investments in agricultural R&D focused on climate adaptation can target the development of climate-resilient varieties,<sup>81</sup> the implementation of climate-smart agricultural practices,<sup>82</sup>

76 Institute for Economics & Peace, *Positive Peace Report 2019: Analysing the Factors that Sustain Peace*, Sydney, October 2019, available at: <https://www.visionofhumanity.org/wp-content/uploads/2020/10/PPR-2019-web.pdf>.

77 European Commission, *INFORM Risk Data*, available at: <https://drmkc.jrc.ec.europa.eu/inform-index/INFORM-Risk/Results-and-data/moduleId/1782/id/419/controller/Admin/action/Results>.

78 Philip G. Pardey *et al.*, “Returns to Food and Agricultural R&D Investments in Sub-Saharan Africa, 1975–2014”, *Food Policy*, Vol. 65, 2016.

79 Julian M. Alston, Philip G. Pardey and Xudong Rao, *The Payoff to Investing in CGIAR Research*, Report, SoAR Foundation, Arlington, VA, October 2020, available at: [https://supportagresearch.org/assets/pdf/Payoff\\_to\\_Investing\\_in\\_CGIAR\\_Research\\_final\\_October\\_2020.pdf](https://supportagresearch.org/assets/pdf/Payoff_to_Investing_in_CGIAR_Research_final_October_2020.pdf).

80 P. G. Pardey *et al.*, above note 78.

81 Julian Ramirez-Villegas *et al.*, “CGIAR Modeling Approaches for Resource-constrained Scenarios: I. Accelerating Crop Breeding for a Changing Climate”, *Crop Science*, Vol. 60, No. 2, 2020.

82 Arun Khatri-Chhetri *et al.*, “Farmers’ Prioritization of Climate-Smart Agriculture (CSA) Technologies”, *Agricultural Systems*, Vol. 151, 2017; Nadine Andrieu *et al.*, “Ex Ante Mapping of Favorable Zones for Uptake of Climate-Smart Agricultural Practices: A Case Study in West Africa”, *Environmental Development*, 2020, available at: <https://doi.org/10.1016/j.envdev.2020.100566>.

information services for better agronomy and climate risk management,<sup>83</sup> insurance to transfer risks<sup>84</sup> and financing options.<sup>85</sup>

This section reviews specific R&D activities across the Sahel and discusses potential ways in which they have contributed to food security and peacebuilding. The list of examples is not exhaustive but showcases some of the main R&D activities currently implemented.

## Climate-sensitive crop improvement

Crop-improvement networks have played an important role in increasing crop productivity levels and reducing food insecurity and poverty.<sup>86</sup> Garbero *et al.*<sup>87</sup> assessed the overall impact of CGIAR improved seeds interventions between 2007 and 2015 and found that improved varieties reduced poverty by 4% (although this finding is not statistically significant), increased income by 35% and increased expenditure by 14% in adopting households in rural areas.

Climate-sensitive crop improvement, also referred to as climate-smart breeding, seeks to develop novel crop varieties that are adapted to the set of stresses that are expected in the future.<sup>88</sup> Model-based analyses suggest that productivity gains from climate-smart breeding can be in the range of 10–50% under climate change.<sup>89</sup> Many efforts are already ongoing across sub-Saharan Africa to develop and promote the adoption of climate-resilient varieties, especially targeting drought, heat, flooding and salinity tolerance. Despite adoption constraints, these varieties are already being adopted by small-scale producers.<sup>90</sup>

An evaluation of the potential impacts of the Drought Tolerant Maize for Africa (DTMA) project (a CGIAR-led breeding effort in thirteen countries of eastern, southern and western Africa) estimates that economic and poverty

83 Catherine Vaughan *et al.*, “Evaluating Agricultural Weather and Climate Services in Africa: Evidence, Methods, and a Learning Agenda”, *Wiley Interdisciplinary Reviews: Climate Change*, Vol. 10, No. 9, 2019; Steven Sotelo *et al.*, “Pronosticos AClimateColombia: A System for the Provision of Information for Climate Risk Reduction in Colombia”, *Computer and Electronics in Agriculture*, Vol. 174, 2020.

84 James W. Hansen *et al.*, “Climate Services Can Support African Farmers’ Context-Specific Adaptation Needs at Scale”, *Frontiers in Sustainable Food Systems*, Vol. 3, 2019.

85 Charles Odhong *et al.*, “Financing Large-Scale Mitigation by Smallholder Farmers: What Roles for Public Climate Finance?”, *Frontiers in Sustainable Food Systems*, Vol. 3, 2019.

86 Peter Stamp and Richard Visser, “The Twenty-First Century, the Century of Plant Breeding”, *Euphytica*, Vol. 186, 2012; R. E. Evenson and D. Gollin, “Assessing the Impact of the Green Revolution, 1960 to 2000”, *Science*, Vol. 300, No. 5620, 2003.

87 Alessandra Garbero, Pierre Marion and Valentina Brailovskaya, *The Impact of the Adoption of CGIAR’s Improved Varieties on Poverty and Welfare Outcomes: A Systematic Review*, IFAD Research Series 33, IFAD, 2018, available at: <https://www.ifad.org/documents/38714170/40951886/Research+Series+33.pdf/4b08b329-8f1c-2920-bce8-fba1a7a76593>.

88 J. Ramirez-Villegas *et al.*, above note 81, p. 19; A. J. Challinor *et al.*, “Current Warming Will Reduce Yields Unless Maize Breeding and Seed Systems Adapt Immediately”, *Nature Climate Change*, Vol. 6, 2016.

89 J. Ramirez-Villegas *et al.*, above note 81, p. 19.

90 Maricelis Avecedo *et al.*, “A Scoping Review of Adoption of Climate Resilient Crops by Small-Scale Producers in Low- and Middle-Income Countries”, *Nature Plants*, Vol. 6, 2020.

reduction benefits from full adoption of drought-tolerant maize varieties are in the range of US\$ 0.53 to 0.88 billion (2007–2016).<sup>91</sup> In Mali, these gains are estimated at about US\$ 10 million, and can lead to an overall increase in maize production of 7%. Across sub-Saharan Africa, various studies report widespread adoption and benefits from climate-resilient wheat,<sup>92</sup> small cereals,<sup>93</sup> as well as rice and other crops.<sup>94</sup> Ouédraogo *et al.* show that since 2011 to now, the adoption of improved variety increased from 32.9% to 95.6% in the Mali climate-smart villages.<sup>95</sup>

While the benefits from climate-resilient varieties are already substantial, the potential of these varieties to transform African food production systems is far from being realized. Adoption levels remain moderate at best, and systems for delivery of improved seeds are largely underdeveloped<sup>96</sup> and unprepared for climate change.<sup>97</sup> Acevedo *et al.*<sup>98</sup> report that access to extension, experience and skills, education, farm inputs, financial instruments and climate information constitute major obstacles in the way of achieving large-scale benefits from climate-resilient seeds. Furthermore, the potential of improved varieties to contribute to poverty reduction and food security is fully realized when improved varieties are part of a broad climate-resilience strategy that includes other agricultural practices and technologies.

Climate-sensitive crop improvement helps adaptation to recurrent, pervasive and co-occurring climate variability and hazards (e.g. seasonal drought and heat stress) that can lead to recurring conflict among people whose farming systems are rainfed and therefore exposed to these hazards.<sup>99</sup> As water availability diminishes due to lack of rain and hot weather, intercommunal conflict over access to wells and riverbeds becomes more likely.<sup>100</sup>

91 Roberto La Rovere *et al.*, *Potential Impact of Investments in Drought Tolerant Maize in Africa*, CIMMYT/ International Institute of Tropical Agriculture (IITA), Addis Ababa, 2010.

92 Maximina A. Lantican *et al.*, *Impacts of International Wheat Improvement Research, 1994–2014*, Technical Report, CIMMYT, Mexico, 2016; D. P. Hodson *et al.*, “Ethiopia’s Transforming Wheat Landscape: Tracking Variety Use Through DNA Fingerprinting”, *Scientific Reports*, Vol. 10, No. 1, 2020.

93 Melinda Smale *et al.*, “Farm Family Effects of Adopting Improved and Hybrid Sorghum Seed in the Sudan Savanna of West Africa”, *Food Policy*, Vol. 74, 2018; B. I. G. Haussmann *et al.*, “Breeding Strategies for Adaptation of Pearl Millet and Sorghum to Climate Variability and Change in West Africa”, *Journal of Agronomy and Crop Science*, Vol. 198, No. 5, 2012.

94 Thomas S. Walker and Jeffrey Alwang (eds), *Crop Improvement, Adoption, and Impact of Improved Varieties in Food Crops in Sub-Saharan Africa*, CGIAR and CAB International, Oxford, 2015.

95 Mathieu Ouédraogo *et al.*, “Uptake of Climate-Smart Agricultural Technologies and Practices: Actual and Potential Adoption Rates in the Climate-Smart Village Site of Mali”, *Sustainability*, Vol. 11, No. 17, 2019.

96 Arega Alene *et al.*, “Measuring the Effectiveness of Agricultural R&D in Sub-Saharan Africa from the Perspectives of Varietal Output and Adoption: Initial Results from the Diffusion and Impact of Improved Varieties in Africa (DIIVA) Project”, *Conference Working Paper 7*, 2011; T. S. Walker and J. Alwang, above note 94, p. 21.

97 A. J. Challinor *et al.*, above note 88, p. 20.

98 M. Acevedo *et al.*, above note 90, p. 21.

99 C. Hendrix and I. Salehyan, above note 53, p. 12.

100 Colin H. Kahl, *States, Scarcity, and Civil Strife in the Developing World*, Princeton University Press, Princeton, NJ, 2006.

## Climate-smart agricultural practices

Climate-smart agriculture (CSA) seeks to sustainably increase agricultural productivity, enhance resilience, and, where possible, also reduce greenhouse gas (GHG) emissions.<sup>101</sup> Agricultural practices that have positive effects on yield, resilience and GHG emissions exist and evidence of their benefits has been documented for some agro-ecologies and cropping systems.<sup>102</sup> Figure 4 shows the mean effect size for eight practices across five of the six countries analysed here (no data for Chad were found) as reported by a meta-analysis of published literature.<sup>103</sup> Across West Africa, the CGIAR has been using “climate-smart villages” to test many of these options as part of an ongoing global effort to bring CSA to scale.<sup>104</sup>

Implementing CSA at scale requires a multi-disciplinary approach that goes beyond the biophysical piloting of options in specific agro-ecologies, and seeks to understand how these options can be embedded in a given socio-economic context and how science–policy interfacing (see the “Enabling environment and the science policy interface” section) can help bring them to scale.<sup>105</sup> A starting point in this process is the identification of the trade-offs and synergies of CSA practices across space and time,<sup>106</sup> followed by participatory processes that help identify what options have the largest potential (based on their biophysical performance and farmer adoption). Partey *et al.*<sup>107</sup> show that agroforestry options (i.e. farmer-managed natural tree regeneration activities), as well as soil and water conservation technologies (i.e. zai pits, half-moon, tie/contour ridges, conservation agriculture), are the most promising CSA practices for West African farmers due to their substantial potential to increase productivity and help manage climate risk. Ouédraogo *et al.*<sup>108</sup> indicate that adoption of CSA

101 Leslie Lipper *et al.*, “Climate-Smart Agriculture for Food Security”, *Nature Climate Change*, Vol. 4, 2014.

102 Christine Lamanna *et al.*, *Evidence-Based Opportunities for Out-Scaling Climate-Smart Agriculture in East Africa*, CCAFS Working Paper No. 172, CGIAR Research Program on Climate Change, Agriculture and Food Security (CCAFS), Copenhagen, 2016; Nadine Andrieu *et al.*, “Climate-Smart Farms? Case Studies in Burkino Faso and Colombia”, in Miguel Pedrono *et al.* (eds), *Climate Change and Agriculture Worldwide*, Springer, Dordrecht, 2016; Laura N. Arenas-Calle, Stephen Whitfield and Andrew J. Challinor, “A Climate Smartness Index (CSI) Based on Greenhouse Gas Intensity and Water Productivity: Application to Irrigated Rice”, *Frontiers in Sustainable Food Systems*, Vol. 3, 2019.

103 Todd S. Rosenstock *et al.*, *The Scientific Basis of Climate-Smart Agriculture: A Systematic Review Protocol*, CCAFS Working Paper No. 138, CCAFS, Copenhagen, 2016.

104 Mathieu Ouédraogo *et al.*, *Uptake of Climate-Smart Agriculture in West Africa: What can we learn from Climate-Smart Villages of Ghana, Mali and Niger?* Info Note, CCAFS, Wageningen, 2018; Pramod K. Aggarwal *et al.*, “The Climate-Smart Village Approach: Framework of an Integrative Strategy for Scaling up Adaptation Options in Agriculture”, *Ecology and Society*, Vol. 23, No. 1, 2018; Minjie Chen *et al.*, “Diversification and Intensification of Agricultural Adaptation from Global to Local Scales”, *PLoS ONE*, Vol. 13, No. 5, 2018; Krisha Lim *et al.*, “Impacts of Smallholder Agricultural Adaptation on Food Security: Evidence from Africa, Asia, and Central America”, *Food Security*, Vol. 12, No. 1, 2020.

105 P. K. Aggarwal *et al.*, *ibid.*, p. 22; L. Lipper *et al.*, above note 101, p. 22.

106 Reinhard Prestele and Peter H. Verburg, “The Overlooked Spatial Dimension of Climate-Smart Agriculture”, *Global Change Biology*, Vol. 26, No. 3, 2020; N. Andrieu *et al.*, above note 82, p. 20.

107 Samuel T. Partey *et al.*, “Developing Climate-Smart Agriculture to Face Climate Variability in West Africa: Challenges and Lessons Learnt”, *Journal of Cleaner Production*, Vol. 187, 2018.

108 M. Ouédraogo *et al.*, above note 104, p. 22.

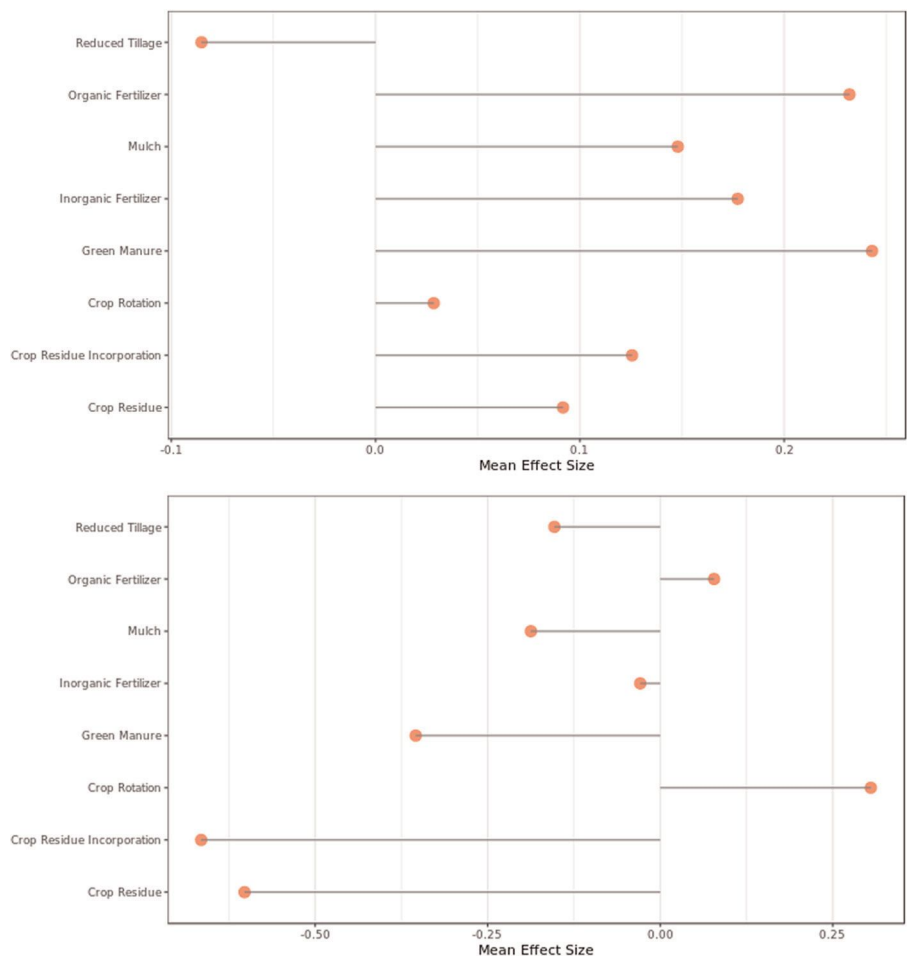


Fig. 4 - Colour online, B/W in print

Figure 4. Mean effect of different practices on productivity (top) and resilience (bottom). Taken from Evidence for Resilient Agriculture (ERA), available at: <https://era.ccafs.cgiar.org/>.

technologies is greater across West Africa if it is accompanied by capacity development and education programmes. These authors highlight the crucial role of community-, national- and regional-level institutions in creating the enabling environment and securing the necessary financing to scale CSA technologies.

Rapid population growth in the Sahel means that total food production needs to increase to reduce the risk of food insecurity crises. Sustainably increasing food production under climate stress is a major challenge in this very harsh environment. At the same time, food security is an important driver connecting climate to conflict (see the “Pathways through which climate and conflict relate” section). Empirical research suggests that adverse climate impacts

affecting food and livestock prices in sub-Saharan Africa can lead to low-level political violence (e.g. protests and riots) in urban areas where cheap substitutes are absent.<sup>109</sup> CSA practices and technologies are one piece in the puzzle to prevent conflicts, being natural capital that contributes to food security and thus indirectly to peace and stability.

## Climate information services

Information services to support farmer decision-making in the face of climate variability offer significant potential to build resilience and enhance food security and nutrition.<sup>110</sup> These services, mostly known as climate information services (CIS) or climate services more generally, are defined as the systematic provision of climate information in support of sector decision-making. By design, climate services arise from a systematic process of co-production, translation, transfer and use of tailored decision support information.<sup>111</sup> User-tailored CIS have been shown to support up to a 66% increase in yield and corresponding gains in income.<sup>112</sup> Since insufficient availability of and access to climate information can constitute a barrier for the adoption of certain practices and technologies,<sup>113</sup> CIS can also help unlock climate adaptation at scale. In fact, CIS can be extended to include advice on best agronomic practice, pest and disease early warnings, and market information related to the current or upcoming season.<sup>114</sup>

To assess the potential for CIS implementation across the Sahel, we developed an analysis of CIS hotspots. We define a hotspot as an area in which high seasonal forecast skill co-occurs with high climate variability. Climate variability is defined using the CV of annual rainfall (standard deviation normalized by the mean), whereas forecast skill is defined using the precipitation tercile classification skill at 0.5-month lead time as reported by the International Research Institute for Climate and Society (IRI) seasonal climate forecast

109 V. Koubi, above note 43, p. 11; J.-F. Maystadt and O. Ecker, above note 49, p. 12; C. Raleigh, H. Choi and D. Kniveton, above note 45, p. 11.

110 J. W. Hansen *et al.*, above note 84, p. 20; C. Vaughan *et al.*, above note 83, p. 20.

111 Edward R. Carr *et al.*, *Identifying Climate Information Services Users and Their Needs in Sub-Saharan Africa: A Learning Agenda*, Report, United States Agency for International Development, October 2017, available at: <http://www.edwardcarr.com/downloads/Carr%20et%20al.%20-%202017%20-%20Identifying%20Climate%20Information%20Services%20Users%20and%20Their%20Needs%20in%20Sub-Saharan%20Africa%20A%20Learning%20Agenda.pdf>; Catherine Vaughan *et al.*, “Identifying Research Priorities to Advance Climate Services”, *Climate Services*, Vol. 4, 2016; Catherine Vaughan and Suraje Dessai, “Climate Services for Society: Origins, Institutional Arrangements, and Design Elements for an Evaluation Framework”, *Wiley Interdisciplinary Reviews: Climate Change*, Vol. 5, No. 5, 2014.

112 Catherine Vaughan *et al.*, “Creating an Enabling Environment for Investment in Climate Services: The Case of Uruguay’s National Agricultural Information System”, *Climate Services*, Vol. 8, 2017.

113 M. Avededo *et al.*, above note 90, p. 21.

114 Regina Birner *et al.*, “From Best Practice to Best Fit: A Framework for Designing and Analyzing Pluralistic Agricultural Advisory Services Worldwide”, *Journal of Agricultural Education and Extension*, Vol. 14, No. 4, 2009; Guy Faure, Yann Desjeux and Pierre Gasselin, “New Challenges in Agricultural Advisory Services from a Research Perspective: A Literature Review, Synthesis and Research Agenda”, *Journal of Agricultural Education and Extension*, Vol. 18, No. 5, 2012.



verifications.<sup>115</sup> In the areas of the Sahel adequately covered by the available data, approximately half of the analysed area has either high potential or can be considered implementation-ready for CIS. Areas labelled as having ‘potential’ would require some level of investment in better seasonal prediction systems and climate data infrastructure to support CIS achieving their full potential (see Figure 5).

As mentioned above, CIS can be tailored in many different context-specific ways and be disseminated using different mechanisms including text messaging, user groups, web platforms, and more. The basic objective is always the same, i.e. to inform farming decisions either ahead, during, or at the end of the season. In West Africa, one of the most important uses of CIS lies in helping farmers decide what to crop during the sole rainy season, when to prepare their field and sow their crops, as this reduces the risk of crop failure.<sup>116</sup> It is estimated that upwards of ten million farmers in West Africa currently have access to CIS through radio and short message service (SMS),<sup>117</sup> and new projects are bringing many more farmers onboard with every season.

Climate services exemplify the need for adaptive management of development research. The CGIAR’s Research Program on Climate Change, Agriculture and Food Security (CCAFS), for example, collaborated with the Senegalese National Meteorological Agency (ANACIM) to develop CIS that are relevant to farmers on a broad scale. As of August 2015, seasonal forecasts are transmitted nationwide through 102 rural community radio stations and SMS (the best means available for the region), potentially reaching 7.4 million rural people across Senegal. Climate information in Senegal is now considered an agricultural input just like seeds, fertilizers and equipment, which are at the basis of production.<sup>118</sup> An impact assessment study revealed that the use of CIS in Senegal led to 10–25% increases in household income.<sup>119</sup>

Small-scale farmers who do not receive adequate information and capacity-building are often caught unprepared when required to respond to climate variability. This leads to cycles of low output resulting in low income. The income disparity and inequality between local farmers and other citizens can fuel social envy and can be potential sources of conflict.<sup>120</sup> Climate services are a means to manage risk, they can minimize losses and damages caused by shocks

115 Anthony G. Barnston *et al.*, “Verification of the First 11 Years of IRI’s Seasonal Climate Forecasts”, *Journal of Applied Meteorology and Climatology*, Vol. 49, No. 3, 2010.

116 M. Ouédraogo *et al.*, above note 104, p. 22; Mathieu Ouédraogo *et al.*, “Farmers’ Willingness to Pay for Climate Information Services: Evidence from Cowpea and Sesame Producers in Northern Burkina Faso”, *Sustainability*, Vol. 10, No. 3, 2018.

117 M. Ouédraogo *et al.*, above note 104, p. 22; M. Ouédraogo, *ibid.*, p. 26; Djibril S. Dayamba *et al.*, “Assessment of the Use of Participatory Integrated Climate Services for Agriculture (PICSA) Approach by Farmers to Manage Climate Risk in Mali and Senegal”, *Climate Services*, Vol. 12, 2018.

118 T. S. Rosenstock *et al.*, above note 103; J. W. Hansen *et al.*, above note 84, p. 20.

119 Brian Chiputwa *et al.*, “Transforming Climate Science into Usable Services: The Effectiveness of Co-Production in Promoting Uptake of Climate Information by Smallholder Farmers in Senegal”, *Climate Services*, Vol. 20, 2020.

120 Usman Pakasi, “Conflict in the Border Region between Indonesia and Papua New Guinea”, in *Proceedings of the International Conference on Ethics in Governance (ICONEG 2016)*, Atlantis Press, 2016.

