

# DREAMS OF LIBERATION BOUND BY BONDAGE

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Economic crisis and political instability in Sub-Saharan Africa force Africans to leave their countries and travel to the European Union in hope of better opportunities. Upon travel to the European Union, African migrants are subject to risks such as drowning or captivity as slaves. Libya serves as a point of transit for a large number of African migrants on their way to Europe. Human traffickers take advantage of this popular travel hub by capturing and enslaving African migrants. European countries continue to close their borders to African migrants and also pay the Libyan government incentives to combat African migration. Regrettably, few steps have been taken to eradicate slavery in Libya.

To eradicate slavery, the United Nations backed Libyan government must implement laws through a federal mandate. If the Libyan government cannot remedy this issue, a global effort must be made to both combat and eradicate slavery in Libya. This note will first examine laws that the United States and the United Kingdom have established to end slavery and propose laws that Libya can implement. Further, this note will also examine alternatives to Libya's federal mandate and discuss how international bodies can help eradicate slavery in Libya. To eradicate slavery, Libya must adopt the United Nation Protocol against transnational organized crime and or follow the example of countries that have implemented laws to combat slavery.

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“Nobody’s free until everybody’s free.” – Fanny Lou Hamer

## I. INTRODUCTION

Freedom is the most basic, fundamental human right. In the Universal Declaration of Human Rights, the United Nations General Assembly declared that “[n]o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”<sup>1</sup> Despite the global emphasis on freedom, an estimated forty million people are denied this basic fundamental right worldwide.<sup>2</sup> Unfortunately, global efforts to eradicate slavery have not achieved freedom for current migrant Africans auctioned and enslaved in Libya.<sup>3</sup> Non-Africans are working with African traffickers in Libyan slave markets to sell African migrants.<sup>4</sup> Suffering from the effects of the African Debt Crisis, largely due to the structural growth policies advocated by International Monetary Fund (“IMF”) and World Bank,<sup>5</sup> thousands of Africans are left with migration as the only option for survival.<sup>6</sup> Consequently, this leaves some of the most vulnerable people to be exploited via modern-day slavery.<sup>7</sup>

Although many African migrants are aware of the high-risk of enslavement in Libya and the possibility of drowning in the Mediterranean, economic and social circumstances force these migrants to risk their lives in pursuit of a better life.<sup>8</sup> Instead of extending humanitarian efforts to combat slavery in Libya, leaders of the European Union have focused their efforts on preventing migrants from reaching

1. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 4 (Dec. 10, 1948) [*hereinafter* UNHCR].

2. *Slavery Today*, FREE THE SLAVES, <https://www.freetheslaves.net/our-model-for-freedom/slavery-today/> (last visited Nov. 1, 2019).

3. Omer Karasapan & Sajjad Shah, *The Slave Trade in Libya: What Can Development Actors Do?*, BROOKINGS (Jan. 25, 2018), <https://www.brookings.edu/blog/future-development/2018/01/25/the-slave-trade-in-libya-what-can-development-actors-do/> (noting that the response to slave markets in Libya have been underwhelming).

4. *Id.*

5. Brian-Vincent Ikejiaku, Africa Debt Crisis and the IMF with a Case of Nigeria: Towards Theoretical Explanations, 1 J. POL. & L. 2, 3 (2008).

6. Nadege Desiree Yameogo, *Trapped in Transit*, WORLD BANK BLOGS (Dec. 16, 2017), <http://blogs.worldbank.org/peoplemove/trapped-transit>.

7. *See id.*

8. Adaobi Tricia Nwaubani, *Letter from Africa: Nigerian Migrant Dreams in the Lap of the Gods*, BBC NEWS (Dec. 17, 2017), <https://www.bbc.com/news/world-africa-42415238>.

European borders and have offered incentives to the United Nations-backed Libyan government to combat migration.<sup>9</sup> The incentives offered to stop the influx of African migrants by the European Union to Libya are destructive.<sup>10</sup> Hundreds of thousands of refugees and migrants are detained and abused by Libyan authorities and smugglers who work together for financial profit.<sup>11</sup> By supporting Libyan authorities in prohibiting sea crossings and detaining migrants, the European Union complicity contributes to these oppressive practices and the enslavement of African migrants.<sup>12</sup> Instead of leaving many African migrants vulnerable to smugglers by combatting migration through Libya to the Mediterranean Sea, policymakers must first address the issues of several different countries in Africa<sup>13</sup> and strive to alleviate the problems that cause African migrants to leave their homes. Despite international attention,<sup>14</sup> few steps have been taken to combat the slave trade in Libya<sup>15</sup> and the internationally recognized Government of National Accord must implement laws to eradicate slavery. Alternatively, an international body must intervene if the conflict-stricken political climate of Libya impedes change.<sup>16</sup>

This note will first discuss the structure of the Libyan government and the slave trade. Next, this note will discuss why migrants leave sub-

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9. *Migrant Crisis: EU Leaders Agree Plan to Stop Libya Influx*, BBC NEWS (Feb. 3, 2017), <https://www.bbc.com/news/world-europe-38850380> (noting that preventing migration likely increases slavery).