Fig. 5 - Colour online, B/W in print

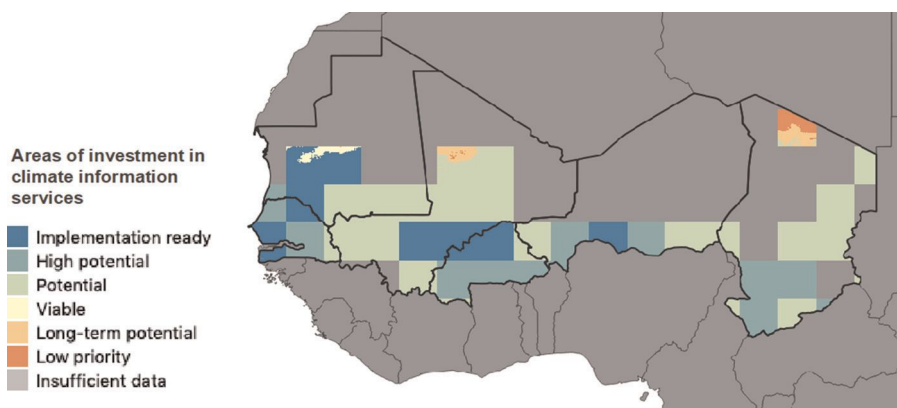


Figure 5. Priority areas for investment in climate information services (CIS). Grey areas are either outside of the Sahel or have no data.

such as floods, droughts or storms, and reduce the need for humanitarian assistance in their aftermath. Through reducing the recovery time and the number of food-insecure people, these strategies can reduce the risk of community destabilization, riots and protests.

## Crop insurance

Helping farmers make better choices by de-risking their farming activities has proven successful across Africa. In East Africa for example (Kenya, Rwanda and Tanzania), the Agriculture and Climate Risk Enterprise (ACRE) recently scaled to reach nearly 200,000 farmers, bundling index insurance with agricultural credit and farm inputs.<sup>121</sup> ACRE has built on strong partnerships with regional initiatives such as M-PESA mobile banking. In Ethiopia and Senegal, the R4 Rural Resilience Initiative has scaled unsubsidized index insurance to over 20,000 poor smallholder farmers who were previously considered uninsurable, using insurance as an integral part of a comprehensive risk management portfolio.<sup>122</sup> Also, the Index-Based Livestock Insurance (IBLI) project in Kenya and Ethiopia demonstrates innovative approaches to insuring poor nomadic pastoralists in challenging circumstances.<sup>123</sup> The examples show that insurance is deployed most effectively bundled with loans, credits, agricultural inputs such as fertilizer and climate-resilient seeds, and in combination with CIS providing information on what to plant, where, when and how.

121 ACRE, *Fact Sheet on Kilimo Salama "Safe Agriculture"*, Syngenta Foundation, 2014.

122 Shawn Cole et al., *The Effectiveness of Index-Based Micro-Insurance in Helping Smallholders Manage Weather-Related Risks*, Report, EPPI-Centre, London, 2012, available at: <https://www.biopasos.com/biblioteca/105v%20MicroinsuranceWeather2012ColeReport.pdf>.

123 Samuel Mintz, "Insurance Designed for Muslim Herders Makes First Payout in Kenya", *IBLI News*, 1 May 2014, available at: <https://ibli.ilri.org/2014/05/01/insurance-designed-for-muslim-herders-makes-first-payout-in-kenya/>.

Insurance products help transfer climate risk from low-likelihood high-impact events from the farmer toward insurers and re-insurers, at a reasonable cost for the farmer. Climate variability and extreme drought events that lead to crop failure or livestock death accelerate competition over the same scarce resources and increase, for example, territorial tensions over pasture and surface and underground water resources.<sup>124</sup> This creates a fruitful environment for extremist groups like Al-Shabab to recruit fighters by offering cash and other benefits to individuals trapped in poverty and lacking alternative sources of livelihoods.<sup>125</sup> Insurance can prevent climate shocks from leading to loss of crop and livestock, assets, income, price volatility, food insecurity and thus leading to grievances and instabilities.

## Sustainable finance

The Sustainable Development Goals (SDGs), resulting from the 2015 Paris Agreement, define ambitious goals to end poverty and hunger and provide a strategic framework for a transition towards peace and prosperity by 2030. Five years after their adoption, funding resources are falling remarkably short – with an enormous gap of US\$ 2.5 trillion annually.<sup>126</sup> Realizing these shortfalls, the international community has been increasingly engaging with the private sector to mobilize and drive investments. Indeed, if we were to align just a proportion of the capital invested daily in capital markets, including resources from institutional investors, retail investors, etc., this would catalyse significant progress towards achieving the SDGs. It is worth highlighting that of the US\$ 153.9 billion mobilized in blended private finance, approximately US\$ 9.3 billion went to least developed countries.<sup>127</sup> To fill this private financing gap, recent initiatives, such as the International Committee of the Red Cross's (ICRC) Humanitarian Impact Bond, have encouraged the private sector to enter these complex environments. Impact Bonds are financial instruments (results-based contracts) in which private investors provide pre-financing for public projects that deliver social and environmental outcomes. Governments, development or other philanthropic funders pay back investors their principal plus a return if, and only if, these projects succeed in delivering social and environmental outcomes.

Engaging with private finance to co-address cross-cutting environmental, humanitarian and development objectives poses certain challenges that require institutional realignment. One challenge is balancing the need to generate cash flows from the private sector alongside the goal of reducing poverty in fragile

124 Urmilla Bob and Salome Bronkhorst, *Conflict-Sensitive Adaptation to Climate Change in Africa*, BWV Verlag, Berlin, 2014.

125 Jean-Francois Maystadt, Margherita Calderone and Liangzhi You, "Local Warming and Violent Conflict in North and South Sudan", *Journal of Economic Geography*, Vol. 15, No. 3, 2014.

126 United Nations Conference on Trade and Development (UNCTAD), *SDG Investment Trends Monitor*, 2019, available at: [https://unctad.org/system/files/official-document/diaemisc2019d4\\_en.pdf](https://unctad.org/system/files/official-document/diaemisc2019d4_en.pdf).

127 OECD/United Nations Capital Development Fund (UNCDF), *Blended Finance in the Least Developed Countries 2019*, Report, OECD Publishing, Paris, 2019.

contexts, where cash flows may not yet be generated. Private investors may not be inclined to take high risks in these environments, whereas public actors do not face this challenge, as they expect no profit return from using public funds. In addition, the sheer complexity in addressing environmental, social and governance factors requires establishing broad collaboration frameworks with appropriate indicators to track long-term progress.

It is paramount that humanitarian, development and peacebuilding objectives and incentives are aligned, and investments are made to mutually reinforce each other. There are plenty of emerging sustainable finance schemes from the agricultural development sector that currently do not address peace objectives systematically. For example, the West African Initiative for Climate-Smart Agriculture (WAICSA) provides financial and technical support to incentivize the adoption of CSA and increase local financial institutions' capacity for climate-smart lending.

## Enabling environment and the science–policy interface

Science–policy engagement efforts are crucial to ensure that scientific findings from agricultural research for development inform actions of governments, the private sector, non-governmental organizations (NGOs) and international development partners, accelerating progress toward upper-level goals.<sup>128</sup> A few examples where this is being done from across the Sahel include: the New Partnership for Africa's Development (NEPAD) agency that is leading the implementation of the African Union–NEPAD Agriculture Climate Change Programme, which aims to have twenty-five million farm households practising CSA by 2025;<sup>129</sup> the Africa CSA Alliance, a partnership between the NEPAD agency and five international NGOs (CARE, Catholic Relief Services, Concern, Oxfam and World Vision); and the Comprehensive Africa Agriculture Development Programme (CAADP) that aims to reach at least six million farm households with CSA reaching twenty-five million farm households.<sup>130</sup> In West Africa, included is the West African CSA Alliance (WACSAA) and the regional initiative called “The Promotion of Smart-Agriculture towards Climate Change and Agro-ecology transition” that aims to ensure adoption of CSA practices by twenty-five million households by 2025.

The above regional efforts are complemented by national and local efforts. A successful example at national level in Ghana, Mali and Senegal is the CCAFS West Africa multi-stakeholder national science–policy dialogue platforms on CSA, that use scientific evidence to create awareness of climate change impacts on agriculture and advocate for the mainstreaming of climate change and CSA

128 Dhanush Dinesh *et al.*, “Facilitating Change for Climate-Smart Agriculture through Science-Policy Engagement”, *Sustainability*, Vol. 10, No. 8, 2018.

129 Global Alliance for Climate-Smart Agriculture (GACSA), *Regional CSA Alliances and Platforms: Information Sheet: The Africa CSA Alliance (ACSAA) and the NEPAD-iNGO Alliance on CSA*. GACSA, Rome, 2016.

130 GACSA, *ibid.*, p. 29.

into agricultural development plans.<sup>131</sup> Results show that these platforms are an innovative approach to effectively engage decision-makers and sustainably mainstream climate change into development plans. In Senegal, for example, the national platform engaged with policymakers through targeted knowledge sharing workshops, which led to the inclusion of the scientific evidence into the agricultural component of the presidential plan for an emerging Senegal by 2035 (PSE).

However, the above-mentioned science-policy enabling environment has not yet addressed peace and security aspects explicitly, which is a missed opportunity and of crucial importance for food systems to contribute to lasting peace.

## **Contribution of R&D food system programming to peace and security in the Sahel**

From the discussion above we draw that food security and resilience of local food systems can potentially serve to address the complexities dealing with the cycle of conflict, poverty and climate security in the region. We suggest that moving away from a reactive scheme to a more preventive approach should include the establishment of sustainable food systems, while addressing the root causes of conflict.

While the value of R&D across sub-Saharan countries is documented widely, data on social returns of R&D related to climate programming specifically are much scarcer. A study of IFAD's Agricultural Smallholder Adaptation Programme (ASAP) concludes that the social return on investment (SROI) ratios range from 1.26:1 to 4.66:1 for four private sector-leveraged country investments selected out of a portfolio of thirty-nine.<sup>132</sup> The authors have not found data on the IRR or SROI of R&D in agricultural and food systems for peace and security, which is a field that needs to be addressed.

The set of agricultural R&D interventions in food systems described above demonstrably has potential for poverty reduction and food security.<sup>133</sup> Their contribution to peace and security is, however, less clear. As shown in the "Climate and conflict hotspots in the Sahel" section, conflict occurs in climate hotspots. In many of the hotspots there are ongoing interventions to enhance resilience and food security. A quick perusal of the theories of change and scenarios considered for the development of these activities and projects suggests

131 Robert B. Zougmore *et al.*, "Science-Policy Interfaces for Sustainable Climate-Smart Agricultural Uptake: Lessons Learnt from National Science-Policy Dialogue Platforms in West Africa", *International Journal of Agricultural Sustainability*, Vol. 17, No. 5, 2019.

132 Le Nghiem *et al.*, *The Business Advantage: Mobilizing Private Sector-led Climate Actions in Agriculture*, IFAD Advantage Series, IFAD, Rome, 2018.

133 J. Alston, P. Pardey and X. Rao, above note 79, p. 19.

that peace and security have not been considered as an outcome from the outset<sup>134</sup> but have the potential to contribute to lasting peace.<sup>135</sup> In Table 3 we therefore summarize the potential contributions of these R&D agricultural and food systems activities and programming for peace and security. R&D activities contribute through specific mechanisms towards peace and security such as managing risk, transferring risk, adapting, and leveraging natural capital and financial capital.

Table 3. Overview of climate and drivers that exacerbate food systems and its respective R&D activities that have the potential to buffer those drivers and contribute to peace and stability

Climate drivers that exacerbate food systems and put strain on peace	R&D activities and programming in food systems and its potential to contribute to peace and stability in the Sahel
Small-scale farmers that do not receive adequate information and capacity building are often caught unprepared when required to respond to climate variability. This leads to cycles of low output resulting in low income. The income disparity and inequality between local farmers and other citizens can fuel social envy and can be potential sources of conflict <sup>136</sup>	<i>Manage risk:</i> CIS that use seasonal and weather forecasts to provide agricultural climate advisory and forecast-based finance can enable anticipatory actions for disaster mitigation at the community and government levels. These actions minimize losses and damages caused by shocks such as floods, droughts or storms, and reduce the need for humanitarian assistance in their aftermath. Through reducing the recovery time and the number of food-insecure people, these strategies can reduce the risk of community destabilization, riots, and protests
Continued	

134 Bia Carnero *et al.*, *A Web Analytics Approach to Map the Influence and Reach of CCAFS*, Working Paper No. 326, CGIAR Research Program on Climate Change, Agriculture and Food Security (CCAFS), 2020.  
135 Theresa Liebig *et al.*, *CGIAR's Contribution to Peace: Portfolio Analysis*, CGIAR Focus Climate Security Report, CCAFS, April 2020.  
136 U. Pakasi, above note 120, p. 27.

TABLE 3.  
Continued

**Climate drivers that exacerbate food systems and put strain on peace**

Extreme drought events that lead to crop failure or livestock death accelerate competition over the same scarce resources and increase, for example, territorial tensions over pasture and surface and underground water resources.<sup>137</sup> This creates a fruitful environment for extremist groups like Al-Shabab to recruit fighters by offering cash and other benefits to individuals trapped in poverty and lacking alternative sources of livelihoods<sup>138</sup>

Recurrent, pervasive and co-occurring climate hazards (e.g. seasonal drought and heat stress) can lead to recurring conflict among people whose farming systems are rainfed and therefore exposed to these hazards.<sup>139</sup> As water availability diminishes due to lack of rain and hot weather, intercommunal conflict over access to wells and riverbeds becomes more likely<sup>140</sup>

**R&D activities and programming in food systems and its potential to contribute to peace and stability in the Sahel**

*Transfer risk:* Insurance helps transfer risk out of farming households and in general provides safety nets and protective coverage, which unlocks safer productive investment. Weather index insurance specifically provides protective coverage for smallholder farmers against the risk of droughts. Farmers receive pay-outs when levels of seasonal rainfall fall below a critical threshold, threatening their crop performance and their main source of livelihood. This prevents climate shocks from leading to loss of crop and livestock, assets, income, price volatility and food insecurity

*Adaptation:* Climate-sensitive crop improvement (adapt) also referred to as climate-smart breeding, seeks to develop novel crop varieties that are adapted to the set of climate stresses that are prevalent in a given site or region.<sup>141</sup> Climate-ready varieties maintain productivity under single or combined stresses (e.g. droughts, floods, shorter rainy

137 U. Bob and S. Bronkhorst, above note 124, p. 28.

138 J.-F. Maystadt, M. Calderone and L. You, above note 125, p. 28.

139 C. Hendrix and I. Salehyan, above note 53, p. 12.

140 C. H. Kahl, above note 100, p. 22.

141 J. Ramirez-Villegas *et al.*, above note 81, p. 19; A. J. Challinor *et al.*, above note 88, p. 20.



Rapid population growth in the Sahel means that total food production needs to increase to reduce the risk of food-insecurity crises. Sustainably increasing food production under climate stress is a major challenge. At the same time, food security is an important driver connecting climate to conflict (“Pathways through which climate and conflict relate” section). Empirical research suggests that adverse climate impacts affecting food and livestock prices in sub-Saharan Africa can lead to low-level political violence (e.g. protests and riots) in urban areas where cheap substitutes are absent<sup>142</sup>

Five years after the adoption of the SDGs there is still an enormous gap of US\$ 2.5 trillion annually with respect to the funding required for their implementation.<sup>143</sup> These are funds required to achieve SDG 1 on no poverty, SDG 2 on zero hunger, SDG 13 on climate action and SDG 16 on peace

seasons, waterlogging, high temperatures). As a result, farming systems are more productive under harsher climates and climate variability

*Leverage natural capital:* CSA practices support vulnerable populations by increasing food security, helping them adapt to climate stress, while decreasing GHG emissions as a co-benefit. CSA practices in the Sahel include water-smart activities such as solar pumps, on farm water management, rainwater harvesting; seed- and breed-smart activities such as adapted varieties, breeds and seed banks; soil-, carbon- and nutrient-smart activities such as agroforestry systems, integrated nutrient management, terraces. These activities effectively create a sustainable pathway toward greater food production under climate change, which reduces food insecurity

*Leverage financial capital:* Sustainable finance refers to any form of financial service integrating environmental, social and governance (ESG) criteria into the business or investment decisions for the lasting benefit of both clients and society at large. Sustainable finance that deploys public capital

*Continued*

142 V. Koubi, above note 43, p. 11; J.-F. Maystadt and O. Ecker, above note 49, p. 12; C. Raleigh, H. Choi and D. Kniveton, above note 45, p. 11.

143 UNCTAD, above note 126, p. 28.

TABLE 3.  
Continued

**Climate drivers that exacerbate food systems and put strain on peace**

**R&D activities and programming in food systems and its potential to contribute to peace and stability in the Sahel**

for de-risking investments and attracting private capital is essential to meet the funding gap. Examples include ICRC's humanitarian development bond, and ASAP private sector-leveraged investments<sup>144</sup>

## Conclusion

It is by now well acknowledged that the current literature does not display an exact consensus on the interface of climate and conflict, with some even doubting its fundamental validity. Yet, there is a generally accepted view that a relationship between climate and conflict is observable, despite the fact that the exact mapping of conflict pathways remains elusive. Complexity, systemic, albeit highly contextual, lenses are needed to capture the whole set of direct and indirect channels and feedback loops across different existing risks and insecurities and to accurately represent the highly intertwined relationships across the entire climate–security nexus.

In this paper we have embraced this complexity and demonstrate for the Sahel that (i) climate hazards are frequent and exposure to climate variability is high across the Sahel, (ii) hotspots of high climate variability and conflict exist, and (iii) impact pathways by which climate exacerbates food systems drivers that can lead to conflicts are documented in the literature. While these three findings suggest clear links between conflict and climate, we find that (iv) current peace indices do not include climate and food systems indicators and therefore provide an uncomplete picture, and (v) food systems programming for climate adaptation has so far not explicitly considered peace and security outcomes. Despite this, R&D for agricultural and food systems have the potential to contribute to peace and security through managing risk, transferring risk, adaptation, and leveraging natural and financial capital. Future studies are needed that evaluate agricultural and food system R&D returns on investment specifically for peace and security outcomes. Furthermore, we propose that food systems programming that truly tackles the climate crisis should take more explicit account of peace and security outcomes in conflict-affected areas.

144 L. Nghiem, above note 132.

# Climate-induced displacement in the Sahel: A question of classification

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## Abstract

*This article examines legal aspects of climate-induced forced displacement in the Sahel region of North Africa. The Sahel region is being adversely affected by climate change, leading to the displacement of thousands of people, both cross-border migrants and internally displaced persons (IDPs). The conventional stance is that refugee status*

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*does not extend to individuals displaced as a result of natural or environmental catastrophes and that consequently a normative gap exists in international refugee law. However, the position in international law may not be as clear-cut as this conventional view assumes, in light of recent trends which are moving towards the recognition of the rights of such displaced people. It seems clear that under the terms of the 1951 Refugee Convention, such people are excluded from refugee status, and while the situation is less obvious under the Organisation of African Unity Convention on Refugees in Africa, it appears that the end result is the same, although there seems to be an increasing desire for recognition of refugee status under that treaty. Other regional treaties are also taking tentative steps in this direction; the Kampala Convention on IDPs is especially noteworthy because it makes express references to circumstances such as natural disasters. A human rights approach may offer hope to displaced people, since climate change can impact on a number of rights—particularly significant is the decision of the UN Human Rights Committee in Teitiota v. New Zealand which acknowledged the harmful impact of climate change. The response, legislative and otherwise, of five Sahel States towards forcibly displaced persons is examined in this article.*

**Keywords:** Sahel, climate change, forced displacement, refugee status, policy of Sahel States.

⋮ ⋮ ⋮ ⋮ ⋮ ⋮

Partout où quelque chose remue sur cette longue traînée de poussière, rendue plus subtile encore après six mois de sécheresse, on voit s'élever des nuages, et quand le moindre vent passe sur la campagne, la tête alourdie des vieux arbres semble se dissoudre en fumée.

Eugene Fromentin<sup>1</sup>

## Introduction

This article examines legal aspects of climate-induced forced displacement in the Sahel region of North Africa. As is observed below, such displacement has been ongoing for a number of years but continues to increase to alarming levels. The forcibly displaced can be divided into two categories: firstly, those who by virtue of seeking refuge in another State may have a claim to refugee status under international law, sometimes referred to as cross-border migrants;<sup>2</sup> and secondly,

1 “Wherever something stirs on this long trail of dust, made even more subtle after six months of drought, clouds are seen to rise, and when the slightest wind passes over the countryside, the heavy heads of the old trees seem to dissolve into smoke.” Eugene Fromentin, *Une année dans le Sahel*, Typographie Wittersheim, Paris, 1859, p. 43.

2 Climate migration refers to “[t]he movement of a person or groups of persons who, predominantly for reasons of sudden or progressive change in the environment due to climate change, are obliged to leave their habitual place of residence, or choose to do so, either temporarily or permanently, within a State or across an international border”: Warsaw International Mechanism, Executive Committee, “Action Area 6: Migration, Displacement and Human Mobility”, submission from the International

those who are uprooted from their homes but remain within the borders of their own disaster-affected country and are therefore classified as internally displaced persons (IDPs).<sup>3</sup> The conventional stance is that refugee status does not encompass individuals displaced because of natural disasters or environmental catastrophes whatever the cause, be they sudden-onset events, such as volcanic eruptions or flooding, which may pose an immediate threat to life; or slow-onset events, such as desertification or rising sea levels, which may eventually make life untenable.<sup>4</sup> Consequently, “cross-border displacement stemming from natural disasters and the effects of climate change has ... been identified as a normative gap in the international legal protection regime”.<sup>5</sup> This article argues first that the position in international law may not be as clear-cut as the traditional view supposes in light of regional regimes, and explores recent trends towards the legal recognition of the rights of people displaced because of climate change. It then examines the response to climate-induced displaced persons, particularly in terms of domestic legislation, of five Sahel States that form the focus of the article: Burkina Faso, Mali, Niger, Chad and Mauritania.

Organization for Migration (IOM), 2016. The present article seeks to avoid labels such as “environmental refugee” or “climate refugee”, as they have no basis in international law: see Jane McAdam, *Climate Change, Forced Migration, and International Law*, Oxford University Press, Oxford, 2012, pp. 3, 6. These terms also generate considerable controversy as the word “refugee” has a technical legal meaning: see Rafiqul Islam, “Climate Refugees and International Refugee Law”, in Rafiqul Islam and Jahid Hossain Bhuiyan (eds), *An Introduction to International Refugee Law*, Martinus Nijhoff, Leiden and Boston, MA, 2013, pp. 217–218. Many writers warn of misunderstandings as a result of the misuse of legal terms by lay persons: see, for example, the review of such criticisms in Camillo Boano, Roger Zetter and Tim Morris, *Environmentally Displaced People: Understanding the Linkages between Environmental Change, Livelihoods and Forced Migration*, Forced Migration Policy Briefing No. 1, Refugee Studies Centre, Oxford, November 2008, p. 10. See also Astri Suhrke, “Environmental Degradation and Population Flows”, *Journal of International Affairs*, Vol. 47, No. 2, 1994, p. 482, who suggests that the definition of refugee in such contexts is a sociological one rather than a legal one. The Office of the UN High Commissioner for Refugees (UNHCR) recommends the term “persons displaced in the context of disasters and climate change”, which is somewhat long-winded: see UNHCR, “Climate Change and Disaster Displacement”, available at: [www.unhcr.org/climate-change-and-disasters.html](http://www.unhcr.org/climate-change-and-disasters.html) (all internet references were accessed in January 2022). Others suggest “environmental refugees”: see Diane C. Bates, “Environmental Refugees? Classifying Human Migrations Caused by Environmental Change”, *Population and Environment*, Vol. 23, No. 5, 2002.

3 As the United Nations (UN) has observed, “[d]isasters often generate the mass displacement of persons, either across borders (refugees) or within those of a disaster-affected State (internally displaced persons)”. *Report of the Special Rapporteur on the Protection of Persons in the Event of Disasters*, UN Doc. A/CN.4/598, 15 May 2008, para. 27.

4 “The occurrence of a disaster is not envisaged as grounds for granting refugee status”: *ibid.*, para. 28. According to the Intergovernmental Panel on Climate Change (IPCC), the harmful effects of climate change include an increase in the frequency and intensity of extreme weather events forcing people from their homes, possibly permanently; increased warming and drought affecting agriculture and access to clean water; sea-level rises making coastal areas uninhabitable; and increased potential for violence as a result of economic dislocation. Vicente R. Barros *et al.* (eds), *Climate Change 2014: Impacts, Adaptation and Vulnerability*, Fifth Assessment Report, Working Group II, IPCC, 2014, Part A, pp. 766–771, and Part B, p. 1175, available at: [www.ipcc.ch/report/ar5/wg2/](http://www.ipcc.ch/report/ar5/wg2/). While international law may draw distinctions between different categories of natural disasters, it has been observed that “disaster categorization” entails a “high degree of arbitrariness” since it is “not always possible to maintain a clear delineation between causes”. *Report of the Special Rapporteur*, above note 3, paras 48–49.

5 J. McAdam, above note 2, p. 1.

The Sahel is a semi-arid region of sub-Saharan Africa that experiences a hot, sunny and dry climate all year round. It is bordered by the Sahara Desert to the north and savannahs to the south, and stretches from Sudan in the east to Senegal in the west, taking in all or parts of Chad, Niger, Burkina Faso, Mauritania and Mali.<sup>6</sup> In recent decades the Sahel has experienced drought, desertification and soil loss,<sup>7</sup> which the United Nations (UN), in partnership with African countries, is attempting to reverse.<sup>8</sup> Such slow-onset environmental degradation, which may be attributable partially to local human activity but is also attributable to global climate change,<sup>9</sup> has given rise to food insecurity.<sup>10</sup> It has additionally contributed to increased communal violence and armed conflict situations, possibly involving organized armed groups,<sup>11</sup> leading to the forced displacement of hundreds of thousands of people across the region.<sup>12</sup> The

- 6 "Sahel", *Encyclopaedia Britannica*, available at: [www.britannica.com/place/Sahel](http://www.britannica.com/place/Sahel). The Sahel may extend to parts of Nigeria, Eritrea, the Gambia and Guinea-Bissau (Platform on Disaster Displacement (PDD) and Office of the UN High Commissioner for Human Rights (UN Human Rights), *The Slow Onset Effects of Climate Change and Human Rights Protection for Cross-Border Migrants*, 2018, paras 92–93, available at: [www.ohchr.org/Documents/Issues/Migration/OHCHR\\_slow\\_onset\\_of\\_Climate\\_Change\\_EN.pdf](http://www.ohchr.org/Documents/Issues/Migration/OHCHR_slow_onset_of_Climate_Change_EN.pdf)), as well as other neighbouring countries (Africa Renewal, "The Sahel: Land of Opportunities", available at: [www.un.org/africarenewal/sahel](http://www.un.org/africarenewal/sahel)).
- 7 Willem Van Cotthem, "Desertification in the Sahel", 16 February 2015, available at: <https://desertification.wordpress.com/2015/02/16/the-sahel-desertified/>. See UN Framework Convention on Climate Change, 1771 UNTS 107, 9 May 1992 (entered into force 21 March 1993) (UNFCCC), Art. 1(1).
- 8 See the UN Convention to Combat Desertification, 1954 UNTS 3, 17 June 1994 (entered into force 26 December 1996) (UNCCD), Annex I, available at: [www.unccd.int/conventionregions/annex-i-africa](http://www.unccd.int/conventionregions/annex-i-africa). The UNCCD, *inter alia*, establishes a regional programme for Africa to fight land degradation. Land degradation affects much of Africa: see Pablo Muñoz *et al.*, *Land Degradation, Poverty and Inequality*, UNCCD, Bonn, 2019, pp. 8–9, available at: <https://tinyurl.com/yzvnj4h9>.
- 9 UNFCCC, Art. 1(2); PDD and UN Human Rights, above note 6, paras 96–104; UN, "Africa is Particularly Vulnerable to the Expected Impacts of Global Warming", fact sheet, available at: [https://unfccc.int/files/press/backgrounders/application/pdf/factsheet\\_africa.pdf](https://unfccc.int/files/press/backgrounders/application/pdf/factsheet_africa.pdf); ICRC, "Mali-Niger: Climate Change and Conflict Make an Explosive Mix in the Sahel", news release, 22 January 2019, available at: [www.icrc.org/en/document/mali-niger-climate-change-and-conflict-make-explosive-mix-sahel](http://www.icrc.org/en/document/mali-niger-climate-change-and-conflict-make-explosive-mix-sahel). See also, generally, Oxfam International, *Uprooted by Climate Change: Responding to the Growing Risk of Displacement*, Oxford, November 2017; Isabelle Niang and Olivier C. Ruppel, "Africa", in V. R. Barros *et al.* (eds), above note 4, Part B, p. 1199.
- 10 See, for example, HRC Res. 13/4, "The Right to Food", 24 March 2010; ICRC, "A Conflict without Borders Continues to Play Out in the Sahel", news release, 8 July 2020, available at: [www.icrc.org/en/document/conflict-without-borders-continues-play-out-sahel](http://www.icrc.org/en/document/conflict-without-borders-continues-play-out-sahel); Robert Muggah and José Luengo Cabrera, "The Sahel is Engulfed by Violence. Climate Change, Food Insecurity and Extremists are Largely to Blame", World Economic Forum, 23 January 2019, available at: [www.weforum.org/agenda/2019/01/all-the-warning-signs-are-showing-in-the-sahel-we-must-act-now/](http://www.weforum.org/agenda/2019/01/all-the-warning-signs-are-showing-in-the-sahel-we-must-act-now/). Finally, see UN Security Council, *Joint Force of the Group of Five for the Sahel: Report of the Secretary-General*, UN Doc. S/2021/442, 10 May 2021, p. 2, para. 4: "The latest available data indicate that, in 2021, 6.8 million people were food-insecure in G5 Sahel countries. The threat of famine is now looming in Burkina Faso. Also, since 2018, in the Liptako-Gourma region, the number of internally displaced people has risen twentyfold. In G5 Sahel States, close to 2.2 million people were internally displaced and more than 880,000 people were refugees. Large-scale displacement continued to have an impact on State service provision and the availability of natural resources, further exacerbating tension and social conflicts."
- 11 ICRC, above note 9; ICRC, above note 10. The role played by such groups appears to be a complex one: see Lori-Anne Théroux-Bénoni and Baba Dakono, "Are Terrorist Groups Stoking Local Conflicts in the Sahel?", Institute for Security Studies, 14 October 2019, available at: <https://issfrica.org/iss-today/are-terrorist-groups-stoking-local-conflicts-in-the-sahel>.
- 12 Stefano M. Torelli, "Climate-Driven Migration in Africa", European Council on Foreign Relations, 20 December 2017, available at: [https://ecfr.eu/article/commentary\\_climate\\_driven\\_migration\\_in\\_africa/](https://ecfr.eu/article/commentary_climate_driven_migration_in_africa/);

Office of the UN High Commissioner for Refugees (UNHCR), the UN refugee agency, recognizes the threat posed by climate change to the displaced. In its Global Compact for Refugees, the UNHCR acknowledges that “climate, environmental degradation and natural disasters increasingly interact with the drivers of refugee movements”.<sup>13</sup>

The Sahel assumed a higher priority for the UNHCR in 2020. On 23 July 2020, the African Development Bank (AfDB), UNHCR and the G5 Sahel (Burkina Faso, Chad, Mali, Mauritania and Niger)<sup>14</sup> signed an agreement to allocate \$20 million to the COVID-19 response across the Sahel region.<sup>15</sup> The UNHCR has provided emergency shelter to over 81,000 displaced people and amid COVID-19, its work has helped over 338,000 people to receive essential health-care services in the Central Sahel.<sup>16</sup> Additionally, with schools closed, 12,000 displaced and host community children have continued their education through distance learning.<sup>17</sup> At the end of March 2021 the total population of concern for the UNHCR amounted to 3,861,555 individuals, including refugees, asylum-seekers, refugee returnees, IDPs and IDP returnees, in five countries of the Sahel, which are analyzed in this article: Burkina Faso, Mali, Niger, Chad and Mauritania. Excluding returnees, the forcibly displaced numbered 877,773 asylum-seekers and refugees and 2,170,655 IDPs.<sup>18</sup>

Lisa Schlein, “Internal Displacement in the Sahel Tops 2 Million as Armed Conflict Intensifies”, VOA, 23 January 2021, available at: [www.voanews.com/africa/internal-displacement-sahel-tops-2-million-armed-conflict-intensifies](http://www.voanews.com/africa/internal-displacement-sahel-tops-2-million-armed-conflict-intensifies). See UNHCR, *Update of UNHCR’s Operations in Africa*, Executive Committee of the High Commissioner’s Programme, 69th Session, 1–5 October 2018; UNHCR, *UNHCR Global Trends 2019*, 18 June 2020, available at: [www.unhcr.org/globaltrends2019/](http://www.unhcr.org/globaltrends2019/); Internal Displacement Monitoring Centre (IDMC) and Norwegian Refugee Council (NRC), *Global Report on Internal Displacement 2020*, April 2020, available at: [www.internal-displacement.org/sites/default/files/publications/documents/2020-IDMC-GRID.pdf](http://www.internal-displacement.org/sites/default/files/publications/documents/2020-IDMC-GRID.pdf); UNHCR, “Sahel Refugee Crisis”, available at: [www.unrefugees.org/emergencies/sahel/](http://www.unrefugees.org/emergencies/sahel/); UNHCR, “Sahel Crisis Explained”, 29 October 2020, available at: [www.unrefugees.org/news/sahel-crisis-explained/](http://www.unrefugees.org/news/sahel-crisis-explained/); Climate Refugees, “Climate, Conflict, Migration in the Sahel – Regional Expert Weighs In”, 5 October 2020, available at: [www.climate-refugees.org/perspectives/2020/10/4/sahel](http://www.climate-refugees.org/perspectives/2020/10/4/sahel). See also Terence Epule, Changhui Pen and Laurent Lepage, “Environmental Refugees in Sub-Saharan Africa: A Review of Perspectives on the Trends, Causes, Challenges and Way Forward”, *GeoJournal*, Vol. 80, No. 1, 2015.

13 *Report of the United Nations High Commissioner for Refugees*, UN Doc. A/73/12 (Part II), 13 September 2018, para. 8, affirmed by UNGA Res. 73/151, 17 December 2018.

14 The G5 Sahel is an institutional framework for coordination of regional cooperation in development policies and security matters in West Africa. It was formed on 16 February 2014 in Mauritania at a summit of five Sahel countries – Burkina Faso, Chad, Mali, Mauritania and Niger – and is permanently seated in Mauritania. Later in 2014, it adopted a Convention of Establishment. See Dominic Chavez, “Sahel G5 Meeting Brings Together Governments and Donors to Accelerate Regional Development”, World Bank, 14 July 2014, available at: [www.worldbank.org/en/news/feature/2014/07/14/sahel-g5-meeting-brings-together-governments-and-donors-to-accelerate-regional-development](http://www.worldbank.org/en/news/feature/2014/07/14/sahel-g5-meeting-brings-together-governments-and-donors-to-accelerate-regional-development); Abdelhak Bassou, *State, Borders and Territory in the Sahel: The Case of the G5 Sahel*, Policy Brief PB-17/33, OCP Policy Center, October 2017, available at: <https://sahelresearch.africa.ufl.edu/files/OCPPC-PB1733vEn.pdf>; G5 Sahel, Convention portant creation du G5 Sahel, 14 December 2014.

15 UNHCR, “US\$20 Million for Sahel Drive to Curb COVID-19”, 23 July 2020, available at: [www.unhcr.org/news/press/2020/7/5f1993eb4/us20-million-sahel-drive-curb-covid-19.html](http://www.unhcr.org/news/press/2020/7/5f1993eb4/us20-million-sahel-drive-curb-covid-19.html).

16 UNHCR, “UNHCR Warns of Mounting Needs in Sahel as Forced Displacement Intensifies”, 16 October 2020, available at: [www.unhcr.org/news/briefing/2020/10/5f894b234/unhcr-warns-mounting-needs-sahel-forced-displacement-intensifies.html](http://www.unhcr.org/news/briefing/2020/10/5f894b234/unhcr-warns-mounting-needs-sahel-forced-displacement-intensifies.html).

17 *Ibid.*

18 UNHCR, “Sahel Crisis”, available at: <https://data2.unhcr.org/en/situations/sahelcrisis>.



## The definition of refugee according to the 1951 Refugee Convention

The first issue addressed in this article is whether the cross-border climate-induced displaced persons in the Sahel are entitled to refugee status under international law. The established definition of a refugee in international law is found in the 1951 Convention relating to the Status of Refugees (Refugee Convention). As is well known, this instrument defines a refugee as someone who, *inter alia*, leaves or is unable to return to his or her country of nationality as a result of a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”.<sup>19</sup> There are therefore three essential elements to satisfying the test for refugee status: first, an individual, well-founded fear of persecution;<sup>20</sup> secondly, being outside of one’s country of origin or habitual residence; and thirdly, an inability or unwillingness to rely on the protection of that country or to return there due to a fear of persecution.<sup>21</sup> While the established definition has been subject to judicial interpretation over the years so that, for instance, gender-related violence,<sup>22</sup> including female genital mutilation<sup>23</sup> and forced sterilization,<sup>24</sup> and sexual orientation<sup>25</sup> have become accepted as falling within the Refugee Convention’s grounds for recognizing refugee status, it would ordinarily strain the text beyond breaking point to read into it that natural or environmental disasters in and of themselves, including climate change as a subcategory, are one such ground, even if one invokes the doctrine of evolutive interpretation.<sup>26</sup> The fact that a conscious decision was seemingly taken to exclude peoples fleeing natural disasters would render such a

- 19 Convention Relating to the Status of Refugees, 189 UNTS 137, 28 July 1951 (entered into force 22 April 1954) (Refugee Convention), Art. 1(a)(2). The overwhelming majority of African States are parties to the Refugee Convention, including the five Sahel countries in question: see UNHCR, “States Parties, Including Reservations and Declarations, to the 1951 Refugee Convention”, available at: [www.unhcr.org/5d9ed32b4](http://www.unhcr.org/5d9ed32b4).
- 20 The fear of persecution must be based on the five grounds listed in Article 1(a)(2) of the Refugee Convention, which is exhaustive. See Jahid Hossain Bhuiyan, “Refugee Status Determination: Analysis and Application”, in R. Islam and J. Hossain Bhuiyan (eds), above note 2, pp. 54–60.
- 21 UNHCR, “What Is a Refugee?”, available at: [www.unhcr.org/what-is-a-refugee.html](http://www.unhcr.org/what-is-a-refugee.html). See, generally, James C. Hathaway and Michelle Foster, *The Law of Refugee Status*, 2nd ed., Cambridge University Press, Cambridge, 2014.
- 22 UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or Its 1967 Protocol relating to the Status of Refugees*, UN Doc. HCR/GIP/02/01, 7 May 2002, available at: [www.unhcr.org/uk/publications/legal/3d58ddef4/guidelines-international-protection-1-gender-related-persecution-context.html](http://www.unhcr.org/uk/publications/legal/3d58ddef4/guidelines-international-protection-1-gender-related-persecution-context.html).
- 23 *Ibid.*; House of Lords, *Fornah v. SSHD*, [2007] 1 AC 412, 2007.
- 24 Supreme Court of Canada, *Cheung v. Canada (Minister of Employment and Immigration)*, 102 DLR (4th) 214, 1993.
- 25 UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the Context of Article 1A(2) of the 1951 Convention and/or Its 1967 Protocol relating to the Status of Refugees*, UN Doc. HCR/GIP/12/09, 23 October 2012, available at: [www.unhcr.org/uk/publications/legal/50ae466f9/guidelines-international-protection-9-claims-refugee-status-based-sexual.html](http://www.unhcr.org/uk/publications/legal/50ae466f9/guidelines-international-protection-9-claims-refugee-status-based-sexual.html); Court of Justice of the European Union, *X, Y, Z v. Minister voor Immigratie en Asiel*, Case Nos C-199/12, C-200/12, C-201/12, ECLI:EU:C:2013:720, 2013.
- 26 See House of Lords, *Hoxha and Anor v. Secretary of State for the Home Department*, [2005] UKHL 19, 2005, paras 8–9, which cautioned against “reading into a treaty [the Refugee Convention] words that are not there”. It should be noted that the first principle of treaty interpretation is that of giving a term

reading extremely unlikely.<sup>27</sup> However, the UNHCR is of the view that climate-induced displaced persons do not qualify as refugees “unless they also have well-founded fear of persecution for one of the reasons stated”.<sup>28</sup> A causal link must therefore be established between the environmental disaster and the persecution,<sup>29</sup> described by the UNHCR as “nexus dynamics”.<sup>30</sup> A possible scenario might be flooding caused by the deliberate destruction of dykes or a dam;<sup>31</sup> another would be discrimination against as a member of a social group in the distribution of disaster relief.<sup>32</sup> Nevertheless, unlikely as it may seem, it has been suggested that nature could be viewed as the “persecutor”,<sup>33</sup> but logically, persecution, and/or the fear of it, such as fear for one’s life, must be generated by human agency and by definition cannot be carried out by random and inanimate acts of nature, however calamitous.<sup>34</sup> The view has therefore been expressed that,

implicitly, the [Refugee] Convention ... excludes those who are displaced across a state border due to drought, flood or loss of income induced by deforestation. People fleeing such environmental changes would not qualify for refugee status even under liberal interpretations of prevailing legal norms.<sup>35</sup>

its ordinary meaning: see Vienna Convention on the Law of Treaties, 1155 UNTS 331, 22 May 1969 (entered into force 27 January 1980), Art. 31(1).

- 27 Ionel Zamfir, “Refugee Status under International Law”, European Parliamentary Research Service, 27 October 2015, p. 24, available at: <https://epthinktank.eu/2015/10/27/refugee-status-under-international-law/>.
- 28 UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, Geneva, January 1992, para. 39, available at: [www.unhcr.org/4d93528a9.pdf](http://www.unhcr.org/4d93528a9.pdf); UNHCR, *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters*, 1 October 2020, paras 7–9, available at: [www.refworld.org/docid/5f75f2734.html](http://www.refworld.org/docid/5f75f2734.html).
- 29 UNHCR, *Legal Considerations*, above note 28, para. 10. See also Colloquium on Challenges in International Refugee Law, “International Refugee Law: The Michigan Guidelines on Nexus to a Convention Ground”, *Michigan Journal of International Law*, Vol. 23, No. 2, 2002; R. Islam, above note 2, pp. 222–224.
- 30 See Sanjula Weerasinghe, *In Harm’s Way: International Protection in the Context of Nexus Dynamics between Conflict or Violence and Disaster or Climate Change*, UNHCR, Division of International Protection, December 2018, available at: <https://www.unhcr.org/5c1ba88d4.pdf>.
- 31 See Jane McAdam, *Climate Change Displacement and International Law: Complementary Protection Standards*, UNHCR, Geneva, May 2011, p. 14.
- 32 *Report of the Special Rapporteur*, above note 2, para. 26; New Zealand Immigration and Protection Tribunal (NZIPT), *AC (Tuvalu)*, [2014] NZIPT 800517-520, 2014, para. 86. A much-cited example is that of the Marsh Arabs of Iraq, many of whom were forced to flee their traditional homeland as a result of the wetlands being drained by the Iraqi government of Saddam Hussein in retribution for a failed uprising. See *Report of the Special Rapporteur of the Commission on Human Rights*, UN Doc. E/CN.4/1995/56, 15 February 1995.
- 33 Jessica B. Cooper, “Environmental Refugees: Meeting the Requirements of the Refugee Definition”, *New York University Environmental Law Journal*, Vol. 6, No. 2, 1998.
- 34 New Zealand Court of Appeal (NZCA), *Teitiota v. Chief Executive of the Ministry of Business, Innovation and Employment*, [2014] NZCA 173, 2014, para. 21. See, further, J. McAdam, above note 31, p. 12; Mark Baker-Jones and Melanie Baker-Jones, “*Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment – A Person Displaced*”, *QUT Law Review*, Vol. 15, No. 2, 2015, pp. 114–116. While national courts have assumed different stances on the definition of fear of persecution (see Rafiqul Islam, “The Origin and Evolution of International Refugee Law”, in R. Islam and J. Hossain Bhuiyan (eds), above note 2, pp. 26–27), the circumstances share the common feature of human agency, whether through human rights violations or armed conflict.
- 35 A. Suhrke, above note 2, p. 492.

This strict interpretation has been upheld by national courts.<sup>36</sup> A decision of the New Zealand Court of Appeal (NZCA), rejecting the submission that a climate-induced displaced person could qualify for refugee status, is apposite.<sup>37</sup> The case concerned Mr Teitiota and his wife from the Pacific Island State of Kiribati, who were in New Zealand unlawfully and whose application for refugee status and protected person status on the grounds that climate change would make living in Kiribati untenable had been turned down by the New Zealand Immigration and Protection Tribunal (NZIPT).<sup>38</sup> The NZIPT held that Teitiota was not a victim of “forced” displacement but had moved voluntarily, and that persecution required human agency under both international law and the relevant New Zealand legislation.<sup>39</sup> With specific reference to natural disasters and environmental degradation, while such events could entail serious human rights issues, the criteria in the Refugee Convention had to be met, which in the New Zealand context meant establishing egregious violations of core human rights with a sufficient link to a Refugee Convention ground.<sup>40</sup> Teitiota appealed the decision, arguing, *inter alia*, that environmental degradation in the form of coastal erosion and sea-level rise meant that there was no future for him and his family in Kiribati.

An appeal against the NZIPT’s decision that the factual circumstances meant that Teitiota did not qualify for refugee status under the Refugee Convention eventually reached the NZCA. It was submitted on behalf of Teitiota that the “word ‘refugee’ constitutes and incorporates those who are refugees by way of climate change and its effects”.<sup>41</sup> The NZCA held that the domestic legislation, which incorporated both the definition of refugee under the Refugee Convention and that of protected person under the International Covenant on Civil and Political Rights (ICCPR), had been correctly interpreted to exclude such persons, and that the categories of refugee and protected person required persecution by a “human agency”.<sup>42</sup> It has therefore been remarked that

the use of the term refugee in Mr Teitiota’s circumstances [was] conceptually inaccurate and ‘misconceived’, in that the factual circumstances provided no evidence to support the legal interpretation and ‘bring him within the Convention’. On considering the definition, it was not difficult for the courts

36 See J. McAdam, above note 31, pp. 13–14; Law Library of Congress, “New Zealand: ‘Climate Change Refugee’ Case Overview”, Section IV, July 2015, available at: [www.loc.gov/item/2016295703/](http://www.loc.gov/item/2016295703/).

37 NZCA, *Teitiota*, above note 34. For comment, see M. Baker-Jones and M. Baker-Jones, above note 34.

38 NZIPT, *AF (Kiribati)*, [2013] NZIPT 800413, 2013. The New Zealand Immigration Act of 2009 incorporates the test for a refugee under the Refugee Convention and the test for protected person status in accordance with the International Covenant on Civil and Political Rights, 999 UNTS 171, 16 December 1966 (entered into force 23 March 1976) (ICCPR). See Supreme Court of New Zealand (NZSC), *Teitiota v. Chief Executive of the Ministry of Business, Innovation and Employment*, [2015] NZSC 107, 2015, paras 5–6.

39 NZIPT, *AF*, above note 38, paras 49, 54.

40 *Ibid.*, para. 65.

41 NZCA, *Teitiota*, above note 34, para. 11. This submission appears to have been based on a “sociological” definition of refugee status, which is broader than the legal definition: see NZIPT, *AF*, above note 38, para. 52.

42 NZCA, *Teitiota*, above note 34, para. 21. See also NZIPT, *AC*, above note 32; NZIPT, *AF*, above note 38.

to conclude that Mr Teitiota did not satisfy the definition of a ‘refugee’ for the purposes of the Convention.<sup>43</sup>

It is difficult to disagree with this assessment, and neither did an examination of the facts give rise to fears over Mr Teitiota’s human rights if he was returned to Kiribati.<sup>44</sup> The NZCA was not unsympathetic to the plight of climate-induced displaced persons, but it observed that ultimately, “climate change and its effect on countries like Kiribati is not appropriately addressed under the Refugee Convention”.<sup>45</sup> Whilst the Supreme Court of New Zealand upheld the decisions of the lower courts denying leave to appeal, it agreed with them that it could not be definitively ruled out that climate change or environmental disasters “could never create a pathway into the Refugee Convention”.<sup>46</sup> The UNHCR has welcomed the fact that the door has been opened to the possibility of relying on the Refugee Convention in such circumstances but has warned against a narrow interpretation of the effects of climate change to the exclusion of other considerations, since the authorities could find the Refugee Convention inapplicable.<sup>47</sup>

International law, in the guise of the Refugee Convention as traditionally understood, may therefore be of limited relevance to persons who are forcibly displaced because of natural disasters. An argument made on human rights grounds may, however, stand a chance of success, and this will be considered below. In light of the somewhat narrow interpretation of the concept of a refugee under the Refugee Convention, States have acted at the regional level to broaden the definition of refugee, particularly in Africa and the Middle East.

## The OAU Convention on Refugees

Particularly significant in this context was the adoption by the Organization of African Unity (OAU, now African Union) of the 1969 Convention on Refugees in Africa (OAU Convention).<sup>48</sup> The OAU Convention is vitally important to the five Sahel States mentioned above, which are parties to it. The OAU was of the view that the existing international law, as enshrined in the 1951 Refugee

43 M. Baker-Jones and M. Baker-Jones, above note 34, pp. 111–112 (footnotes omitted).

44 NZCA, *Teitiota*, above note 34, para. 25.

45 *Ibid.*, para. 41.

46 NZSC, *Teitiota*, above note 38, para. 13. It should be noted that the UN Human Rights Committee did not find reasons to disagree with the conclusions of the New Zealand judiciary: see Human Rights Committee, *Teitiota v. New Zealand*, Communication No. 2728/2016, Views, 24 October 2019.