10. *See id.*

11. Robert Hackwill, *Amnesty International Accuses EU of Complicity in Libyan Slave Trade*, EURONEWS, <https://www.euronews.com/2017/12/12/amnesty-international-accuses-eu-of-complicity-in-libyan-slave-trade> (last updated Dec. 12, 2017).

12. *Id.*

13. *See* Amanda Sakuma, *Damned for Trying*, MSNBC, <http://www.msnbc.com/specials/migrant-crisis/libya> (last visited Jan. 28, 2019).

14. *See* Channel 4 News, *Rescued African Migrants Say They are Fleeing Slavery*, YOUTUBE (June 28, 2017), <https://www.youtube.com/watch?v=lnSgWGUi3jE>; CNN, *Migrants Being Sold as Slaves in Libya*, YOUTUBE (Nov. 14, 2017), [https://www.youtube.com/watch?v=2S2qtGisT34;\\_Libya\\_Migrant\\_'Slave\\_Market'\\_Footage\\_Sparks\\_Outrage](https://www.youtube.com/watch?v=2S2qtGisT34;_Libya_Migrant_'Slave_Market'_Footage_Sparks_Outrage), BBC NEWS (Nov. 18, 2017), <https://www.bbc.co.uk/news/world-africa-42038451>.

15. *See* Karasapan & Shah, *supra* note 3.

16. *See id.* (noting that the International Organization for Migration plays an active role in transporting victims of slavery to safety and repatriating victims, and that the United Nations Human Rights Council requested more funds to eradicate slavery).

Saharan Africa and the dangers that ensue<sup>17</sup> migration. Further, this note will examine actions that have occurred to attempt to eradicate this issue and discusses who must be held legally responsible for that failure. Lastly, this note discusses laws that must be enacted, how the laws can be implemented, and alternative solutions to creating laws. Even with the international ban on slavery<sup>18</sup> and the global consensus on the evils of slavery, African migrants are subject to the perils of the Libyan slave market.<sup>19</sup> The selling of African migrants in Libya is an atrocious violation of human rights and the selling of African migrants must be put to an end.

## II. BACKGROUND

### A. The State of Libya

The lack of a single, functional central government in Libya has enabled trafficking to thrive and has left borders unsecured, as migrants travel through the Mediterranean Sea to reach the European Union.<sup>20</sup> As an oil-rich country, Libya “once had one of the highest standards of living,” with both free healthcare and free education.<sup>21</sup> However, Libya now faces a financial crisis.<sup>22</sup> Despite the economic developments stemming from oil, Libya failed to align with the interests of Western policies for the extension of power and influence.<sup>23</sup> Sources have indicated that for “Western leaders, the neoliberal faction of the Libyan leadership was too weak and [Muammar] Gaddafi an obstacle to the

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17. See, e.g., *The Law Against Slavery*, BBC, <http://www.bbc.co.uk/ethics/slavery/modern/law.shtml> (last visited Nov. 1, 2019).

18. See *id.*

19. Camila Domonoske, *Migrants Forced Off Ship After They Refused to Return to Libya*, NPR (Nov. 20, 2018, 6:19 PM), <https://www.npr.org/2018/11/20/669526616/migrants-forced-off-ship-after-they-refused-to-return-to-libya>.

20. Atlantic Council, *Foreign Actors in Libya’s Crisis*, 7 (Karim Mezran & Arturo Varvelli eds., 2017).

21. *Why is Libya So Lawless?*, BBC NEWS (Apr. 10, 2019), <https://www.bbc.com/news/world-africa-24472322>.

22. *Id.*

23. Lucia Pradella & Sahar Taghdisi Rad, *Libya and Europe: Imperialism, Crisis and Migration*, 38 *THIRD WORLD Q.* 2411, 2416 (2017).

desired economic reforms.”<sup>24</sup> As the leader of Libya, Gaddafi had major oil and gas companies renegotiate their contracts, searched for political allies to achieve economic diversification, endeavored to reach both food and water self-sufficiency, and attempted to create an “African Central Bank, an African Monetary Fund and an African Court of Justice to challenge their Western counterparts.”<sup>25</sup> Further, in 2008, Gaddafi attempted to block the proposal of a Mediterranean Union suggested by France to find a way around both the African Union and Arab League.<sup>26</sup> After an uprising in 2011 and the repressive response by Gaddafi, Western powers gained the opportunity to intervene and shape Libya to fit their interests.<sup>27</sup> Eventually, in October 2011, Gaddafi was killed by Libyan militias with the support of Western powers.<sup>28</sup> Most regional and international actors assumed that the overthrow of Gaddafi would grant their desired political outcomes.<sup>29</sup> However, conditions in Libya have worsened.<sup>30</sup> The unstable structure of Libya caused by “political and institutional uncertainty”<sup>31</sup> has prevented Libya from establishing a security network in the country.<sup>32</sup>