47 UNHCR, *Legal Considerations*, above note 28, paras. 5–6.

48 Convention Governing the Specific Aspects of Refugee Problems in Africa, 1001 UNTS 45, 10 September 1969 (entered into force 20 January 1974) (OAU Convention). As of May 2019, the OAU Convention had been ratified by forty-six States. See, generally, Paul Weis, “The Convention of the Organization of African Unity Governing the Specific Aspects of Refugee Problems”, *Revue de Droits de l’Homme*, Vol. 3, No. 3, 1970; Rose M. D’Sa, “The African Refugee Problem: Relevant International Conventions and Recent Activities of the Organization of African Unity”, *Netherlands International Law Review*, Vol. 31, No. 3, 1984; Rainer Hofman, “Refugee Law in an African Context”, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Vol. 52, No. 2, 1992.

Convention, did not adequately reflect the singular difficulties facing Africa as a result of decolonization, such as wars of national liberation and minority rule, which had given rise to mass exoduses and the displacement of whole populations, in addition to the persecution of particular individuals involved in the liberation struggle.<sup>49</sup> However, the OAU Convention complements, rather than replaces, the Refugee Convention in Africa.<sup>50</sup>

For present purposes, the OAU Convention's main innovation is that it broadens the concept of the refugee.<sup>51</sup> Article 1(2) of the OAU Convention extends the definition of refugee to include persons fleeing "external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of [their] country of origin or nationality".<sup>52</sup> This definition was designed to cover flight brought about by the liberation struggle, and placed emphasis on an objective test of fear of persecution.<sup>53</sup> Furthermore, it has been argued that the OAU definition does not require "calculated", directed intent but can also apply to "accidental situations".<sup>54</sup> This broader and more

49 For a different narrative asserting that in fact, national security considerations were uppermost, see George Okoth-Obbo, "Thirty Years On: A Legal Review of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa", *Refugee Survey Quarterly*, Vol. 20, No. 1, 2001, p. 90; Micah Bond Rankin, "Extending the Limits or Narrowing The Scope? Deconstructing the OAU Refugee Definition Thirty Years On", *South African Journal on Human Rights*, Vol. 21, No. 3, 2005, p. 408.

50 OAU Convention, Art. 8(2). The preamble additionally acknowledges that the Refugee Convention constitutes the basic instrument relating to the status and treatment of refugees. See also African Commission on Human and Peoples' Rights (ACHPR), *Doebbler v. Sudan*, Communication No. 235/2000, 11–25 November 2009, para. 125.

51 Latin American States expanded the definition of refugee through a non-binding declaration, the Cartagena Declaration on Refugees, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena de Indias, Colombia, 22 November 1984, Art. 3(3), available at: [www.unhcr.org/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html](http://www.unhcr.org/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html). The Cartagena Declaration makes specific reference to generalized violence, internal conflicts and massive violations of human rights but does not expressly mention natural disasters. European Union legislation is also of interest: Directive 2011/95/EU on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted, OJ L 337/9, 13 December 2011, Art. 2(f), known as the Qualifications Directive, whilst accepting that the Refugee Convention constitutes the foundation of the international legal regime for the protection of refugees, introduces the legal concept of "subsidiary protection" for persons who do not qualify as refugees but would be at risk of "serious harm" if returned to their country of origin. "Serious harm" is defined as (a) the death penalty or execution; (b) torture or inhuman or degrading treatment or punishment; and (c) serious and individual threat to a person's life due to indiscriminate violence in situations of international or internal armed conflict (Art. 15). Persons displaced as a result of climate change or environmental disasters may therefore fall outside the scope of the definition.

52 R. Hofman, above note 48, p. 323. Judge Pinto de Albuquerque was of the view that the OAU Convention constituted an example of an instrument incorporating a broader human rights standard enlarging the concept of refugee to those in need of complementary international protection. European Court of Human Rights (ECtHR), *Hirsi Jamaa and Others v. Italy*, Appl. No. 27765/09, Judgment (Grand Chamber), 23 February 2012, Concurring Opinion of Judge Pinto de Albuquerque, p. 62.

53 P. Weis, above note 48, p. 455; G. Okoth-Obbo, above note 49, pp. 111–112; Eduardo Arboleda, "Refugee Definition in Africa and Latin America: The Lessons of Pragmatism", *International Journal of Refugee Law*, Vol. 3, No. 2, 1991, pp. 194–196. However, this view has been challenged: see M. B. Rankin, above note 49, pp. 410–414; Marina Sharpe, "The 1969 African Refugee Convention: Innovations, Misconceptions, and Omissions", *McGill Law Journal*, Vol. 58, No. 1, 2012, pp. 113–120.

54 G. Okoth-Obbo, above note 49, p. 112.

liberal regime was motivated, as stated in the preamble to the OAU Convention, by “the need for an essentially humanitarian approach towards solving the problems of refugees”.<sup>55</sup> However, this wider definition is not without its critics, who consider that it contains elements of “vagueness and ambiguity”.<sup>56</sup> There has been considerable debate as to whether or not population displacement because of natural disasters was initially envisaged as coming within the protective scope of the definition,<sup>57</sup> and there is persuasive support for the stance that it appears to have been limited to human-made disasters.<sup>58</sup> Could it nevertheless be said that this understanding has evolved subsequently so that it has become accepted that climate-induced displaced persons would qualify as refugees for the purposes of the OAU Convention?<sup>59</sup> The key phrase is “events seriously disturbing public order”. It is argued that “public order” refers to disorder caused by social and political unrest, breaches of the peace, riots, violent demonstrations etc., rather than natural calamities,<sup>60</sup> but there does not seem to be any insuperable reason why this phrase should not be capable of being interpreted to include those fleeing public disorder because of natural catastrophes.<sup>61</sup> The UNHCR has emphasized that a vital element is the *effect* of the disorder rather than the cause, be it human-made or natural.<sup>62</sup> Yet, crucially, there appears to have been little support for this approach in Africa itself.<sup>63</sup> The African Charter on the Rights and Welfare of the Child contains an explicit reference to “natural disasters”, albeit limited to internally displaced children.<sup>64</sup> Whether this development may cause a rethinking of the above narrative, in that the interpretation of the relevant

55 See also Vienna Declaration and Programme of Action, *International Legal Materials*, Vol. 32, No. 6, 1993, p. 1661, Part I, para. 23(5).

56 M. B. Rankin, above note 49, p. 410; M. Sharpe, above note 53, p. 111.

57 For the “inclusive” view, see, for example, Gino J. Naldi, *The Organization of African Unity: An Analysis of Its Role*, 2nd ed., Mansell, London, 1999, p. 79; Ram C. Chhangani, *African Refugee Law: Problems and Prospects*, University of Maiduguri Press, Maiduguri, 1992, p. 9. In contrast, for the “exclusive” view, see Ruma Mandal, *Protection Mechanisms Outside of the 1951 Convention* (“Complementary Protection”), Legal and Protection Policy Research Series No. 9, UNHCR, 2005, pp. 13–14, available at: [www.unhcr.org/435df0aa2.pdf](http://www.unhcr.org/435df0aa2.pdf).

58 M. B. Rankin, above note 49, p. 415; M. R. Rwelamira, “Two Decades of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa”, *International Journal of Refugee Law*, Vol. 1, No. 4, 1989, p. 558; Walter Kälin and Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches*, UNHCR, Geneva, February 2012, pp. 33–34; David Keane, “The Environmental Causes and Consequences of Migration: A Search for the Meaning of ‘Environmental Refugees’”, *Georgetown International Environmental Law Review*, Vol. 16, No. 2, 2004, pp. 216–217.

59 Cristiano d’Orsi, “Sub-Saharan Africa: Is a New Special Regional Refugee Law Regime Emerging?”, *Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht*, Vol. 68, No. 6, 2008, p. 1061.

60 For a summary of these views, see Alice Edwards, “Refugee Determination in Africa”, *African Journal of International and Comparative Law*, Vol. 14, No. 2, 2006, p. 226. However, the view has been expressed that the term “public order” in the Refugee Convention corresponds to the term “ordre public” in French law (see Paul Weis, *The Refugee Convention, 1951*, available at: [www.unhcr.org/4ca34be29.pdf](http://www.unhcr.org/4ca34be29.pdf)), and this may well be the case also with the OAU Convention.

61 M. R. Rwelamira, above note 58, p. 558; A. Edwards, above note 60, p. 227; R. Islam, above note 2, p. 229; W. Kälin and N. Schrepfer, above note 58, p. 34.

62 UNHCR, *Legal Considerations*, above note 28, para. 16.

63 A. Edwards, above note 60; W. Kälin and N. Schrepfer, above note 58.

64 African Charter on the Rights and Welfare of the Child, 1 July 1990 (entered into force 29 November 1999), Art. 23(4).



treaties, as living instruments, may have evolved since to encompass those affected by natural disasters, remains an open question. There is evidence to suggest that a reversal in the legal attitude is under way.<sup>65</sup>

The UNHCR has drawn attention to another issue concerning Article 1(2) of the OAU Convention. The provision in question requires a person to have been “compelled” to leave their place of habitual residence. According to the UNHCR, a high threshold must be met: climate change or a disaster must have an effect or impact on the person’s place of habitual residence and compel or force the person to leave their country – i.e., it must have put the person at risk of serious harm. Whether the effects of climate change or disasters are severe enough to compel a person to leave and seek protection in another country – namely, whether a risk of serious harm is established – depends on how the disaster unfolds and develops; the geographical proximity of the disaster to the person’s place of habitual residence; how it affects their life, physical integrity, liberty and enjoyment of other human rights; and how the State responds.<sup>66</sup> As such, while a disaster may by definition seriously disrupt public order, it will only warrant refugee status when the State, including with international assistance, is unable or unwilling to address its impacts on the State and its societal order and population.

Recent African Union (AU) treaties deserve mention in this context. The Protocol on Older Persons seeks to ensure that older persons in situations of, *inter alia*, natural disaster are a prioritized group for assistance.<sup>67</sup> The Protocol on Persons with Disabilities in Africa contains a similar provision, obliging States Parties to take measures to protect persons with disabilities in situations of, *inter alia*, forced displacement, humanitarian emergency and natural disaster.<sup>68</sup> In the absence of any specifics, the rights in both treaties must be presumed to apply in all cases of displacement. According to the Protocol on Free Movement of Persons, States Parties may establish specific procedures for the movement of specific vulnerable groups, including refugees and, impliedly, IDPs, in addition to the measures provided for by international, regional and subregional instruments, which must, however, be compatible with obligations assumed under such instruments relating to their protection.<sup>69</sup> It has been suggested that the Protocol could become a substitute for refugee protection among States Parties, particularly through the abolition of visa requirements, but doubt has been cast on the viability of this viewpoint.<sup>70</sup> In this regard, the Protocol appears to add little to the current state of affairs since States are free, subject to their

65 S. Weerasinghe, above note 30, p. 114.

66 UNHCR, *Legal Considerations*, above note 28, para. 17.

67 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa, 31 January 2016, Art. 14.

68 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa, 29 January 2018, Art. 12(1).

69 Protocol to the Treaty Establishing the African Economic Community relating to Free Movement of Persons, Right of Residence and Right of Establishment, 29 January 2018, Art. 24.

70 Marina Sharpe, “The Free Movement of Persons within the African Union and Refugee Protection”, 25 May 2020, available at: [www.reflaw.org/the-free-movement-of-persons-within-the-african-union-and-refugee-protection/](http://www.reflaw.org/the-free-movement-of-persons-within-the-african-union-and-refugee-protection/).



international obligations, to determine rights of entry for refugees and other displaced persons.

## The Arab Convention on Refugees

The Arab Convention on Regulating Status of Refugees in the Arab Countries (Arab Convention on Refugees) adopted by the League of Arab States also expands the definition of refugee.<sup>71</sup> Unlike the ambiguity surrounding the relevance of the OAU definition discussed above, the Arab Convention on Refugees defines a refugee as any person “who unwillingly takes refuge in a country other than his own ... because of the occurrence of natural disasters or grave events resulting in major disruption of public order”.<sup>72</sup> Natural disasters are explicitly recognized as a ground for determining refugee status. Because the phrase “natural disasters” is not defined, it can reasonably be argued that persons forcibly displaced because of natural disasters come within the scope of this provision. It should also be observed that in order to qualify for refugee status a person must have moved “unwillingly”, comparable to the element of compulsion in the OAU definition.

## The Kampala Convention

Persons who, because of forced or involuntary movement, find themselves in a refugee-like situation but do not qualify for refugee status under international law because they remain within national frontiers—namely, IDPs—have long existed in a legal limbo.<sup>73</sup> As has been previously stated, the Refugee Convention does not apply to IDPs. According to the UNHCR, there were over 16.5 million IDPs in Africa by mid-2018, and the Sahel is a problem area.<sup>74</sup> The OAU had taken steps to deal with the plight of IDPs;<sup>75</sup> according to the African Charter on the Rights and Welfare of the Child,<sup>76</sup> children displaced by, *inter alia*, natural disasters are entitled to protection and humanitarian assistance. But the ground-

71 Arab Convention on Regulating Status of Refugees in the Arab Countries, 1994 (not yet in force) (Arab Convention on Refugees). Mauritania and Sudan are the only Sahel States to be members of the League of Arab States.

72 Arab Convention on Refugees, Art. 1.

73 However, the UN has drafted a soft-law document, the Guiding Principles on Internal Displacement, setting out the humanitarian and human rights standards applicable to IDPs: see *Report of the Special Representative of the Secretary-General, Mr. Francis M. Deng, Submitted Pursuant to Commission Resolution 1997/39*, UN Doc. E/CN.4/1998/53/Add.2, 11 February 1998, Annex. The Principles apply to those affected by natural disasters (*ibid.*, Introduction, para. 2). Furthermore, according to Principle 6(2)(d), the prohibition on arbitrary displacement includes displacement in cases of disaster, unless required by health and safety reasons. See, further, Francis M. Deng, “The International Protection of the Internally Displaced”, *International Journal of Refugee Law*, Vol. 7, No. 1, 1995, p. 74.

74 UNHCR, *Update of UNHCR’s Operations in Africa*, above note 12. For the situation in the Sahel, see IDMC and NRC, above note 12, pp. 23–24.

75 Rachel Murray, *Human Rights in Africa: From the OAU to the African Union*, Cambridge University Press, Cambridge, 2004, pp. 222–225.

76 See above note 64.

breaking development was the adoption by the AU in 2009 of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).<sup>77</sup> The basic premise of this instrument seems to be that all persons have a right to be protected against arbitrary displacement.<sup>78</sup> The Kampala Convention reiterates the basic principle that the primary (though not exclusive) duty and responsibility for providing protection and humanitarian assistance to IDPs within their territory or jurisdiction rests with States.<sup>79</sup> This extends to taking measures to protect and assist IDPs.<sup>80</sup>

The Kampala Convention defines IDPs as

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.<sup>81</sup>

The broad scope of the definition adopted by the Kampala Convention is notable; it expressly refers to circumstances such as natural disasters. Internal displacement is defined as “the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders”.<sup>82</sup> Clearly, and following from the previous paragraph, forced displacement because of natural disasters comes within the scope of this definition, and this is also apparent from other treaty provisions. The Kampala Convention protects against arbitrary displacement, which includes forced evacuations caused by natural disasters where the evacuations are not necessitated by health and safety reasons.<sup>83</sup>

77 Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 23 October 2009 (entered into force 6 December 2012), *International Legal Materials*, Vol. 49, No. 1, 2010 (Kampala Convention), p. 83. By June 2020, the Kampala Convention had been ratified by thirty-one States, including the five countries of the Central Sahel. See, generally, Mike Asplet and Megan Bradley, “Introductory Note to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)”, *International Legal Materials*, Vol. 52, No. 1, 2013; Romola Adeola, “The Impact of the African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa”, *African Journal of Human Rights Law*, Vol. 19, No. 2, 2019; Allehone M. Abebe, “The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, and Enforcement Challenges”, *Refugee Survey Quarterly*, Vol. 29, No. 3, 2010; Flavia Zorzi Giustiniani, “New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa”, *Denver Journal of International Law and Policy*, Vol. 39, No. 2, 2011; Cristiano d’Orsi, “Strengths and Weaknesses in the Protection of the Internally Displaced in Sub-Saharan Africa”, *Connecticut Journal of International Law*, Vol. 28, No. 1, 2012.

78 Kampala Convention, Art. 4(4).

79 *Ibid.*, Art. 5(1).

80 *Ibid.*, Art. 5(4).

81 *Ibid.*, Art. 1(k). It essentially repeats verbatim the description provided by the Guiding Principles on Internal Displacement, above note 73, Introduction, para. 2.

82 Kampala Convention, Art. 1(l).

83 *Ibid.*, Art. 4(4)(f). Accordingly, forced evacuations to protect a population at risk of drowning in floods, for instance, would not come within the scope of the definition.

## The Protocol on the Protection and Assistance to Internally Displaced Persons

The Kampala Convention was not the first treaty to address the plight of IDPs, however. That distinction goes to the sub-regional Protocol on the Protection and Assistance to Internally Displaced Persons (Great Lakes Protocol) adopted in 2006 by the International Conference on the Great Lakes Region (ICGLR).<sup>84</sup> In broad terms, the Great Lakes Protocol places a stress on “the protection function of member states, who bear the primary responsibility” for IDPs.<sup>85</sup> Arguably, the primary objective of the Great Lakes Protocol is the incorporation of the Guiding Principles on Internal Displacement into national law.<sup>86</sup> What is important for present purposes is that it explicitly applies to environmentally displaced persons. Article 1(4) defines internally displaced persons as, *inter alia*, those who have had to flee because of natural disasters. Furthermore, States Parties are required, where possible, to “mitigate the consequences of displacement caused by natural disasters and natural causes”.<sup>87</sup>

### A human rights approach?

Human rights may offer a gainful route to the protection of persons forcibly displaced because of natural disasters.<sup>88</sup> In this context, it is important to note that the African Charter on Human and Peoples’ Rights (African Charter)

84 Protocol on the Protection and Assistance to Internally Displaced Persons, 30 November 2006 (entered into force 21 June 2008) (Great Lakes Protocol), available at: [www.refworld.org/pdfid/52384fe4.pdf](http://www.refworld.org/pdfid/52384fe4.pdf). The Great Lakes Protocol shares many similarities with the Kampala Convention and the UN Guiding Principles on Internal Displacement: see International Refugee Rights Initiative, *Comparison of the Kampala Convention and the IDP Protocol of the Great Lakes Pact*, January 2014, available at: [www.refugee-rights.org/wp-content/uploads/2019/03/Comparative-Note-on-the-Kampala-Convention-and-IDP-Protocol-FINAL-EN.pdf](http://www.refugee-rights.org/wp-content/uploads/2019/03/Comparative-Note-on-the-Kampala-Convention-and-IDP-Protocol-FINAL-EN.pdf). The ICGLR is an intergovernmental organization of the States of the African Great Lakes region with a mandate to promote peace and development. Its members are Angola, Burundi, the Central African Republic, the Republic of Congo, the Democratic Republic of the Congo, Kenya, Uganda, Rwanda, South Sudan, Sudan, Tanzania and Zambia. The relevance of the Great Lakes Protocol for the purposes of this article may be limited as only one State Party, Sudan, is considered to be part of the Sahel region.

85 International Refugee Rights Initiative, *Comparison of the Kampala Convention and the IDP Protocol of the Great Lakes Pact*, January 2014, p. 3, available at: [www.refugee-rights.org/wp-content/uploads/2019/03/Comparative-Note-on-the-Kampala-Convention-and-IDP-Protocol-FINAL-EN.pdf](http://www.refugee-rights.org/wp-content/uploads/2019/03/Comparative-Note-on-the-Kampala-Convention-and-IDP-Protocol-FINAL-EN.pdf); Walter Kälin and Nina Schrepfer, *Internal Displacement and the Kampala Convention: An Opportunity for Development Actors*, IDMC, Geneva, November 2012, pp. 18–19.

86 W. Kälin and N. Schrepfer, above note 85, p. 18.

87 Great Lakes Protocol, Art. 3(2).

88 See Annalisa Savaresi, “Plugging the Enforcement Gap: The Rise and Rise of Human Rights in Climate Change Litigation”, *Questions of International Law*, Vol. 77, 2021. See, generally, Jane McAdam and Marc Limon, *Human Rights, Climate Change and Cross-Border Displacement: The Role of the International Human Rights Community in Contributing to Effective and Just Solutions*, Universal Rights Group, Versoix, 2015. See also the Climate Change Litigation Databases, available at: <http://climatecasechart.com/non-us-case-category/human-rights/page/3/>.

applies to displaced persons.<sup>89</sup> The argument that a nexus exists between the protection of the environment and the realization of human rights is increasingly gaining traction.<sup>90</sup> Additionally, the UNHCR has recognized that human rights violations can amount to persecution.<sup>91</sup> Human rights that may be at stake include a number of first- and second-generation rights, such as the right to life, the right to water, the right to food and the right to health.<sup>92</sup> It is now clearly established in human rights law that States have assumed both positive and negative obligations in this regard and that consequently, environmental hazards that have adverse effects on human beings and are caused, directly or indirectly, by State action or inaction may lead to a breach of the State's human rights obligations.<sup>93</sup> The European Court of Human Rights (ECtHR) pioneered this concept through the employment of the doctrine of implied rights,<sup>94</sup> and recent developments have continued this approach of securing environmental protection via the interpretation of other rights, with particular emphasis being placed on

89 African Charter on Human and Peoples' Rights, 1520 UNTS 217, 17 June 1981 (entered into force 21 October 1986) (African Charter). The African Charter has been ratified by all the Sahel States.

90 R. Islam, above note 2, pp. 231–234; Walter Kälin, "The Human Rights Dimension of Natural or Human-Made Disasters", *German Yearbook of International Law*, Vol. 55, 2012. See, further, Inter-American Court of Human Rights (IACHR), *Kawas Fernández v. Honduras*, Series C, No. 196, Judgment, 3 April 2009, para. 148; ACHPR, *Social and Economic Rights Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Communication No. 155/96, Decision, 27 October 2001, para. 51; Federal Constitutional Court of Germany, *Neubauer v. Germany*, BVerfG 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20, 29 April 2021; Supreme Court of the Netherlands, *State of the Netherlands v. Urgenda Foundation*, ECLI:NL:HR:2019:2007, Judgment, 20 December 2019, English translation available at: <https://tinyurl.com/vc5vw9w4>. In the *Urgenda Foundation* case, the Supreme Court held, *inter alia*, that the Netherlands was under a positive obligation under the European Convention on Human Rights to take appropriate and independent measures to mitigate climate change even if it was a minor contributor to greenhouse gas emissions. For comment, see Maïko Meguro, "International Decisions", *American Journal of International Law*, Vol. 114, No. 4, 2020. See, further, Jacqueline Peel and Jolene Lin, "Transnational Climate Litigation: The Contribution of the Global South", *American Journal of International Law*, Vol. 113, No. 4, 2019; Charlotte Renglet and Stefaan Smis, "The Belgian Climate Case: A Step Forward in Invoking Human Rights Standards in Climate Litigation?", *ASIL Insights*, Vol. 25, No. 21, 2021.

91 UNHCR, *Legal Considerations*, above note 28, para. 11.

92 *Report of the Special Rapporteur*, above note 2, para. 26; *Report of the Special Rapporteur on the Human Rights of Migrants*, UN Doc. A/75/207, 21 July 2020; IACHR, *State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(1) in relation to Articles 1(1) and 2 of the American Convention on Human Rights*, Series A, No. 23, Advisory Opinion OC-23/17, 15 November 2017, para. 66; J. McAdam, above note 31, pp. 16–36; James C. Hathaway, *The Rights of Refugees under International Law*, Cambridge University Press, Cambridge, 2005.

93 W. Kälin, above note 90, p. 127. See, for example, ECtHR, *Önerildiz v. Turkey*, Appl. No. 48939/99, Judgment (Grand Chamber), 30 November 2004 (rights to life and property); ECtHR, *Budayeva and Others v. Russia*, Appl. Nos 15339/02, 21166/02, 20058/02, 11673/02, 15343/02, Judgment (Chamber), 20 March 2008 (right to life); ECtHR, *Kolyadenko and Others v. Russia*, Appl. Nos 17423/05, 20534/05, 20678/05, 23263/05, 24283/05, 35673/05, Judgment (Chamber), 28 February 2012 (right to life and respect for private and family life).

94 See, for example, ECtHR, *Lopez Ostra v. Spain*, Appl. No. 16798/90, Judgment, 9 December 1994 (respect for private and family life); ECtHR, *Guerra v. Italy*, Appl. No. 14967/89, Judgment, 19 February 1998 (respect for private and family life); ECtHR, *Giacomelli v. Italy*, Appl. No. 59909/00, Judgment (Chamber), 2 November 2006 (respect for private and family life); ECtHR, *Tătar v. Romania*, Appl. No. 67021/01, Judgment (Chamber), 27 January 2009 (respect for private and family life).

the right to life.<sup>95</sup> However, it should be observed that in the context of natural hazards “beyond human control”, the ECtHR grants States a considerable margin of appreciation.<sup>96</sup> A decision of the UN Human Rights Committee is especially significant in this regard. In *Teitiota v. New Zealand*, the applicant, having had his claim for asylum as a refugee or protected person rejected by the New Zealand authorities (as detailed above) and having exhausted all domestic remedies, complained that by removing him to Kiribati, New Zealand had violated his right to life under Article 6 of the ICCPR.<sup>97</sup> The Human Rights Committee made the point that environmental degradation and climate change “constitute some of the most pressing and serious threats” to the right to life.<sup>98</sup> While the threat to Kiribati was a slow-onset one, the Committee accepted that the situation there could become incompatible with the right to life.<sup>99</sup> It determined that in protecting the right to life, States had to take account of “reasonably foreseeable threats and life-threatening situations”.<sup>100</sup> While the Committee concluded that on the facts New Zealand had not violated the applicant’s right to life in that there was no prospect of imminent harm, this decision is nevertheless important because of its reasoning on the impact of climate change.

It is significant that the right to a healthy environment is recognized as an autonomous right in regional human rights treaties.<sup>101</sup> The jurisprudence of the Inter-American Court of Human Rights (IACHR) is particularly relevant, especially a recent opinion which has affirmed the right to a healthy environment as “fundamental for the existence of humanity”.<sup>102</sup> Climate change was also explicitly mentioned in the opinion, asserting that the right to a healthy environment is both an individual and collective right that includes current and future generations.<sup>103</sup> In addition, the IACHR observed that one of the rights at risk from environmental change is the right not to be forcibly displaced.<sup>104</sup>

Having examined the status, and certain rights accruing thereby, of people displaced as a result of climate change in international law, this article now focuses on the response to the climate crisis in the Sahel—firstly, by the international community, and secondly, in terms of domestic legislation by the five Sahel States.

95 See, for example, ECtHR, *Öneryildiz*, above note 93; ECtHR, *Budayeva*, above note 93.

96 ECtHR, *Budayeva*, above note 93, paras 135, 137. As opposed to human-made hazards: ECtHR, *Öneryildiz*, above note 93. See also J. McAdam, above note 31, pp. 59–60. The obvious point could be made that it is now generally accepted that environmental change is also driven by human activity.

97 For comment, see Simon Behrman and Avidan Kent, “The Teitiota Case and the Limitations of the Human Rights Framework”, *Questions of International Law*, Vol.77, 2021. The ICCPR has been accepted by the five Sahel States in question.

98 Human Rights Committee, *Teitiota*, above note 46, para. 9.4.

99 *Ibid.*, paras 9.11–9.12.

100 *Ibid.*, para. 9.4.

101 African Charter, Art. 24; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, OAS Treaty Series No. 69, 16 November 1988 (entered into force 16 November 1999), Art. 11; Arab Charter on Human Rights, 22 May 2004 (entered into force 15 March 2008), Art. 38. See further ACHPR, *SERAC*, above note 90.

102 IACHR, above note 92, para. 59.

103 *Ibid.*, paras 54, 59.

104 *Ibid.*, para. 66.

## International responses to climate-induced displacement

For many years, the UN has been expressing concern that climate change could lead to increased displacement and migration in the Sahel region.<sup>105</sup> In January 2021, the AfDB pledged to mobilize up to \$6.5 billion over five years to advance the Sahel's landmark initiative, the Great Green Wall Initiative (GGWI), launched by the AU in 2007.<sup>106</sup> Once that goal is reached, the GGWI should assist in providing a solution to many threats faced not only by Africa but also by the entire world, such as climate change, drought, famine, conflict and migration. The GGWI creates a barrier against climate change running across the Sahel region. To date,<sup>107</sup> notable successes have been achieved, including the restoration of 5 million hectares of land in Niger that will deliver an additional 500,000 tonnes of grain per year, enough to feed 2.5 million people.<sup>108</sup> This will help to alleviate the damage caused by the floods of October 2019 around the Komadugu Yobé River; these caused the displacement of some 23,000 persons, who lost hectares of their

105 UN, *Support Plan for the Sahel (Working Together for a Peaceful and Prosperous Sahel)*, May 2018, p. 8: "For years, the improvements and growth witnessed in the Sahel have been overshadowed by complex and multi-dimensional challenges. These are characterized by mutually reinforcing factors of vulnerability, instability and insecurity. These risks are intensified by political and governance crises, unequal distribution of wealth and lack of access to resources, opportunities and basic services. The demographic bulge, combined with climate change, could worsen a phenomenon of violence and conflict, and lead to displacement and migration".

106 AfDB, "Sahel Region: The African Development Bank Pledges to Mobilise \$6.5 Billion in Support of the Great Green Wall Initiative", 11 January 2021, available at: [www.afdb.org/en/news-and-events/press-releases/sahel-region-african-development-bank-pledges-mobilise-65-billion-support-great-green-wall-initiative-40203](http://www.afdb.org/en/news-and-events/press-releases/sahel-region-african-development-bank-pledges-mobilise-65-billion-support-great-green-wall-initiative-40203).

107 20 December 2021.

108 See the GGWI website, available at: [www.greatgreenwall.org/results](http://www.greatgreenwall.org/results). See also Republic of Niger, *Cadre de Gestion Environnementale et Sociale (CGES) du Projet de Relance et du Développement de la Région du Lac Tchad (PROLAC): Rapport final*, January 2020, para. 2(5) ("Défis environnementaux et sociaux"); Republic of Niger, *Plan d'Action 2016–2020 de l'initiative 3N "Les nigériens nourrissent les nigériens"*, 2016; Soufiyane Amadou, Nicola Cantoreggi and Ronald Jaubert, "Les Nigériens nourrissent les Nigériens: Quelles perspectives pour les exploitations familiales?", *Les Cahiers d'Outre-Mer*, Vol. 2018/2, No. 278, 2018, p. 337: "The 3N initiative, 'Nigériens feed Nigeriens', supposes to break with the "addiction to aid". The initiative affirms a willingness to address the dependence on aid and the practices of development and humanitarian aid programs through innovations such as the creation of an investment fund, the promotion of small scale irrigation and the supervision of humanitarian aid. The analysis of the achievements of the first phase of the Initiative (2011–2015), of programmatic documents and their evolution between 2012 and 2017 as well as the positioning of donors raises questions on the 3N initiative's capacity and willingness to promote a policy centered on family farms while it is an essential condition for Nigeriens to feed Nigeriens." See, finally, Republic of Chad, *Stratégie nationale et plan d'action pour la mise en oeuvre de l'initiative Grande Muraille Verte au Tchad*, 2012, p. 34: "L'Initiative GMV vise le développement des communautés locales à travers la mise en place d'une approche novatrice et inclusive consistant à mettre en synergie les actions de lutte contre la désertification avec des activités de restauration des terres et de conservation de la biodiversité. Cette mise en synergie concerne également le développement des systèmes de productions (agricole, sylvicole et pastorale) et aussi le développement des infrastructures socioéconomiques de base et la création de richesses par le développement d'activités génératrices de revenus en vue de contribuer à une sécurité alimentaire stable et à la relance d'une croissance économique durable. L'objectif général visé est de contribuer à la lutte contre l'avancée du désert en mettant en valeur, de manière intégrée, des zones dégradées dans l'emprise de la GMV en vue de lutter contre la pauvreté tout en assurant une gestion durable des ressources naturelles."



soil.<sup>109</sup> Another success of the GGWI has been the 3 million hectares of land that have been rehabilitated in Burkina Faso through a farming technique known as *Zai*, in which pits are dug in the soil during the pre-season to catch water and concentrate compost.<sup>110</sup>

In October 2020, the UNHCR warned of disastrous consequences in the Sahel region, in what was declared the world's fastest-growing displacement and protection crisis.<sup>111</sup> Commitments expected to be made at a Ministerial Roundtable for the Central Sahel on 20 October in Copenhagen restored a sense of urgency to a region facing a number of challenges. The Roundtable adopted both financial announcements and non-financial commitments. In the first case, twenty-two States, plus the European Union (EU) and Education Cannot Wait, the first global fund dedicated to education in emergencies and protracted crises,<sup>112</sup> pledged to allocate \$725.4 million to help the Sahel for 2021 and beyond.<sup>113</sup>

Additionally, eight European States (Denmark, France, Germany, Italy, the Netherlands, Norway, Sweden and the United Kingdom) plus the International NGO Forum in Burkina Faso (INGO Burkina Faso) adopted several non-financial commitments. Several of these commitments directly affect displacement in the region—for example, developing an efficient nexus approach for responding to displacement (Denmark, Italy, Norway, Sweden), and making displacement a priority in bilateral development cooperation with displacement-affected States in the Sahel (Denmark).

Other commitments have been undertaken, for example, to support climate-resilient access to services and infrastructure for refugees, enabling them to pursue self-reliance and contribute to local socio-economic development (Denmark), and to sustain engagement in support of durable solutions, whenever opportunities for ending displacement arise in the Sahel (Denmark, INGO Burkina Faso). Also, humanitarian access and the promotion and implementation

109 "Niger Floods Force 23,000 from their Homes", *Phys.Org*, 20 October 2019, available at: <https://phys.org/news/2019-10-niger-homes.html>.

110 See the GGWI website, available at: [www.greatgreenwall.org/results](http://www.greatgreenwall.org/results).

111 UNHCR, "UNHCR Warns of Mounting Needs in Sahel as Forced Displacement Intensifies", 16 October 2020, available at: [www.unhcr.org/news/briefing/2020/10/5f894b234/unhcr-warns-mounting-needs-sahel-forced-displacement-intensifies.html](http://www.unhcr.org/news/briefing/2020/10/5f894b234/unhcr-warns-mounting-needs-sahel-forced-displacement-intensifies.html).

112 See the ECW website, available at: [www.educationcannotwait.org/about-ecw/](http://www.educationcannotwait.org/about-ecw/). Concerning the action of the EU in the Sahel, see, for example, Louis Balmond, "Les organisations internationales régionales africaines face à l'impact du changement climatique sur les conflits et le cas particulier du Sahel", *Questions de Droit International*, 30 September 2021, pp. 35-36, available at: [www.qil-qdi.org/wp-content/uploads/2021/09/03\\_Climate-Security\\_BALMOND\\_FIN\\_b.pdf](http://www.qil-qdi.org/wp-content/uploads/2021/09/03_Climate-Security_BALMOND_FIN_b.pdf): "Depuis 2008, l'UE préconisait en effet une approche globale en matière de sécurité et de développement pour faire face à la complexité des problèmes auxquels est confrontée la zone. La dégradation de la situation sécuritaire l'a conduite à adopter une stratégie pour la sécurité et le développement au Sahel dont la formulation même est significative de l'ordre des priorités retenues: l'insistance sur la relation entre sécurité et développement traduit le caractère intégré de la stratégie mais la dimension sécuritaire demeure prioritaire."

113 Ministerial Roundtable for the Central Sahel, "Financial Announcements", 28 October 2020, available at: <https://tinyurl.com/yckva5pe>.



of international humanitarian law (France, Germany, Netherlands, Norway, Sweden, United Kingdom, INGO Burkina Faso), and the protection from human rights abuses (Italy, Norway, Sweden, United Kingdom, INGO Burkina Faso) found space on the list of commitments.<sup>114</sup> Consequently, the co-chairs of the Roundtable, apart from highlighting that the effects of climate change, including as a driver of displacement, should be addressed as a priority, stressed that displacement should be considered a priority both in humanitarian action and in development cooperation, which should be carried out in close collaboration with government authorities and, to the greatest extent possible, within the framework of national development strategies, as called for in the Global Compact on Refugees (GCR).<sup>115</sup>

In its own words, the GCR is a “framework for more predictable and equitable responsibility-sharing, recognizing that a sustainable solution to refugee situations cannot be achieved without international cooperation”. The GCR may aid refugee protection in Africa because its four objectives address the three principal protection challenges prevailing on the continent. The objectives of the GCR are to ease pressures on host countries, enhance refugee self-reliance, expand access to third-country solutions, and support conditions in countries of origin for return in safety and dignity. The GCR seeks to achieve these objectives through the mobilization of political will and arrangements facilitating more equitable and sustained contributions among States and other relevant stakeholders.<sup>116</sup>

First among the three principal protection challenges in Africa is the scale of the refugee problem, coupled with limited resources. In this context, the GCR's first objective of easing pressures on host countries and its third objective of expanding third-country solutions are critical. Second, refugees in Africa frequently find some of their most important rights systemically violated. The GCR's second objective, regarding enhanced refugee self-reliance, speaks to rights including education and employment. Thirdly, refugee situations in Africa are often protracted. The GCR's fourth objective of supporting conditions for return in safety and dignity can help address this challenge.<sup>117</sup> The GCR builds on the sentiments expressed in the 1969 OAU Convention of harm, fear, and international and intergovernmental assistance to facilitate returns, by incorporating “humanitarian, peacebuilding, and development interventions”.<sup>118</sup> This formula is reflective of the 2030 Agenda for Sustainable Development

114 For the list of commitments, see, “Non-Financial Commitments”, 20 October 2020, available at: <https://tinyurl.com/3nw4xjp4>.

115 See Ministerial Roundtable for the Central Sahel, “Co-Chairs’ Summary”, 2020, available at: <https://tinyurl.com/mr33eph7>. For the GCR, see *Report of the UNHCR, Part II: Global Compact on Refugees*, UN Doc. A/73/12, 2 August 2018; see also UN General Assembly, *Office of the United Nations High Commissioner for Refugees*, UN Doc. A/RES/73/151, 17 December 2018.

116 UN, *Global Compact on Refugees*, 2018 (GCR), p. 4, para. C(7).

117 Marina Sharpe, “The Global Compact on Refugees and Conflict Prevention in Africa: ‘Root Causes’ and Yet Another Divide”, *International Journal of Refugee Law*, Vol. 30, No. 4, 2018.

118 GCR, above note 116, para. 88.

Goals<sup>119</sup> and, together with mechanisms for livelihood and economic opportunities, facilitates dignified repatriation.<sup>120</sup>

African States have demonstrated their commitment to addressing refugee and migration-related problems in Africa in many international and regional fora. This includes participating in the development and drafting of both the GCR and the Global Compact for Safe, Orderly and Regular Migration (GCM).<sup>121</sup> The GCM, in its Objective No. 2 (“Minimize the adverse drivers and structural factors that compel people to leave their country of origin”), also deals with the effects on migration of natural disasters, the adverse effects of climate change, and environmental degradation. It does so by, *inter alia*, seeking to integrate displacement considerations into disaster preparedness strategies and to promote cooperation with neighbouring and other relevant countries (para. j), developing mechanisms at the regional level to address the vulnerabilities of persons affected by natural catastrophes, in order for them to have access to humanitarian assistance (para. k). Finally, the GCM is also aimed at developing approaches to address the challenges of migration movements in the context of ecological disasters. It does this by taking into consideration recommendations from State-led consultative processes, such as the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change.<sup>122</sup> This document highlights, for example, that in several disaster situations in Africa, migration officials have exercised their authority specially to allow on their territories groups of forcibly displaced persons fleeing disasters who lack domestic legal protection, providing for at least a temporary protection addressing ecological disasters.<sup>123</sup> In the framework of the adoption of the GCM, the government of Niger, for example, has reaffirmed that the country has embraced a strategy to adapt to climatic changes and the degradation of soil.<sup>124</sup> Niger’s National Plan of Adaptation of Agriculture in the Context of Climatic Change was adopted in April 2020. It highlights the will of the government of find a solution to ease the lives of populations obliged to relocate because of climatic

119 UN General Assembly, *Transforming our World: The 2030 Agenda for Sustainable Development*, UN Doc. A/RES/70/1, 25 September 2015. For a definition of the Agenda, see the preamble of the resolution: “This Agenda is a plan of action for people, planet and prosperity. It also seeks to strengthen universal peace in larger freedom. We recognize that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development. All countries and all stakeholders, acting in collaborative partnership, will implement this plan. We are resolved to free the human race from the tyranny of poverty and want and to heal and secure our planet. We are determined to take the bold and transformative steps which are urgently needed to shift the world on to a sustainable and resilient path. As we embark on this collective journey, we pledge that no one will be left behind.”

120 Fatima Khan and Cecile Sackeyfio, “What Promise Does the Global Compact on Refugees Hold for African Refugees?”, *International Journal of Refugee Law*, Vol. 30, No. 4, 2018.

121 UN General Assembly, *Global Compact for Safe, Orderly and Regular Migration*, UN Doc. A/RES/73/195, 19 December 2018.

122 Nansen Initiative, *Agenda for the Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, 2 vols, December 2015.

123 *Ibid.*, Vol. 2, p. 47.

124 Republic of Niger, *Statement at the Adoption of the GCM*, 10 December 2018, p. 3, available at: [www.un.org/en/conf/migration/assets/pdf/GCM-Statements/niger.pdf](http://www.un.org/en/conf/migration/assets/pdf/GCM-Statements/niger.pdf).

circumstances that are unfavourable to agriculture and, as such, to the livelihoods of those populations.<sup>125</sup> In general terms, the goal of addressing the environmental challenges in the Sahel region, characterized by forced displacement, was taken up by the UN Economic and Social Council (ECOSOC) in 2018.<sup>126</sup>

In light of the GCR, several African States, but only Chad belonging to the Sahel, are currently rolling out the new Comprehensive Refugee Response Framework (CRRF). The CRRF is the first of two annexes to the New York Declaration for Refugees and Migrants adopted in September 2016 at a high-level meeting of the UN General Assembly. It is a comprehensive set of commitments to be implemented in situations involving large-scale movements of refugees. It lists a number of actions and best practices in four areas: reception and admission measures (para. 5), support for immediate and ongoing needs (para. 6), support for host countries (para. 8), and enhanced opportunities for durable solutions (paras 9–16).<sup>127</sup> Through the New York Declaration, States commit to assisting displaced persons in countries that are experiencing natural disasters, recognizing the importance of the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (para. 50). The UN Secretary-General has also noted that many people are compelled to leave their homes for reasons that do not fall within the refugee definition contained in the Refugee Convention.<sup>128</sup>

## How domestic legislation and policy in the Sahel tackle the plight of climate-induced displaced persons

On 3 May 2018, the Republic of Chad announced its formal implementation of the CRRF through a letter signed by the minister of territorial administration, public security and local governance.<sup>129</sup> The application of the CRRF aims to strengthen the pursuit of protection, assistance and solutions for refugees and other

125 Republic of Niger, *Stratégie et plan national d'adaptation face aux changements climatiques dans le secteur agricole SPN2A 2020-2035*, 10 April 2020, p. 49 available at: [https://reca-niger.org/IMG/pdf/adaptation\\_niger\\_spn2a\\_document\\_cadre\\_10042020.pdf](https://reca-niger.org/IMG/pdf/adaptation_niger_spn2a_document_cadre_10042020.pdf).

126 ECOSOC, *Support to the Sahel Region*, UN Doc. E/RES/2020/2, 10 December 2019.

127 UN General Assembly, *New York Declaration for Refugees and Migrants*, UN Doc. A/RES/71/1, 19 September 2016.

128 *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants: Report of the Secretary-General*, UN Doc. A/70/59, 21 April 2016, p. 6, para. 18. See also p. 8, para. 27: "Disasters have always led to displacement and are likely to do so even more in the future, given the rising concentration of populations in cities and the likelihood that hazards relating to climate change and environmental degradation will increase in frequency and intensity. ... More droughts are likely to lead many rural inhabitants to move to cities, creating pressures on labour markets and housing. Evidence suggests that people displaced by environmental factors tend to move to areas at even greater environmental risk. Sea-level rise and extreme weather events may drive people away from coastal areas and low-lying small island States. While many victims of disasters are able to return to their homes in a relatively short time, in some cases they require permanent relocation."

129 UNHCR, "UNHCR Welcomes the Accession of the Government of Chad to the Comprehensive Refugee Response Framework", 8 May 2018, available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/Press%20release\\_UNHCR\\_CRRF\\_English.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/Press%20release_UNHCR_CRRF_English.pdf).

displaced populations, and for the communities that host them.<sup>130</sup> In the framework of the CRRF, the Chadian government also decided to implement a national law governing the status of refugees and asylum-seekers, which was adopted on 23 December 2020.<sup>131</sup> This law does not present any provision on climate-related displaced persons, although it is highlighted that asylum can also be “economic”, in case of unemployment and/or lack of remuneration in the country of origin.<sup>132</sup> However, it is true that Article 3(2) of the Chadian law, on the definition of refugee, adopts the “expanded” definition provided in Article 1 (2) of the OAU Convention that gave rise to debate as to whether it also includes persons forcibly displaced because of natural disasters.<sup>133</sup> The Chadian government has long had a humanitarian action plan in place to ensure the safety of settlements for displaced persons and the availability of education, health care and food.<sup>134</sup>

The Central Sahel countries of Burkina Faso, Mali and Niger are the epicentre of the forced displacement crisis. The number of IDPs inside Burkina Faso increased from 87,000 in January 2019 to more than 1 million in December 2020. Burkina Faso, among the poorest countries in the world and one of the most susceptible to climate risks, faces a major internal security crisis.<sup>135</sup> Despite relatively favourable rains in 2020, food insecurity and malnutrition remain at

130 UNHCR, “Applying Comprehensive Responses (CRRF) in Africa”, June 2018, available at: [www.unhcr.org/5b3346397.pdf](http://www.unhcr.org/5b3346397.pdf).

131 UNHCR, “UNHCR Welcomes New Asylum Law in Chad”, 24 December 2020, available at: <https://tinyurl.com/yckpbp9x>.

132 *Rapport sur le projet de loi portant asile en République du Tchad*, No. 065/AN/TL/CPGILAAJ/2020, 18 December 2020; see also Loi No. 027/PR/2020 portant d’asile en République du Tchad, 31 December 2020 (both documents on file with author). Finally, see Décret No. 11-839/PR/PM/MAT/11 portant création, organisation et attributions de la Commission nationale d’accueil, de réinsertion des réfugiés et des rapatriés (CNARR), 2 August 2011.

133 For a doctrinaire debate on this issue, see G. J. Naldi, above note 57, p. 79; R. C. Chhangani, above note 57, p. 9; Aurelie Lopez, “The Protection of Environmentally-Displaced Persons in International Law”, *Environmental Law*, Vol. 37, No. 2, 2007, p. 389; M. R. Rwelamira, above note 58, p. 558; Tatenda N. Muzenda, “The Role of Social and Economic Factors and Natural Disasters in Forced Population Displacements in Africa”, *International Journal of Refugee Law*, Vol. 7, Special Issue, 1995, p. 51; A. Edwards, above note 60, p. 227; Tal H. Schreier, “A Critical Examination of South Africa’s Application of the Expanded OAU Refugee Definition: Is Adequate Protection Being Offered Within the Meaning of the 1969 OAU Refugee Convention?”, LLM diss., University of Cape Town, Faculty of Law, 2008, p. 18 (on file with author).

134 *Combined Periodic Report of the Republic of Chad (1998 to 2015) on the Implementation of the African Charter on Human And Peoples’ Rights*, September 2016, p. 70, para. 323: “The Government and its technical and financial partners have developed a humanitarian action plan to ensure the safety of camps for displaced persons and the availability of food, healthcare and education. Displaced persons live in secure areas including Moundou, Goré, Sarh, Bagassola, GozBeida, etc.”

135 In this regard, see, for example, SB Morgen, *The Search for a Caliphate: Expansionist Agenda of Radical Islam from the Sahel to the Horn of Africa*, May 2021, p. 16, available at: [www.sbmintel.com/wp-content/uploads/2021/05/202105\\_Caliphate\\_.pdf](http://www.sbmintel.com/wp-content/uploads/2021/05/202105_Caliphate_.pdf). Between 2017 and 2019, Burkina Faso suffered from 225 terrorist attacks, Chad fifty-eight, Mauritania nine and Niger 134. Burkina Faso is second only to Mali, which suffered from 579 terrorist attacks during the same period. Institute for Economics and Peace, *Global Terrorism Index 2020: Measuring the Impact of Terrorism*, University of Maryland and US National Consortium for the Study of Terrorism and Responses to Terrorism, November 2020, p. 36, Table 2.9.

alarming levels, most worryingly in the areas affected by insecurity.<sup>136</sup> Worsening insecurity and natural disasters have sparked an unprecedented internal displacement crisis, affecting all thirteen regions of the country. Burkina Faso is also hosting some 19,400 refugees and asylum-seekers, most of whom are from Mali.<sup>137</sup> In 2009, the government of Burkina Faso adopted a National Multi-Risk Disaster Preparedness and Response Plan in which is detailed the legal framework by which people made vulnerable by ecological disasters are protected within the country.<sup>138</sup> This plan was updated for the period 2013–2014<sup>139</sup> and was imitated by similar documents issued in Chad,<sup>140</sup> Mali,<sup>141</sup> Mauritania<sup>142</sup> and Niger.<sup>143</sup> In the Burkinabe National Plan, it is interesting to note that in the list of legal instruments by which people are protected during natural catastrophes, the Kampala Convention, which Burkina Faso ratified in July 2012, does not appear.

In contrast, the 2014 Burkinabe Law on the Prevention and Management of Catastrophes plays a key role in protecting the displaced because of environmental disasters.<sup>144</sup> While its Chapter 6 (Articles 50–59) deals with displacement and resettlement of people obliged to flee because of catastrophes, Chapter 7 (Articles 60–62) specifically focuses on the possible humanitarian crisis derived from the displacement. Local communities play an important part in the case of resettlement because they not only assist displaced persons but also should facilitate the integration, even if temporary, of the displaced into the socio-economic fabric of the host population (Article 57). Additionally, Article 62 calls for cooperation with bordering States in cases where the humanitarian crisis is cross-border. Article 61 makes it clear that the prevention of a humanitarian crisis is essential in order to avoid it becoming a humanitarian “catastrophe” (Article 61). The 2014 law supplements the 2008 Law on the Status of Refugees in Burkina Faso, which does not mention forced displacement because of natural

<sup>136</sup> See, for example, Daly Belgasmi, “The Issue of Food Security: The Case of Niger”, *Refugee Survey Quarterly*, Vol. 26, No. 4, 2007, p. 60: “The Niger crisis is a complex food crisis that was caused by a combination of structural causes, last year’s drought and the devastation of crops and grazing lands by locusts, between August and October 2004. High rates of poverty (63%), one of the highest population growths, low access to health care, low agricultural productivity, desertification and structurally high rates of severe child malnutrition (60% of children under five are affected by stunting) all played a role in this crisis. Niger is prone to recurrent droughts, which regularly result in food shortages.” See also Filippo Grandi, “Opening Statement at the 70th Session of the Executive Committee of the High Commissioner’s Programme”, *International Journal of Refugee Law*, Vol. 32, No. 3, 2020, p. 520.

<sup>137</sup> UN Office for the Coordination of Humanitarian Affairs (OCHA), *Burkina Faso: Situation Report*, 1 February 2021, p. 2, available at: <https://reports.unocha.org/en/country/burkina-faso/>.

<sup>138</sup> *Plan national multirisques de préparation et de réponse aux catastrophes*, 2009, pp. 107–108.

<sup>139</sup> *Plan national multirisques de préparation et de réponse aux catastrophes*, 2012, pp. 9–10.

<sup>140</sup> *Plan d’action national de renforcement des capacités pour la réduction des risques de catastrophes, la préparation et la réponse aux urgences 2015–2020*, September 2015.

<sup>141</sup> *Plan national multirisques de préparation et de réponse aux catastrophes*, 2011.

<sup>142</sup> *Plan d’action national de renforcement des capacités en réduction des risques de catastrophes et préparation et réponse aux urgences 2015–2018*, 2014.

<sup>143</sup> *Plan d’action national de renforcement des capacités pour la réduction des risques de catastrophe, la préparation et la réponse aux urgences 2015–2018*, March 2015.

<sup>144</sup> Loi No. 012-2014/AN portant loi d’orientation relative à la prévention et à la gestion des risques, des crises humanitaires et des catastrophes, 22 April 2014.

disasters.<sup>145</sup> In the case of both natural and human-induced disasters, the National Emergency Assistance and Rehabilitation Council (Conseil National de Secours d'Urgence et de Réhabilitation, CONASUR) provides support for the survival of the population during such events, particularly in the form of food and material assistance.<sup>146</sup>

An important reference for Burkina Faso in protecting the displaced is the report of the 2005 World Conference on Disaster Risk Reduction, held in Kobe, including its resolutions. Through this document, States and relevant stakeholders made an effort to ensure that local programmes for displaced persons do not intensify the risk of threats to the displaced.<sup>147</sup>

In 2019, Niger adopted a new National Disaster Risk Reduction Strategy (Stratégie Nationale de Réduction des Risques de Catastrophe, SNRRC). The SNRRC recognizes that Niger is vulnerable to the effects of various hazards, including floods and droughts, and that these phenomena are the consequences of its geographical location and the changing nature of the climate. A land-use planning policy encouraging the settlement of populations in areas at risk of environmental degradation has also exacerbated the condition of displaced persons. The SNRRC lists droughts as the most frequent climate phenomenon in the country and the main cause for conflicts over natural resources such as water.<sup>148</sup> It should be noted that the concept of IDPs is relatively new in Niger, becoming prominent with the Boko Haram insurgency. As such, people displaced in the context of floods have not necessarily been perceived as IDPs unless they have also been displaced by conflict. These considerations had implications for the implementation of Niger's 2018 Law on the Protection and Assistance of Internally Displaced Persons, suggesting the need to raise awareness among important stakeholders concerning their obligations towards IDPs affected by natural catastrophes.<sup>149</sup>

In December 2020, Chad adopted its new National Strategy and Action Plan for Disaster Risk Management. One of the objectives of this new strategy is to prevent the risk of new natural disasters and, as a consequence, new displacement of populations as well. In order to do that, this document seeks to encourage Chadians to adopt a culture of prevention of risks of possible new environmental calamities through the cooperation of all the stakeholders involved in such a process of prevention. The principles that guide this new cultural

145 Loi No. 042-2008/AN portant statut des réfugiés au Burkina Faso, 18 December 2008.

146 *Periodic Report of Burkina Faso within the Framework of the Implementation of Article 62 of the African Charter on Human and Peoples' Rights*, January 2015, p. 58, para. 231.

147 UN, *Report of the World Conference on Disaster Reduction (Kobe, Hyogo 18–22 January 2005)*, UN Doc. A/CONF.206/6, 16 March 2005, p. 16, para 4(ii)(i). At p. 4, the delegates at the Conference note that they “are deeply concerned that communities continue to experience excessive losses of precious human lives and valuable property as well as serious injuries and major displacements due to various disasters worldwide”.

148 Sanjula Weerasinghe, *Bridging the Divide in Approaches to Conflict and Disaster Displacement: Norms, Institutions and Coordination in Afghanistan, Colombia, the Niger, the Philippines and Somalia*, UNHCR and IOM, 2021, p. 134.

149 *Ibid.*, p. 139.



approach are numerous: they include the development and strengthening of the mechanisms of emergency relief and the promotion of resilient attitudes in the communities concerned, guaranteeing the right of prevention and risk reduction of natural disasters for all, because the protection of the well-being of people remains of paramount importance.<sup>150</sup> Interesting to note is the fact that the Chadian authorities envision local integration of the displaced (both refugees and IDPs) because their return to their place of origin seems undesirable in the short to medium term.<sup>151</sup>

Looking at the domestic legislation on refugees of the remaining three countries under scrutiny,<sup>152</sup> in Mauritania, State Decree No. 22 of 2005 clarifies in its first part the conditions for acquisition and loss of the status of refugee. It creates a National (Consultative) Commission for Refugees that can recommend decisions on recognition of refugee status to the minister of the interior based on positive individual assessments by the UNHCR (Article 5). In the second part, the Mauritanian law enunciates the rights and obligations of refugees, tapping into the provisions of the OAU Convention (ratified by Mauritania in 1972) and the Refugee Convention and its New York Protocol (both ratified by Mauritania in 1987).<sup>153</sup> No mention is made to forced displacement due to environmental catastrophes; similarly, the National Strategy on Migration, implemented in October 2010, lacks any specific reference to such a situation.<sup>154</sup>

The Malian legislation on refugees, dating back to 1998, does not contain any provision on forced displacement because of ecological disasters, having a similar structure to the Mauritanian legislation.<sup>155</sup> Contrary to what happened in Mauritania, the Malian Refugee Law did not create any National Commission on Refugees; that was, however, created by a specific, later decree.<sup>156</sup> While Mali ratified the OAU Convention in 1981, the Refugee Convention had already been ratified in 1973 and its New York Protocol on the same date. In the context of

150 Republic of Chad, *Stratégie nationale et plan d'actions pour la gestion des risques de catastrophes*, December 2020, Chap. 3 (“Stratégie nationale de réduction de risques des catastrophes”), pp. 39–43. On file with authors. For previous documents that also focus on natural disasters in Chad, Republic of Chad, *Rapport d'évaluation des capacités nationales pour la réduction des risques, la préparation et la réponse aux urgences au Tchad*, April 2014; Republic of Chad, *Plan d'action national de renforcement des capacités pour la réduction des risques de catastrophes, la préparation et la réponse aux urgences (2015–2020)*, September 2015.

151 Republic of Chad, *Stratégie nationale*, above note 150, para. 2(3)(5) (“Mouvements de populations”). In more detail, see p. 37: “La présence des camps de réfugiés/déplacés/retournés continue à représenter une préoccupation majeure sur le plan humanitaire. De toute évidence, on devrait s'attendre à ce que la situation se maintienne longtemps encore, le retour de ces réfugiés dans leur pays d'origine restant très improbable. L'approche de réinsertion socio-économique des réfugiés dans les communautés d'accueil en apportant une assistance élargie réfugiés/populations hôtes, en application dans le sud du pays doit être suivi minutieusement. Ces communautés hôtes sont estimées à 734 000 personnes.”

152 On the Refugee Law in Chad, see above note 131.

153 Décret No. 2005-022 fixant les modalités d'application en République islamique de Mauritanie des conventions internationales relatives aux réfugiés, 3 March 2005.

154 *Document de stratégie nationale pour une meilleure gestion de la migration*, October 2010.

155 Loi No. 1998-40 du 1998 portant sur le statut des réfugiés, 18 May 1998.

156 Décret No. 98-354/P-RM portant création de la Commission Nationale chargées des Réfugiés (CNCR), 28 October 1998.

the constitutionalism of the Sahel, specificity is given by Article 16 of the Malian Constitution, which provides the duty of all citizens to offer support in the event of a natural disaster.<sup>157</sup>

Niger's National Law on the Status of Refugees follows the examples of the other two countries in terms of absence of any provision providing for forced displacement because of natural disasters. It is the oldest law among the three countries, having been promulgated in 1997.<sup>158</sup> Niger also adopted the principal international legal instruments on refugees a long time ago, having ratified the OAU Convention in 1971, the Refugee Convention in 1961, and the latter's New York Protocol in 1970.

The principal refugee protection legal instruments of the five countries under discussion do not seem fit to address the concerns raised by the mounting problems of climate-induced displacement. That is why the present authors urge a revision of these documents (through the creation of new instruments or amendments to the existing ones) to incorporate the circumstance of displacement due to natural catastrophes—a situation that evidently was not taken into consideration by the drafters of the refugee law instruments currently in force.

## **Efficacy of subregional legislation and policy in the Sahel in tackling the plight of climate-induced displaced persons**

At a subregional level, the five States are parties to the Community of Sahel-Saharan States (CEN-SAD), whose Treaty Establishing CEN-SAD, in its Article 1, considers free movement of people as a core objective of the subregional economic community. It stipulates that the same rights, advantages and obligations granted to a member State's own citizens should be applied to nationals of the signatory countries, in conformity with the provisions of their respective constitutions. Implementation of this specific objective has been stagnant, but a number of CEN-SAD member States have been increasingly liberalizing their policies and have successfully implemented schemes to foster the intraregional movement of people; those countries that have overlapping memberships with the Economic Community of West African States (ECOWAS) tend to be further along in liberalizing their cross-border mobility restrictions. Burkina Faso, Mali and Niger are also ECOWAS members. The recognition of the need for economic

157 Décret No. 92-0731 P-CTSP portant promulgation de la Constitution, 25 February 1992. See also *Mali Periodic Report to the African Commission on Human and Peoples' Rights relating to the Implementation of the African Charter on Human and Peoples' Rights, 2001–2011*, December 2011, p. 72, para. 363: "The same Constitution stipulates a number of duties that fall on the citizen: the duty for all to protect and defend the environment and the quality of life, the duty for all citizens to provide support in the event of a natural disaster, work, defence of the fatherland, the duty to honour all civic obligations and particularly to pay one's taxes, the duty of respecting the Constitution (Articles 15 to 24)."

158 Loi No. 97-16 portant statut des réfugiés, 20 June 1997. See also Décret No. 98-382/PRN/MI/AT déterminant les modalités d'application de la Loi No. 97-016 portant statut des réfugiés, 24 December 1998; Arrêté No. 208/MI/AT/SP/CNE portant règlement intérieur de la Commission Nationale d'Éligibilité au Statut des Réfugiés, 14 July 2000.

integration, including the free flow of persons, goods and services, stimulated the enactment of the ECOWAS Protocol relating to Free Movement of Persons, Residence and Establishment in 1979.<sup>159</sup> The first phase of the Protocol guaranteed free entry of citizens from member States without visa for ninety days and was ratified by all member States in 1980. The second phase of the Protocol, concerning the right of residence, became effective in July 1986, and all member States ratified it.<sup>160</sup> In contrast, the right of establishment is contained in the 1990 Supplementary Protocol on the Implementation of the Third Phase of the ECOWAS Protocol.<sup>161</sup> The Supplementary Protocol entitles nationals of member States to settle or establish in ECOWAS States and to carry out business activities under the same conditions that apply to nationals of the host State.<sup>162</sup> However, the Supplementary Protocol, much like the 1979 Protocol, did not include any special provision concerning forced displacement because of natural disasters in the region. To further develop its policy of mobility within the region, ECOWAS introduced subregional passports in 2000.<sup>163</sup> While these passports aims to facilitate the movement of people, the challenge remains that those most vulnerable to climate change are frequently the most disadvantaged and least able to move.<sup>164</sup>

On the other hand, the governments of Burkina Faso, Chad, Mali, Mauritania and Niger have made a commitment to place the protection of displaced people and their host communities at the core of their actions. On 12 October 2020, these governments launched the Bamako Process, an intergovernmental platform for concrete and rapid actions to strengthen coordination between security and humanitarian actors and to ensure humanitarian access, protection and assistance to affected populations. The five areas of intervention on which the process focuses are: “1) Humanitarian access and civil-military coordination 2) Protection in the context of the UN framework

159 ECOWAS, Protocol relating to Free Movement of Persons, Residence and Establishment, A/P 1/5/79, 29 May 1979. More generally, for the action of ECOWAS in the Sahel, see L. Balmont, above note 112, p. 41: “Pour le Sahel plus particulièrement, elle [ECOWAS] s’est dotée d’une Stratégie pour le Sahel, adoptée en 2014 complétée par une stratégie contre-terroriste et son plan de mise en œuvre<sup>23</sup> puis en 2015 d’une Initiative-base de données socio-économique pour le Sahel pour assurer les actions de suivi et évaluation de sa Stratégie. Toutefois, si l’action de la [ECOWAS] dans le maintien de la paix n’a pas été négligeable, elle n’a pas développé une véritable stratégie intégrée au profit du Sahel, se concentrant sur les questions de sécurité et sur la lutte contre le terrorisme.”

160 John Agyei and Ezekiel Clotney, *Operationalizing ECOWAS Protocol on Free Movement of People among the Member States: Issues of Convergence, Divergence and Prospects for Sub-Regional Integration*, 2008, p. 10, available at: [www.migrationinstitute.org/files/events/clotney.pdf](http://www.migrationinstitute.org/files/events/clotney.pdf).

161 ECOWAS, Supplementary Protocol on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment, A/SP 2/5/90, 29 May 1990.

162 Michael P. Okom and Rose Ohiana Ugbe, “The Right of Establishment under the ECOWAS Protocol”, *International Journal of Law*, Vol. 2, No. 5, 2016.

163 Aderanti Adepoju, Alistair Boulton and Mariah Levin, *Promoting Integration through Mobility: Free Movement and the ECOWAS Protocol*, New Issues in Refugee Research, Research Paper No. 150, December 2007, p. 6, available at: [www.unhcr.org/476650ae2.pdf](http://www.unhcr.org/476650ae2.pdf).

164 United Nations Environment Programme (UNEP), *Livelihood Security: Climate Change, Migration and Conflict in the Sahel*, 2011, p. 23, available at: [https://postconflict.unep.ch/publications/UNEP\\_Sahel\\_EN.pdf](https://postconflict.unep.ch/publications/UNEP_Sahel_EN.pdf).

for the prevention of violent extremism 3) Access to asylum in the context of mass influx and mixed movements 4) Solutions for refugees, IDPs and other civilian population 5) Access to civil registration, identity document[s] and nationality”.<sup>165</sup> This intergovernmental process represents the implementation of the conclusions adopted during the 2019 Regional Dialogue among the five countries that also produced the Bamako Declaration, in which the representatives of the five governments showed their willingness to reinforce cooperation in order to enhance the protection of the forcibly displaced in the region. Although the topic of the environmentally displaced has not been explicitly mentioned, several of the recommendations apply to the category of forced displacement because of climate-induced disasters too. For example, the governments agreed to strengthen coordination between humanitarian actors on the ground and local authorities in order to more easily have access to persons in affected areas of the region. In addition, they agreed to reinforce partnership with local communities in situations of emergency to fill possible lacunae where access by humanitarian actors is limited or difficult, and to put in place an alert system allowing for better coordination between countries in the case of cross-border movement. Finally, the governments of the five countries committed to implementing the Kampala Convention, given that those countries had already ratified it.<sup>166</sup>

In this sense, a significant step forward has been taken by Niger, which in 2018 became the first African country to adopt a law on the protection of IDPs.<sup>167</sup> Law No. 2018-74 on the Protection and Assistance of Internally Displaced Persons received a great impulse from the local Ministry on Humanitarian Action and Disaster Management, which in early 2018 created a specific committee to develop a law on IDPs in the country.<sup>168</sup> Even more recently, the Ministry of Justice has confirmed that Law 2018-74 allows the country to promote more solidarity and cooperation among Nigeriens in view of finding durable solutions for the plight of IDPs.<sup>169</sup>

Law 2018-74 aims at the promotion and strengthening of measures to prevent, mitigate and eliminate conditions that could lead to internal displacement.<sup>170</sup> This law, having as a reference the Kampala Convention as well

165 UNHCR, *Progress Report: UNHCR Sahel Crisis Response*, October 2020, p. 3 available at: <https://tinyurl.com/yjs8smdr>.

166 *Dialogue régional de protection et de solutions dans le cadre des déplacements forcés au Sahel/Déclaration ministérielle et conclusions de Bamako*, 11–12 September 2019; *Déclaration ministérielle réaffirmant les conclusions de Bamako*, 9 October 2019.

167 Loi No. 2018-74 relative à la protection et à l’assistance aux personnes déplacées internes, 10 December 2018.

168 Arrêté No. 1 MAHCG/SG portant création, attributions et composition du comité directeur chargé de l’élaboration du projet de loi sur les personnes déplacées internes (PDI) au Niger, 2 February 2018.

169 *Note verbale No. 01/MJ/SG/DGDH/PJJ/AS en date du 27 aout 2019 adressée à la Commission de l’Union Africaine par le Ministère de la Justice de la République du Niger*, 29 August 2019, p. 2.

170 *Fifteenth Periodic Report of the Republic of Niger on the Implementation of the African Charter on Human and Peoples’ Rights Covering the Period 2017–2019, Presented Pursuant to Article 62 of the Said Charter*, November 2019, pp. 90–91, paras 444–445, further explains: “The law defines the roles and responsibilities in matters of protection against internal displacements and it makes reference to sustainable solutions, particularly the voluntary return to their places of origin, local integration into their location of displacement and establishment elsewhere in the country.”

as Resolution 1998/50 of the UN Human Rights Commission,<sup>171</sup> considers as IDPs also people fleeing their place of origin or habitual residence because of natural catastrophes (Article 2(1)). Law 2018-74 is very detailed when it comes to “vulnerability” because, in its Article 2(8), it clearly refers the meaning of the term “vulnerability” to the connotation given to this word by the 2018 domestic law determining the principles of social protection.<sup>172</sup> In the case of an environmental catastrophe, the relevant national authorities adopt all necessary measures to prevent the risk of internal displacement (Article 7), and if the displacement is inevitable, national authorities should do their best to reduce its effects (Article 9). Of particular relevance is Article 31, which concerns offences against IDPs. Arbitrary displacement in the context of environmental calamities is included among punishable offences. Such offences include forced evacuation in the event of natural disasters or due to other triggers, if the evacuations are not required with respect to the safety and health of the persons affected. The sanction is the same for both offences: fifteen to thirty years in jail and a fine of 3 to 7 million Central Africa francs. After the adoption of Law 2018-74, Niger adopted two decrees as part of efforts to implement it, in April 2020. One of these decrees concerns the modalities of application of Law 2018-74 and is to be implemented by the Ministry of Humanitarian Action and Disaster Management.<sup>173</sup> The second adopted decree concerns the organization and modalities of operation of the National Coordination Committee for the Protection and Assistance of IDPs established under Article 26 of the IDP law.<sup>174</sup>

In paragraph 8 of Resolution 1998/50, the Human Rights Commission thanked governments that invited the representative of the UN Secretary-General to visit their countries and assess the situation of IDPs. At the somewhat belated invitation of Niger, the UN Special Rapporteur on the Human Rights of IDPs visited the country (18–24 March 2018), stressing that IDPs should be consulted in all initiatives relating to their situation (para. 32), and applauding the creation, in 2016, of the above-mentioned Ministry of Humanitarian Action and Disaster Management. This ministry is one of the institutional pillars entrusted with responding to the situation of IDPs in the country.<sup>175</sup> Among other tasks, it is

171 Commission on Human Rights Res. 1998/50, “Internally Displaced Persons”, UN Doc. E/CN.4/RES/1998/50, 17 April 1998.

172 Loi No. 2018-22 déterminant les principes fondamentaux de la protection sociale, 27 April 2018.

173 Décret No. 2020-298/PRN/MAH/GC déterminant les modalités d’application de la Loi No. 2018-74 du décembre 2018 relative à la protection et à l’assistance aux personnes déplacées internes, 17 April 2020.

174 Décret No. 2020-297/PRN/MAH/GC déterminant l’organisation et les modalités de fonctionnement du comité de coordination nationale de protection et d’assistance aux personnes déplacées internes, 17 April 2020.

175 *Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons on Her Mission to the Niger*, UN Doc. A/HRC/38/39/Add.3, 9 May 2018, p. 6, para. 22. In full, para. 22 reads as follows: “The Ministry of Humanitarian Action and Disaster Management, established in 2016 on the basis of the former Humanitarian Coordination Unit, is one of the institutions entrusted with responding to the situation of internally displaced persons. With its regional counterparts, it is at the forefront of the Government’s response to the humanitarian crisis. This Ministry’s responsibilities include: coordinating responses at the national level with the other ministries and bodies involved in preparing contingency plans and action plans; ensuring cross-sectoral coordination with national institutions (ministries, regions and subregions) and agencies involved in humanitarian action and disaster management; conducting

also entrusted with elaborating and implementing all projects concerning hospitality towards IDPs in the region where they are displaced and reintegration of IDPs into their regions of origin.<sup>176</sup>

In 2009, the Special Rapporteur also visited Chad (3–9 February). On this occasion, the Special Rapporteur realized that displacement towards areas with an already fragile ecosystem would have put pressure on the limited resources in those areas. Without any intervention by the government in, for example, halting the illegal cutting of trees and the over-utilization of land for grazing, the situation would certainly have deteriorated. This could have resulted in even more limited availability of primary resources (arable land, water, wood) for both locals and IDPs. Such limited availability would have triggered potential civil conflicts and, as a consequence, new displacements.<sup>177</sup> However, in his report, the Special Rapporteur did not indicate any possible concrete solutions to limit the growing number of climate-induced IDPs. Chad, which recently saw the passing of the long-standing President Idriss Deby (1991–2021),<sup>178</sup> has struggled for a long time to accommodate IDPs, particularly in the eastern part of the country. In 2019, the number of IDPs in Chad because of conflict and violence was more than six times the amount of IDPs because of natural disasters.<sup>179</sup> Unfortunately, governmental action to integrate IDPs in the host regions (given that it was impossible to send them back home) has somewhat failed to meet expectations, but national and international actors hope that a new momentum can be gained

surveys and assessments to diagnose humanitarian emergencies and disasters, assess needs and provide preliminary responses; developing and implementing projects to support the reception and reintegration of returnees and repatriated persons, internally displaced persons and host populations; and, in conjunction with the relevant ministries, managing the camps for refugees and internally displaced persons in the Niger.”

176 Ministry of Humanitarian Action and Disaster Management, *Avant-projet de politique nationale de l'action humanitaire et de la gestion des catastrophes*, August 2018, p. 20, para. 4(1)(1)(3). At p. 41, this document provides several interesting definitions: “*Catastrophe*: Rupture grave du fonctionnement d’une communauté ou d’une société engendrant d’importants impacts et pertes humaines, matérielles, économiques ou environnementales que la communauté ou la société affectée ne peut surmonter avec ses seules ressources”; “*Catastrophe naturelle*: c’est un événement d’origine naturelle, subit et brutal, qui provoque des bouleversements importants pouvant engendrer de grands dégâts matériels et humains. Il s’agit des inondations, des sécheresses, des invasions acridiennes et d’autres calamités”; “*Catastrophe anthropique*: Est considérée comme une catastrophe anthropique, toute menace comportant un élément intentionnel, de négligence ou d’erreur humaine ou impliquant la défaillance d’un système conçu par l’homme.”

177 *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons. Addendum: Mission to the Republic of Chad*, UN Doc. A/HRC/13/21/Add.5, 22 December 2009, p. 14, para. 49. In this regard, para. 50 of this document clarifies: “Pour prévenir de nouveaux déplacements, le Représentant estime que cette situation nécessite de la part du Gouvernement tchadien à la fois une action humanitaire et des projets de relèvement précoce en étroite coopération avec les acteurs de développement. Ces projets devraient viser la réhabilitation de l’environnement dans les zones de déplacement et la promotion des moyens de production respectueux de l’environnement et adaptés aux conditions climatiques extrêmes afin d’atteindre l’autosuffisance des communautés affectées par le déplacement.”

178 “Idriss Déby Obituary: End of Chad’s ‘Great Survivor’”, *BBC News*, 21 April 2021, available at: [www.bbc.com/news/world-africa-56816290](http://www.bbc.com/news/world-africa-56816290).

179 IDMC, “Chad: Country Information”, available at: [www.internal-displacement.org/countries/chad](http://www.internal-displacement.org/countries/chad).



in order to find lasting solutions to the plight of the internally displaced.<sup>180</sup> At the same time, the Chadian government has been solicited by non-governmental organizations, international organizations and UN agencies engaged in protection work in humanitarian crises to elaborate a plan of action to identify the challenges involved and provide for some concrete response, and to review its domestic laws in light of the plight of IDPs.<sup>181</sup> A detailed and coherent plan is needed to address the growing number of IDPs that are starving in the areas around Lake Chad.<sup>182</sup> Many of the populations living around the lake have been displaced because of conflict a number of times, spending their savings during the displacements. Crop diversification, important to ensure that there is enough food, is less possible as farmers no longer have enough financial resources to plant multiple crops in different locations.<sup>183</sup>

Community outreach on gender-based violence is also needed given that many of the IDPs in the country are women.<sup>184</sup> This action should be coupled with an effort to improve the access of IDPs to health-care facilities and schools.<sup>185</sup> In 2013, given the delicate situation of IDPs in the country, the AU organized in N'djamena a workshop on the domestic legal implementation and application of the Kampala Convention in Africa. The workshop dedicated a working group to the particular condition of IDPs in Chad. The working group has elaborated a series of recommendations covering what we have already analyzed here, and it has also sought the promulgation of some domestic legislation on the protection of IDPs, though Chad has not yet adopted this legislation.<sup>186</sup>

As noted above, Burkina Faso is another country that has recently experienced a rise in the number of IDPs. According to CONASUR, by the end of 2020 the country had 1,074,993 IDPs.<sup>187</sup> A consultation with communities of IDPs in Burkina Faso, carried out by the UNHCR and other organizations in the field in 2020, revealed that the concerns and requests of IDP communities are similar throughout the country. IDPs have levelled criticism at the government's

180 ACTED, OXFAM *et al.*, *Solutions durables pour les personnes déplacées: Les défis à l'est du Tchad*, March 2012, pp. 19–21.

181 Protection Cluster Chad, *Stratégie du cluster protection: Tchad*, August 2016, p. 15.

182 Action contre le Faim, *Réfugiés et déplacés autour du Lac Tchad*, Quarterly Bulletin No. 123, September–November 2016, pp. 7–8. See also Oxfam International, above note 9, p. 24: “To date, 2.6 million people, including 1.5 million children, have been displaced by the humanitarian crisis in and around the Lake Chad Basin, putting them at risk of violence and malnutrition.”

183 Janani Vivekananda *et al.*, *Shoring Up Stability: Addressing Climate and Fragility Risks in the Lake Chad Region*, Adelphi, Berlin, 2019, p. 51, available at: [www.adelphi.de/en/publication/shoring-stability](http://www.adelphi.de/en/publication/shoring-stability). See also Amali Tower, *Shrinking Options: The Nexus between Climate Change, Displacement and Security in the Lake Chad Basin*, Climate Refugees, 18 September 2017, p. 10, available at: <https://indd.adobe.com/view/bf1670bb-4562-402e-a6c2-ebb3298cf8e5>.

184 OCHA, *Plan de reponse humanitaire: Tchad*, February 2020, p. 59.

185 *Ibid.*, p. 77.

186 AU, *Annuaire de l'Union Africaine sur la transposition en droit national et l'application de la Convention de Kampala sur les personnes déplacées internes: Résumé de discussions, conclusions et recommandations*, 2–3 May 2013, pp. 5–6.

187 Alice S. Thiombiano, “Burkina Faso: 1 074 993 déplacés internes en 2020, selon le CONASUR”, *Burkina 24*, 9 January 2021, available at: [www.burkina24.com/2021/01/09/burkina-faso-1-074-993-deplaces-interne-en-2020-selon-le-conasur/](http://www.burkina24.com/2021/01/09/burkina-faso-1-074-993-deplaces-interne-en-2020-selon-le-conasur/).

efforts to prevent displacement and foster social dialogue.<sup>188</sup> Moreover, IDPs note the exclusion of women, elders and persons with physical disabilities from decisions concerning their situation. Additionally, IDPs also noted a low rate of access to education. In contrast, IDP communities declared that they had received sufficient information about the COVID-19 pandemic. However, given their living conditions, the implementation of measures such as social distancing and regular hand-washing was problematic.<sup>189</sup> This was already noted in a July 2020 report by the UN Office for the Coordination of Humanitarian Affairs (OCHA), which also stressed the necessity of building more shelters to avoid overcrowding in the existing ones.<sup>190</sup>

The pandemic, coupled with civil strife, drought and floods, has also affected the situation of IDPs in Mali, of which there were almost 300,000 in early 2021.<sup>191</sup> In 2020, the AfDB allocated an amount of about \$50 million to help Mali assist IDPs in the context of the pandemic.<sup>192</sup> In March 2021 it allocated a further \$150,000 to help IDPs in the country, providing them with food, access to drinkable water and more durable shelters, as well as identifying women at risk of gender-based violence.<sup>193</sup> In May 2015, the Ministry for Humanitarian Action, Solidarity and Reconstruction of the North published a national strategy on how to manage the situation of IDPs in the country. The Ministry developed this strategy based on the mandate given to it by National Decree No. 280 of 2014.<sup>194</sup> In this framework, it was stressed that the reintegration process of IDPs into their regions of origin is of fundamental importance.<sup>195</sup> The same goal was previously highlighted by the document *Orientations et priorités du gouvernement (Malien) pour la période 2013–2018*.<sup>196</sup> However, further studies on reforming the governmental architecture have made

188 UNHCR, OCHA et al., *Burkina Faso: Consultations avec les personnes déplacées internes et les communautés hôtes au nom du Panel de Haut Niveau sur le Déplacement Interne: Rapport Final*, September 2020, pp. 28–29.

189 *Ibid.*

190 OCHA, *Burkina Faso: Plan de réponse humanitaire révisé*, July 2020, pp. 62–63. For a general reference on the humanitarian response to the influx of IDPs in Burkina Faso, see Haruna Kiemtore, “Analyse de la dimension genre dans la réponse humanitaire face à l’afflux de personnes déplacées internes au Burkina Faso”, master’s thesis, Institut International d’Ingénierie, Ouagadougou, 2019, available at: [http://documentation.2ie-edu.org/cdi2ie/opac\\_css/doc\\_num.php?explnum\\_id=3491](http://documentation.2ie-edu.org/cdi2ie/opac_css/doc_num.php?explnum_id=3491).

191 OCHA, *Mali: Rapport de situation*, 3 February 2021, available at: <https://reports.unocha.org/fr/country/mali/>.

192 AfDB, “Mali: La Banque africaine de développement accorde une aide humanitaire d’urgence de 150 000 dollars pour la prise en charge des personnes déplacées internes à Bamako”, 11 March 2021, available at: <https://tinyurl.com/4z4p2mu8>.

193 *Ibid.*

194 Décret No. 2014-0280/P-RM fixant les attributions spécifiques des membres du gouvernement, 25 April 2014.

195 *Stratégie nationale de gestion des personnes déplacées internes et des rapatriés*, May 2015, p. 2, para. 2(1): “L’objectif général est de contribuer à la stabilisation ... par le biais de la réinsertion socioéconomique des populations affectées ..., afin de créer un environnement favorable au développement durable du pays.”

196 *Orientations et priorités du gouvernement (Malien) pour la période 2013–2018*, 2012; see, particularly, pp. 10–12, para. 6 (“Mise en œuvre d’une politique active de développement sociale”). See also *Plan d’action prioritaires d’urgence (PAPU) du gouvernement (2013–2014)*, March 2013, p. 1, where humanitarian aid to IDPs is set as a top priority for the government.

Decree 280 not applicable, at the same time weakening the competencies of the Ministry.<sup>197</sup> Moreover, although the Malian government ratified the Kampala Convention on 16 June 2010, the Technical Committee for the Domestication of the Kampala Convention in Mali is still working on its domestication.<sup>198</sup> Further, the adoption of the Kampala Convention does not preclude the necessity of adopting a number of legislative amendments to complement coherently the norms introduced by the Convention.<sup>199</sup>

Finally, Mauritania is the country with the lowest number of IDPs in the region: 6,600 in 2019, all due to natural disasters (mostly floods, but some because of earthquakes).<sup>200</sup> However, the problem of IDPs in the country is not yet perceived as a matter of urgency by local institutions that until now have never provided, for example, an institutional framework dealing (fully or partially) with the situation (Mauritania ratified the Kampala Convention on 5 March 2015).<sup>201</sup> As such, for example, IDPs are not mentioned in the Periodic Report that the country submitted to the African Commission on Human and Peoples' Rights (ACHPR) in March 2017,<sup>202</sup> and nor has the ACHPR noted this missing information in its observations replying to the report.<sup>203</sup> In 2017, the most recent report of activities of the Mauritanian commissioner for human rights and humanitarian action was published, but that publication also fails to make any mention of IDPs.<sup>204</sup> A major initiative envisaging the protection of IDPs is sought and is expected to be developed by the Mauritanian institutions as soon as possible.

The AU has intervened in the Sahel, drafting a strategy for the region. However, the commitments regarding displacement in the region have been broad, limited to assisting in mobilizing funds for indigent populations, including IDPs and refugees.<sup>205</sup> Yet the AU recognizes that the degradation of the

197 UNHCR, NRC and IDMC, *Examen du cadre normatif et institutionnel malien relatif à la protection des personnes déplacées à l'intérieur du Mali*, March 2017, p. 11.

198 Décision No. 2016-0109/MSAHRN/SG portant création du Comité Technique de Domestication de la Convention de Kampala, 28 April 2016.

199 UNHCR, NRC and IDMC, above note 197, p. 13.

200 IDMC, "Mauritania: Country Information", available at: [www.internal-displacement.org/countries/mauritania](http://www.internal-displacement.org/countries/mauritania).

201 See, for example, Office of the Commissioner for Human Rights, Humanitarian Action and Relations with Civil Society, *Recueil des textes juridiques de protection et de promotion des droits humains en Mauritanie*, November 2019. This document, however, does not contain any provision regarding the protection of the IDPs in the country.

202 10th, 11th, 12th, 13th and 14th Periodic Reports of the Islamic Republic of Mauritania on the Implementation of the Provisions of the African Charter on Human and Peoples' Rights, July 2016 (submitted 22 March 2017).

203 ACHPR, *Concluding Observations – Mauritania: 10th, 11th, 12th, 13th and 14th Periodic Report*, 2006–2014, 13–22 February 2018.

204 Office of the Commissioner for Human Rights, Humanitarian Action and Relations with Civil Society, *Rapport d'activités 2016: Des progrès importants accomplis*, 2017. See also Office of the Commissioner for Human Rights, Humanitarian Action and Relations with Civil Society, *Plan d'actions stratégique 2015–2017 et Perspectives 2018–2019*, available at: [www.cdah.gov.mr/index.php/10-strategies/14-plan-d-action-triennal](http://www.cdah.gov.mr/index.php/10-strategies/14-plan-d-action-triennal).

205 AU, *The African Union Strategy for the Sahel Region*, PSC/PR/3(CDXLIX), 11 August 2014, p. 9, para. 22 (5).

environment caused by climate change and other natural disasters, for example droughts and floods, is one of the factors affecting development scenarios in the region.<sup>206</sup> For this reason, another task of the AU is to assist in the establishment of coordination centres for the management of natural disasters.<sup>207</sup> The AU has also noted that in situations of natural disaster, the right to freedom of movement and residence of persons, as enshrined in Article 12(1) of the African Charter, should not be restricted unless the law provides restrictions that are essential to respond to the threat to the health, safety or life of affected persons. Following the emergency, these persons have the right to return to their places of habitual residence unless those places of residence are still dangerous for the returnees.<sup>208</sup>

## Conclusion

In Africa, climate change has consequences in terms of human displacement, and its impact has progressively increased over the years. However, given the complex relationship between displacement and climate change, it is worth recalling that climatic hazards do not automatically lead to displacements.<sup>209</sup>

The Sahel region is experiencing adverse effects because of climate change. This in turn is displacing thousands of people, some into neighbouring countries, others within the affected States. One of the questions this article has sought to answer is whether cross-border, climate-induced forcibly displaced persons are entitled to refugee status under international law. This article is in accord with the weight of opinion that persons forcibly displaced because of natural disasters cannot, on that basis alone, satisfy the criteria for refugee status under the Refugee Convention. The situation with regard to the OAU Convention is less clear-cut since its refugee definition may be open to an interpretation that extends to situations affected by climate change. Opinion on this question is divided, although it seems that the arguments in favour of a liberal and inclusive interpretation are gaining ground.<sup>210</sup> In cases where people do not qualify as refugees but are clearly susceptible to harm, complementary forms of protection

206 *Ibid.*, p. 17, para. 35.

207 *Ibid.*, p. 16, para. 33(vi).

208 ACHPR, “General Comment No. 5 on the African Charter on Human and Peoples’ Rights: The Right to Freedom of Movement and Residence (Article 12(1))”, 10 November 2019, p. 6, para. 18. For a general analysis of General Comment No. 5, see Romola Adeola, Frans Viljoen and Tresor Makunya Muhindo, “A Commentary on the African Commission’s General Comment on the Right to Freedom of Movement and Residence under Article 12(1) of the African Charter on Human and Peoples’ Rights”, *Journal of African Law*, Vol. 65, No. S1, 2021, p. 150: “It is important that the African Commission continually engages states on the provisions of General Comment No 5 and leverages on the state reporting process as a means to interact more visibly and vocally with states on the subject. Moreover, it is important that General Comment No 5 is utilized in regional human rights jurisprudence. Overall, there should be significant engagement with civil society, in its broadest understanding, and with states at various levels of governance, to ensure that the right to free movement of persons is ensured in practice.”

209 Etienne Piguet, Antoine Pecoud and Paul de Guchteneire, “Migration and Climate Change: An Overview”, *Refugee Survey Quarterly*, Vol. 30, No. 3, 2011, p. 23.

210 As a general reference, see, for example, M. Bond Rankin, above note 49; E. Arboleda, above note 53.

should be offered by States.<sup>211</sup> However, it is arguably feasible that the criteria for refugee status could be satisfied on human rights grounds, including the right to life, the right to non-discrimination, the right to liberty and security of persons, the right to food, the right to water, the right to housing and the right to a healthy environment, amongst others.<sup>212</sup> The position with regard to IDPs is given legal certainty by the Kampala Convention; African States have the primary responsibility to prevent displacement and protect the displaced.<sup>213</sup> The UN Environment Programme has suggested that forced displacement in the Sahel can be minimized by investing resources in disaster risk reduction and climate change adaptation to enhance the resilience of local communities while simultaneously strengthening humanitarian action to meet the challenges of climate change, for example by enacting measures to ensure assistance and protection for people displaced by environmental factors.<sup>214</sup>

Given the difficulties that persons forcibly displaced because of natural disasters face in meeting the grounds for refugee status under the Refugee Convention, a relevant question for States is whether the Refugee Convention should be amended to include climate change as such a ground.<sup>215</sup> Alternatively, an additional protocol to that effect could be drafted. (Similar considerations arise in relation to regional treaties.) While such steps would help to address the issue, one key challenge is the political will for such change.

At the subregional level, the ICRC believes that more importance should be given to institutions such like the G5 Sahel. Among its objectives, this institution guarantees conditions of security amid its member States and offers a strategic framework of intervention to enhance the living standards of its population, at the same time promoting durable and inclusive development in the Sahel.<sup>216</sup> Within this framework, in November 2020 a meeting in Bamako (Mali) confirmed that the challenges posed by climate change and natural disasters remain one of the top priorities for the G5 Sahel, presently and in the future,

211 UNHCR, *Legal Considerations*, above note 28, para. 19.

212 *Ibid.*, para. 7.

213 In this regard see also ECOSOC, *Final report of the Special Rapporteur, Paulo Sérgio: Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons*, UN Doc. E/CN.4/Sub.2/2005/17, 28 June 2005, Principle 5(4) ("The right to be protected from displacement"): "States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors. States shall also ensure that individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement." More generally, see also Principle 5(1): "Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence."

214 UNEP, above note 164, p. 76.

215 The Refugee Convention can be revised in accordance with its Article 45 ("Revision"). In full, Article 45 reads: "1) Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations. 2) The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request".

216 G5 Sahel Convention of Establishment, 19 December 2014, Art. 4. In this regard, see A. Bassou, above note 14, p. 2: "Article 4 of Title II ("Objectifs du G5 Sahel") sets out the goals, which are essentially to ensure development and security to improve the population's quality of life. Special focus is placed on using democracy and good governance as means to that end, and international and regional cooperation as a framework for such efforts."

because, as these phenomena cause displacement of populations, they may negatively impact on the development of the five countries.<sup>217</sup>

In 2016, President Roch M. C. Kabore of Burkina Faso stated: “Facing these plights [natural disasters, among others], the aspiration of leaving [one’s place of origin] is natural and legitimate. Better still, it is a fundamental human right.”<sup>218</sup> This is why he appealed not only for subregional and regional (African) cooperation, but, more generally, for world cooperation.<sup>219</sup> It is clear that an improvement in relations in the context of the G5 Sahel will certainly have positive effects on the policies of its five member States vis-à-vis the conditions of persons forcibly displaced because of natural disasters. In this regard, in 2000 Zachary Lomo argued that many African States have failed to enact laws indispensable to creating the institutional frameworks to give effect to the international human rights protection regime. While we may not agree with this statement (indeed, after twenty-one years, perhaps Lomo has changed his mind on this point), we believe he is still correct when affirming that many people throughout the continent are not always aware of their rights, and are thus vulnerable to manipulation and coercion.<sup>220</sup>

217 G5 Sahel, “L’impact du changement climatique sur la sécurité et le développement au Sahel”, 20 November 2020, available at: [www.g5sahel.org/limpact-du-changement-climatique-sur-la-securite-et-le-developpement-au-sahel/](http://www.g5sahel.org/limpact-du-changement-climatique-sur-la-securite-et-le-developpement-au-sahel/).

218 G5 Sahel, “Le président du Faso plaide la cause des réfugiés et migrants”, 21 September 2016, available at: [www.g5sahel.org/le-president-du-faso-plaide-la-cause-des-refugies-et-migrants/](http://www.g5sahel.org/le-president-du-faso-plaide-la-cause-des-refugies-et-migrants/) (authors’ translation).

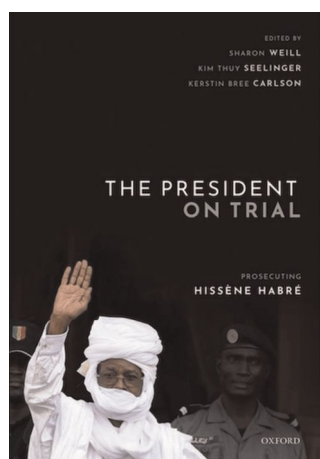
219 *Ibid.*

220 Zachary Lomo, “The Struggle for Protection of the Rights of Refugees and IDPs in Africa: Making the Existing International Legal Regime Work”, *Berkeley Journal of International Law*, Vol. 18, No. 2, 2000, p. 269.





## LIBRARIAN'S PICK



# The President on Trial: Prosecuting Hissène Habré

Edited by Sharon Weill, Kim Thuy Seelinger and Kerstin Bree Carlson\*

Book review by Charlotte Mohr, ICRC Reference Librarian for the collections on the ICRC's history and activities.

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In May 2016, Hissène Habré, president of Chad from 1982 to 1990, was convicted by the Extraordinary African Chambers (EAC) – a hybrid tribunal established in the courts of Senegal on the basis of the principle of universal jurisdiction – of war crimes, crimes against humanity and acts of torture. His conviction was upheld by the EAC's Appeals Chamber on 27 April 2017,<sup>1</sup> and he was sentenced to life in prison. It was the first time that an African defendant was convicted of war crimes on African soil, and the first time that a deposed head of State faced justice for the atrocities committed by his security forces against his own population on the continent. The Habré trial was the culmination of twenty years of efforts by Chadian victims' organizations, supported by NGOs like Human

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## ICRC Library

The “Librarian’s Pick” is a regular section of the *Review* in which one of the International Committee of the Red Cross’s (ICRC) librarians picks and writes about their favourite new book relating to international humanitarian law, policy or action, which they recommend to the readers of the journal.

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Rights Watch (HRW), to bring their former president to justice. It happened against considerable odds, an unlikely and unprecedented ending to a long judicial and political saga.

Regarded as a landmark achievement in international justice, the Habré trial could become a milestone in the fight against global impunity – or it could remain an exception, brought about by the sheer determination of victims’ advocates just as the right political stars finally aligned. This leaves practitioners and scholars with no guarantees as per the legacy of the trial, but with many interrogations regarding its successes, shortcomings<sup>2</sup> and potential replicability. *The President on Trial: Prosecuting Hissène Habré* is a volume rooted in this uncertain space. It manages to capture the hopes and insights of the trial’s protagonists at the same time as it propels forward the scholarship on the trial’s significance and legacy. This approach hinges on an innovative methodology that sparks a conversation between academic authors and the trial’s participants.

The first part of the volume is a collection of twenty-six first-person accounts by protagonists of the trial. The contributions are based on interviews conducted by the volume’s editors, mixing voices from inside and outside the court. They alternate between local and international perspectives, between

1 With one notable exception: a case of personal commission of rape, of which he was acquitted on procedural grounds.

2 In particular, the lack of distribution of the retributions awarded to victims, to this day, is mentioned by many of the volume’s contributors. The lack of cooperation with the EAC by Habré also raises questions relative to the rights of the defence.

activist, official and academic voices, and include accounts from both the prosecution and the defence's<sup>3</sup> standpoints. Though quite short, the individual contributions are often remarkably introspective and thought-provoking, leaving the reader with the sole frustration of being unable to ask follow-up questions. The protagonists present factual accounts of their individual contributions to the trial, but personal hopes, wishes and frustrations do arise as well. Many recount the challenges they faced, from political obstruction to financial and time constraints. This succession of voices creates a powerful narrative, painting a clear picture of the trial as an uphill battle. It delves into processes and participants, giving the reader an invaluable case study of the operationalization of international criminal justice. The selection includes some well-known actors – like Reed Brody from HRW,<sup>4</sup> presented as the public face of the trial in the Anglophone world – but the book gives most of the space to lesser-known protagonists, in line with the editors' wish to "bring local experience and knowledge out of Dakar and to the world".<sup>5</sup> These include former trial officials that occupied a wide range of positions: judges, a clerk, and multiple administration, outreach and finance officials. EAC Investigating Judge Jean Kandé speaks about the limits to judicial cooperation that he faced in the case, which led to Habré being the sole defendant on trial.<sup>6</sup> Franck Petit, former team leader for the Outreach Consortium on the EAC, discusses the challenges of bridging the distance between the Chadian population and the trial taking place in Dakar.<sup>7</sup>

The most memorable contributions, however, are arguably those belonging to the coalition of victims, lawyers and activists that drove the investigation and spearheaded the case, notably Souleymane Guengueng<sup>8</sup> and Jacqueline Moudeina.<sup>9</sup> The Habré trial is systematically presented as a "victim and NGO-driven case", and the writings of these contributors show what that entailed. They

3 The absence of Habré's chosen counsel as well as of Senegalese and Chadian government officials is mentioned up front with regret by the editors. The defence's perspective is explored in a contribution by Hélène Cissé ("Defending Hissène Habré in Senegal during the Early Years"), who participated in Habré's defence in 2000–01 before the criminal court in Dakar, and in a chapter by Mounir Ballal ("Defending Habré"), one of Habré's court-appointed lawyers at the EAC. It is also represented in an excerpted testimony that sees Daniel Fransen, Belgian investigating judge, answer Mounir Ballal's questions ("The Belgian Investigation of the Habré Regime: Excerpt of Trial Testimony by Daniel Fransen, Belgian Investigating Judge"). To include the voice of Hissène Habré himself – as he remained silent during the trial, refusing to recognize the legitimacy of the EAC and to collaborate with his court-appointed lawyers – the editors have included excerpts from his 2011 interview with Senegalese reporters from the newspaper *La Gazette* ("In His Own Words: An Interview with Hissène Habré").

4 See Reed Brody, "Tenacity, Perseverance, and Imagination in the 'Private International Prosecution' of Hissène Habré", in *The President on Trial*, pp. 39–47.

5 *The President on Trial*, p. 2.

6 See Judge Jean Kandé, "Investigations in Senegal and Tchad: Cooperation and Challenges", in *The President on Trial*, pp. 81–89.

7 See Franck Petit, "Outreach for the EAC", in *The President on Trial*, pp. 186–193.

8 See Souleymane Guengueng, "Documenting Crimes and Organizing Victims in Chad", in *The President on Trial*, pp. 31–38. Guengueng is the founder of the Association of Victims of Political Repression in Chad, a civil party in the Habré trial, and director of the Souleymane Guengueng Foundation.

9 See Jacqueline Moudeina, "From Victim to Witness and the Challenges of Sexual Violence Testimony", in *The President on Trial*, pp. 118–124. The first woman to practice law in Chad, Moudeina was the victims'

speak of the victims' determination and fears, of reprisals and community backlash, of the difficulty of gaining access and trust and of ensuring the security of civil parties and witnesses during the trial. Moudeina notably recounts the stories behind the testimonials of the women victims of sexual violence. Her contribution enlightens us as to why such crimes were not part of the original charges brought against Habré and how they finally came to light, leading to a verdict that is regarded as a breakthrough for the prosecution of sexual violence in international criminal justice.

The second part of the book follows a more traditional path. It is a collection of seventeen academic contributions by international criminal law scholars, divided into four categories according to their outlook on the discipline. These contributions investigate the legal issues that are central to the trial, including the non-retroactivity of criminal law, the jurisdiction and legitimacy of the EAC, the prosecution of sexual violence, victim participation, hybrid courts, and the attribution and allocation of reparations. They paint a broader picture of the future of transitional justice on the African continent, and of the mechanisms and politics at play. They are at their most impactful when they echo the first-person accounts of the book and explore the theoretical and practical ramifications of the Habré trial. Dov Jacobs' contribution on the position of the defence in hybrid tribunals, for example, resonates with the arguments put forward by Habré's lawyer Mounir Ballal as it looks at the implications of the victim-oriented trend of international criminal justice for the rights of the defence.<sup>10</sup> Sarah Williams' chapter is a welcome external view on the approach and content of the *amicus curiae* brief on sexual violence submitted to the EAC to advocate for a revision of the charges against Habré.<sup>11</sup> Her analysis follows a first-person contribution by some of the authors of the *amicus curiae* brief included in the first part of the book<sup>12</sup> and represents one of the many contributions exploring the impact of peripheral actors or mechanisms on the trial.

Given its unconventional methodology, the book benefits from a clear, well-thought-out structure. Each section has a specific introduction which brings to light the stakes of the contributions to come and the logic behind their articulation. The book opens with chronologies and graphs that provide the reader with the contextual information needed to follow a necessarily fragmented narrative, told as it is by a multitude of actors. This kaleidoscopic take on the trial is in fact the book's major strength. Read in connection with the others, each contribution takes on new meanings. Stories are corroborated, concerns are shared, and at times viewpoints collide; the book keeps all the plates spinning smoothly. Inviting more research, it provides practitioners with a series of leads

legal counsel before the EAC and is the former president of the Chadian Association for the Promotion and Defence of Human Rights.

10 See Dov Jacobs, "Hybrid Justice and the Rights of Defence: Existence at the Periphery", in *The President on Trial*, pp. 252–264.

11 See Sarah Williams, "Hybrid Courts and Amicus Curiae Briefing", in *The President on Trial*, pp. 351–364.

12 See Kim Thuy Seelinger, Naomi Fenwick and Khaled Alrabe, "Can We Be Friends? Offering an Amicus Curiae Brief on Sexual Violence to the EAC", in *The President on Trial*, pp. 134–141.

and clues, rather than with a definitive conclusion on the legacy of the trial. Ultimately, *The President on Trial* is a distinctive and timely read on an emblematic case. It captures the current preoccupations and hopes of advocates and practitioners of international criminal justice, at a time marked by a much-discussed African backlash against the International Criminal Court. The book looks back on the history of the Habré trial but remains rooted in the present and turned towards to the future, aiming to explore—and perhaps challenge—assumptions that the trial is doomed to be a precedent with no future.<sup>13</sup>

13 See Ndeye Amy Ndiaye, “The Habré Trial and the Malabo Protocol: An Emerging African Criminal Justice?”, in *The President on Trial*, p. 240, referring to Christophe Châtelot’s thesis in his article, “La condamnation de Hissène Habré: Un précédent sans lendemain?”, *Le Monde*, 24 May 2016.





# Theorizing empirical court research: The test case of the trial of Hissène Habré

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## Abstract

*The purpose of this article is to advocate for new methods of studying international law. Hissène Habré, former President of Chad, was convicted by a hybrid tribunal in Dakar. Our book on this judicial process (The President on Trial: Prosecuting Hissène Habré, Oxford University Press, 2020) develops a novel empirical format of first-person testimonials, followed by expert analyses, to trace and contextualize the decades-long story of attempts to bring Habré to justice. The empirical materials collected in our book demonstrate that the Habré trial challenges a linear distribution of power from international (global) actors to local, demonstrating rather a series of horizontal relations between the local and international. Based on this research experience, the article lays out the method we developed. It facilitates an assessment of the legal and political impact of court decisions, routines and broader bureaucratic politics through which the practices of judging are constructed. “Justice” does not speak with one voice; it is made up of multiple actors with different professional interests and personal goals. It is also impacted by power dynamics and by the structure of the institution, including by institutional routine and legal bureaucracy.*

**Keywords:** crimes against humanity, international criminal justice, hybrid tribunals, empirical research, socio-legal methods.

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## Introduction

Hissène Habré, former president of Chad, was convicted by a hybrid tribunal in Senegal on 30 May 2016. The judgment was affirmed on appeal on 27 April 2017. Habré’s prosecution resulted from local and international civil society working in tandem. Following the coup that deposed Habré in 1990 and his flight to Senegal, Chadian victims organized and pressed for justice, led by victims’ association leader Souleyman Guengueng, and Chadian human rights advocate, and the country’s first woman attorney, Jacqueline Moudeina. Their cause was taken up by Reed Brody of the international non-governmental organization (NGO) Human Rights Watch (HRW), who saw in the case the possibility of bringing universal jurisdiction to Africa. HRW championed trying Habré for international crimes committed by his regime, and exerted pressure on Senegal, including through the African Union and several international institutions and courts.

The eventual trial conducted before the Extraordinary African Chambers (EAC) was a seminal judicial experience in a novel hybrid construct: created by agreement between the African Union, Senegal and Chad, located in Dakar and staffed almost entirely by Senegalese judicials, it applied international criminal law while working under Senegalese criminal procedure. Completed on time, within budget, with the defendant prosecuted and no dead witnesses, the Habré trial epitomized the potential of hybrid tribunals. In an era of growing resistance to international judicial institutions, hybrid tribunals are touted as quicker,

cheaper and less controversial than their international counterparts. The Habré trial fulfilled these conditions. It also showed itself to be agile regarding the application of international criminal doctrine, as well as savvy regarding political obstacles.

At the same time, one persistent and valid critique of the Habré trial is that it only managed to try Hissène Habré himself. The EAC pre-trial investigatory chamber had actually brought charges against five people, including Habré. However, Habré was the only one living in Senegal, and was thus the only indictee to actually face trial. The sole presence of Habré as the representative for an atrocity-pursuing regime posed challenges for the EAC when it sought to legitimize itself institutionally through the objectivity of its work.

Our book on this judicial process<sup>1</sup> develops a novel empirical format of first-person testimonials, followed by expert analyses, to trace, explain and contextualize the decades-long story of attempts to bring Habré to justice.

In this article, we lay out the method we developed in this research (“Designing the empirical research on the EAC” section), and theorize that method, using examples from our empirical research (“Developing a theoretical framework based on the empirical findings” section).

## Designing the empirical research on the EAC

We followed the case from 2015 onwards, at first independently, and then as a team. Over our several trips to Dakar, interviewing a spectrum of actors associated with the tribunal, an idea emerged about how we might preserve the empirical richness that we were observing while also telling a coherent story about an important development in international criminal justice.

We wanted to make this empirical source material widely available and we thought the best way to do it was to preserve the actors’ direct testimonies. This is what the first part of the book does; its twenty-six chapters are written by Senegalese, Chadian and foreign experts who were directly involved in facilitating and operationalizing the Habré trial. These chapters tell the story of the trial in chronological order, beginning with Habré’s fall from power and the 1990 regime change in Chad. Contributors include judges, lawyers, administrators, victims’ representatives, politicians, media and civil society leaders central to this case. These chapters are drawn from across the echelons of power, ideology and status, including international judges and bureaucratic workers. Our aim was to construct the narrative of this long process through these accounts, and we invited these participants to tell the story of what they did how, for, or with the EAC, in their own words.

We were aware as we gathered actors’ written perspectives that the process of writing is necessarily transformative. People do not write as they speak, personality often does not translate into text, anecdotes disappear, and stories

1 Sharon Weill, Kim Thuy Seelinger and Kerstin Bree Carlson (eds), *The President on Trial: Prosecuting Hissène Habré*, Oxford University Press, Oxford, 2020.

told “off the record” during an interview might not be shared again on paper. Chance and timing also had some impact: administrators are busy, politicians feel more or less secure as circumstances change, and activists have sometimes moved on to the next engagement. Nonetheless, the book presents much of what was essential about the institution from the actors’ perspectives and how multiple persons and interests interacted in this process.

In the second part of the book we situate the Habré case in its larger context, with seventeen chapters written by scholars and legal experts. Many proponents of international criminal law and transitional justice ask what impact the EAC’s design and jurisprudence can have for other prosecutions of international crimes. As a one-off, *ad hoc* tribunal exploring new judicial forms in the highly contested field of international criminal law in Africa, what is the importance and significance of the EAC’s trial and what will it signify in the pantheon of international criminal law? Can this model be replicated, and should it be? What can we learn from this tribunal’s work to design and strengthen future institutions? This part presents paradigmatic samples of the theoretical and practice-oriented discussions accompanying the Habré trial. We approached scholars mainly within the legal discipline based on the themes we found central to the case: procedural hybridity; international criminal law doctrine; victim and witness participation; and the future of international criminal justice and its challenges. We grouped the chapters of Part II around what we identified as the authors’ own positionality in relation to international criminal law, providing a socio-legal mapping of the field of international criminal law and courts.

The empirical materials collected in our book demonstrate that the Habré trial challenges a linear distribution of power from international (global) actors to local, demonstrating rather a series of horizontal relations between the local and international: this is discussed further below, and at length in the book. The actors’ testimonies helped reveal the ways that professionals and other interested parties interact, an essential aspect of how institutions function. The academic contributions contextualized the work of the EAC against other hybrid and international tribunals, and international criminal justice more generally.

## **Developing a theoretical framework based on the empirical findings**

Based on our research experience in Dakar and elsewhere, we suggest developing a conceptual and methodological framework to analyse the role of courts and to investigate the social, legal and political implications of trials. This method is grounded in empirical observation and seeks to capture the interaction of the actors and their social trajectories, as well as the political context and legal challenges. At the same time, it addresses the institutional routine and political environment in which they are located. It is based on four dimensions: The dynamics of legal doctrines; The role of the human actor; The impact of the institution, structural patterns and bureaucracy net; and Political interaction and

geopolitical influence. In the next part we explore these four dimensions, while providing empirical examples observed in our own research.<sup>2</sup>

### The dynamics of legal doctrines: How law faces international crimes

The first dimension of our conceptual framework examines how political and social goals are translated into legal doctrines, and how, as doctrine is developed and functions as an independent force, it can eventually facilitate or limit the achievement of certain socio-political visions through interpretation or fact-finding.

One clear example of this is the way that the EAC developed international criminal law jurisprudence regarding sexual violence. Sexual violence was not explicitly charged in the investigating phase of the EAC's work. Instead, recommended charges in part referenced torture, presumably including acts of sexualized torture in Habré's prisons that were described in the underlying facts established by the investigating judges. At trial, daily testimony was summarized and uploaded to the Internet by an NGO. During hearings, several witnesses unexpectedly testified about sexual violence committed by members of Habré's regime; one woman, Khadidja Zidane, even testified about being violated by Habré himself. These sudden accounts of sexual violence alerted international scholars. As discussed in Chapter 17, a group of leading experts from Africa, Europe and the United States submitted an *amicus curiae* brief outlining how the evidence of sexual violence could be charged under the EAC statute and the customary international law in effect during Habré's regime.<sup>3</sup> Chambers accepted the brief as informational and it was also made public by journalists, although there was no clear mechanism for accepting such a submission into the formal record. And yet the document is seen to have had influence: victims' counsel echoed several arguments from the brief in its own submissions and the trial court subsequently bent procedure to "requalify" the facts and amend charges to include sexual violence. It then found Habré guilty of, *inter alia*, sexual violence committed by his subordinates and also as a direct perpetrator. Ultimately, the appeals court dismissed this latter conviction on procedural grounds, finding that the allegations of Habré's direct perpetration of rape against Ms Zidane were brought too late. Although the trial court finding regarding rape was not accepted, other doctrinal developments, including how sexual violence can be prosecuted, were affirmed.

- 2 Our method is inspired by socio-legal literature such as Bruno Latour, *The Making of Law. An Ethnography of the Conseil d'Etat*, Polity Press, Cambridge, 2010 (translation); Malcolm M. Feeley, *The Process is the Punishment: Handling Cases in a Lower Criminal Court*, Russell Sage Foundation, New York, 1979; Didier Fassin and Carolina Kobelinsky, "Comment on juge l'asile : l'institution comme agent moral", *Revue française de sociologie*, Vol. 53, No. 4, 2012; Jacqueline Hodgson, *French Criminal Justice: A Comparative Account of the Investigation and Prosecution of Crime in France*, Hart Publishing, Oxford and Portland, OR, 2005.
- 3 Prior to researching the EAC itself, Seelinger was involved in the development of an *amicus curiae* brief submitted to the court in December 2015, regarding the potential to charge sexual violence crimes according to the EAC statute and based on customary international law in effect during the 1980s.

This demonstrates how, while developing the doctrinal framework, the legal decision is motivated by the social and political forces that created it. The EAC's decision, which will be probably taught in law schools detached from its socio-political process, will have a jurisprudential impact on the development of the law. We decided to include a summary of the judgment alongside the other "actors" chapters, as it has become an actor in itself. In doing so, we argue that emerging legal doctrines should not be understood as separate from the social and political forces that guided them as much as facts and laws.

To look at this from another angle, consider the experience of Habré's appointed counsel, brought on while the trial was underway. Habré's appointed counsel, Senegalese lawyers and therefore experts in Senegalese procedure, were confident before the judgment that the irregularities of the process were such that the trial court could not convict Habré (see Chapter 14). Yet in the Habré trial, too much was riding on a court determination to allow Senegalese procedure to dictate. In domestic trials, criminal procedure is not an element where flexibility is permitted. International trials have demonstrated far more flexibility, however, and the experience of the Habré trial develops this doctrinal trend. As a high-ranking justice official, who ultimately did not write for the book, told us, "Once you have the politics lined up, the law can get the job done."

### The role of the human actor: "Law at work"

A court decision is a product of the interaction and contribution of many actors. Yet, standard legal research concerns essentially the study of legislation and precedents or selective cases, without considering the socio-political and empirical context of judicial practice. The components of "the law in action" – such as the legal ritual and procedure, the narratives of the protagonists, the judicial actors' behaviour and interaction – need to be observed and analysed, in order to understand the impact of those interactions on the production of case law. Thus, it is not only the abstract norm and court decision that interest the researcher but the actual practice, the interaction of the actors on a concrete case on which the theoretical analyses are based.

At least three specific groups of actors play a key role in making case law: judges, defence lawyers and State prosecutors. Yet, other actors such as civil society actors, victims' associations, clerks, donors, secretaries, journalists, academics, NGOs, experts and political actors are also important.

The EAC was portrayed as an African Court established to try an African leader by African professionals. This socio-political *raison d'être* of the EAC implied three categories of actors: visible actors, such as the Senegalese/African judges and clerks; background actors, such as a number of French technical experts embedded within the different chambers and judicial corps; and hidden actors such as the French judge who actually drafted whole sections of the decision. This latter category was not hidden to all; those working in the court knew of course. Traces of these actors found their way into the judgment as well. One of the defence attorneys pointed to the phrase "springtime" included in the judgment to



define a timeline, explaining that only a French lawyer would use such a word; for locals, there is no “spring” in Chad but rather a rainy season and a dry season.

More theoretically, we argue that the actors’ career trajectory, competences, and prior socialization and political positioning are key to understanding how court decisions are made.<sup>4</sup> In this context, the interaction between these players, and in particular the extent to which they were cooperating, confronting and being impacted by different internal or political struggles or networks, should be examined. Of particular interest is understanding how the practice and the legal choices made by the different actors are affected by these power dynamics.

Chapters in the book written by an investigating judge, the prosecutor and an appeal judge all speak to how the strengths and obstacles derived from their own professional fields made cooperation possible (or not). For example, EAC judges discussed how during their investigations in Chad, Senegalese and Chadian judicial officials were all similarly trained in and familiar with civil law investigation procedures, and this facilitated their cooperation as they handled hundreds of witnesses. Additionally, Belgium shared its files from the investigation conducted by Judge Fransen; Belgian investigatory procedures are similar to those practised in Senegal and Chad (Chapter 6).

Networks and tensions are revealed all over the book: between academics and the judicial professions (Chapter 26); between the court, victims and NGOs; and internationally between diplomats and government officials. Chapters written by HRW experts Reed Brody and Olivier Bercault, as well as by the victims’ lawyers, discuss a flow of information, ideas and attention travelling horizontally. Consider again the *amicus curiae* brief on sexual violence, which was not entered into the official court record as such, but rather entered the public domain via news media coverage linking to the brief. Likewise, a Senegalese journalist travelled with the investigating judges to Chad, bringing detailed news of the investigation into the Senegalese media sphere (Chapter 24). As a more subtle example of the pervasive power of information networks, consider the source of a key statistic regarding the number of deaths attributed to Habré’s regime. In 1992, a truth commission set up by Habré’s successor, Idris Déby, established that nearly 3,900 people had died in Habré’s prisons. Determining that this number constituted approximately 10% of the deaths for which the regime was responsible, the Truth Commission rounded the number of dead up to 40,000 (Chapter 2). This “statistic” was accepted by NGOs and victims, and made its way into the trial uncontested.

## Institutional factors: hierarchy, bureaucracy and performance

Legal work is necessarily impacted by the structure of the institution, including by institutional routine and legal bureaucracy.<sup>5</sup> This is how even an exceptional trial

4 Pierre Bourdieu, “The Force of Law: Toward a Sociology of the Juridical Field”, *Hastings Law Journal*, Vol. 38, No. 5, 1987; Mikkel J. Christensen, “Crafting and Promoting International Crimes: A Controversy Between Legal Professionals of Core Crimes and Anti-Corruption”, *Leiden Journal of International Law*, Vol. 30, No. 2, 2017.

5 Didier Bigo (ed.), *The Field of the EU Internal Security Agencies*, L’Harmattan, Paris, 2007.

such as that of a former president for violations of international criminal law becomes a work of routine by professionals bounded by institutional bureaucracy, hierarchy and, in this case, by personal precarity.

Routines, organized by managers, set the balance between the legal and social dimensions of the task and orient the work of courts towards a bureaucratic goal of efficiency.

In this context, the book chapters of the administrators and the foreign donors highlight their role and importance as well as some of the internal conflicts that arose, including unexpected power relations. For example, it became evident to us that the EAC Administrator, with his strong personality and professional background, functioned as a gatekeeper between international pressures and the everyday operation of an efficient tribunal. Within the tribunal, the Administrator was spoken of in glowing terms, and the fact that he made everything work with a tiny office staff of only three people including himself was all the more impressive. For example, it was a testament to the Administrator's effectiveness that hundreds of witnesses were able to come to the EAC from Chad without a single person being harmed. For the donors, however, the Administrator often popped up as an irritating figure who imposed unnecessary obstacles and was not "a team player".

"Finishing on time" was a mantra repeated by many actors, and indeed efficiency took precedence in many aspects, as the court-appointed defence attorney pointed out. Even the appeal needed to be filed before the 300-page written judgment was rendered, and so the appeal was made on the basis of the thirty-page summary read out in court. Likewise, the budget was a determinative force that sometimes seemed to play outside the purely practical. For example, prior to the judgment, we asked one of the EAC officials if they believed that there would be an appeal. "Of course," they replied. "We budgeted for it."

## Interaction with politics: Judging at the frontier of politicized justice

While the law claims its underlying capacity to evade political variables, we are interested in showing the positions given to politics and international relations within judicial proceedings, and how facts are established by judges. It is thus essential to contextualize these kinds of trials in the broader international political arenas, as well as historical situatedness, despite the key claim of political detachment.

There is much to discuss in this regard, but due to the limited scope of this article, we point to two examples. First, Habré himself (Chapter 7) drew attention to the aid he received from the United States and France in order to deter the threat of Libya. Habré was received by Ronald Reagan in the US White House in 1986, and was always financed by France. In fact, those forms of support have not changed since Habré's time. Habré's successor, Idris Déby, received counter-terrorism aid from these same foreign allies during his thirty-year reign. Déby died unexpectedly in 2021 and was succeeded by his son.

Second, Chad was initially an enthusiastic supporter of the EAC and its quest to try Habré. Chad was the largest single donor to the tribunal and it even

applied to be a civil party in the trial. This demand was finally rejected by the court, due to the fear of political interference. Chad's initial cooperation and support stopped as the EAC widened its investigation to include international crimes that implicated Déby, however. A fifth investigatory trip was ultimately cancelled due to this change in Chad's position (see Chapters 9 and 13 of the investigating judge and the prosecutor). This also explains Déby's sudden interest in trying a number of Habré-era government officials and regime participants in Chadian courts immediately prior to the commencement of the Habré trial—no extraditions to Senegal would take place (see Chapter 25).

## Conclusion

By analysing these four dimensions, our framework facilitates an assessment of the legal and political impact of court decisions, routines and broader bureaucratic politics through which the practices of judging are constructed. This method could be used to study a variety of courts and trials, both domestic and international. For example, Sharon Weill has applied these methods to her study of French terror trials;<sup>6</sup> Kerstin Carlson has applied these methods to a wider consideration of African courts.<sup>7</sup> As a team, we are now in the process of applying our method in our study of the Special Tribunal for Peace (JEP) in Colombia.

The purpose of this article is to advocate for new methods of studying international law. The empirical elements of law, including the actors and their perspectives, are essential components in an understanding of legal practice, which itself is part of developing legal doctrine. We hope the book can contribute to new ways of seeing and speaking about international legal practice. An essential part of such seeing is how international law is taught. Since the publication of the book, we have used the book in our classes (on international law, international criminal law and human rights) as follows: students break into groups and prepare a short presentation of an actor's chapter (it can be also only a selection of chapters from the different sections). Then, following the chapters' presentations by the students, we conduct the entire process of the trial as a miniature moot court. This has proved an effective method to expose students to an actual case, including its challenges, possibilities and outcomes. This personal participation can then be contrasted with video footage of the trials, which is available online, casting this footage in a very different light after the actors and their choices have become more familiar to students.

6 Sharon Weill, "Transnational Jihadism and the Role of Criminal Judges: An Ethnography of French Courts", *Journal of Law and Society*, Vol. 47, No. S1, 2020; Sharon Weill, "French Foreign Fighters: The Engagement of Administrative and Criminal Justice in France", *International Review of the Red Cross*, Vol. 100, No. 907–909, 2018.

7 Kerstin Bree Carlson, *The Justice Laboratory: International Law in Africa*, Chatham House/Brookings, London, 2022.

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