Since the fall of the Gaddafi regime, Libya’s infrastructure and prospects for stability have decreased.<sup>33</sup> Leadership in both the United States and the United Kingdom failed to prepare for the aftermath of Gaddafi’s overthrow.<sup>34</sup> As a result, a long political struggle ensued between rival factions, in different regions of Libya, fighting over the last remnants of “government functions and oil revenues that remain.”<sup>35</sup> None of the factions have succeeded in establishing power nationwide,

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24. *See, e.g., id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at 2417.

29. Atlantic Council, *Foreign Actors in Libya’s Crisis*, *supra* note 20, at 8.

30. *See id.*

31. *Id.* at 7.

32. *Id.*

33. David Atkinson, *Chair’s Note: Working Around the Crisis in Libya*, 48 LIBYAN STUD. 177, 177 (2017).

34. *Why is Libya so Lawless?*, *supra* note 21.

35. Atkinson, *supra* note 33.

nor have any of the factions dissolved.<sup>36</sup> Currently, Libya contains two rival parliaments and three governments, and “the United Nations aims to replace the other two with the newly formed United Nations-backed Libyan government.”<sup>37</sup> However, the United Nations-backed government received pushback likely due to the influence of Western powers.<sup>38</sup>

The first of the three centers of power in Libya is the Presidential Council, headed by Fayez al-Sarraj, a former member of the Tobruk Parliament, representing a Tripoli constituency. The Presidential Council “was born out of the signing of the UN-brokered Libyan Political Agreement in December 2015.”<sup>39</sup> According to the Libyan Political Agreement, the Presidential Council supervises the Government of National Accord based in Tripoli.<sup>40</sup> Per the Political Agreement, the House of Representatives should endorse the Government of National Accord.<sup>41</sup> However, the House of Representatives, tentatively based in Tobruk, moved to guarantee the safety of its members who are threatened by members hostile to the Government of National Accord.<sup>42</sup> As a result, the House of Representatives have not voted on a government although majority of its members have expressed written support for the Government of National Accord.<sup>43</sup> The second rival is the Government of National Salvation headed by Prime Minister Khalifa Ghwell, which rests on authority of the General National Congress—the parliament elected in 2012 and also based in Tripoli.<sup>44</sup> Lastly, the third power center consists of authorities based in Tobruk and al-Bayda and

36. *A Guide to Libya's Main Players*, EUROPEAN COUNCIL ON FOREIGN REL., [https://www.ecfr.eu/mena/mapping\\_libya\\_conflict](https://www.ecfr.eu/mena/mapping_libya_conflict) (last visited Jan. 25, 2020).

37. *Why is Libya so Lawless?*, supra note 21.

38. *Id.*

39. Mattia Toaldo, *A Quick Guide to Libya's Main Players*, EUROPEAN COUNCIL ON FOREIGN REL., [https://www.ecfr.eu/page/-/Lybias\\_Main\\_Players\\_Dec2016\\_v2.pdf](https://www.ecfr.eu/page/-/Lybias_Main_Players_Dec2016_v2.pdf) (last visited Mar. 3, 2019), (discussing that nine members also make up the Presidential Council and some members have connections with powerful stakeholders).

40. *Id.*

41. *Id.*

42. *Id.* (Noting that reports have shown that members are also stopped from voting).

43. *Id.*

44. *Id.* The General National Congress of Accord does not control any relevant institution and most of its members have moved to the State Council which is a consultative body created under the Libyan Political Agreement. *Id.*

must also concede power to the Government of National Accord.<sup>45</sup> Under the Libyan Political Agreement, the House of Representatives in Tobruk is the legitimate legislative authority while the government of Abdullah al-Thinni operates from the east in al-Bayda and “should eventually concede power to the [Government of National Accord] once this is voted into office by Parliament.”<sup>46</sup> The authorities in Tobruk and al-Bayda are under the control of Khalifa Haftar, the leader of the Libyan National Army.<sup>47</sup> Due to the split governments, the various factions throughout Libya are left to regulate unchallenged.<sup>48</sup> Further, external actors have aided different factions for personal gain.<sup>49</sup>

The fall of Muammar Gaddafi resulted in Libya’s instability and chaos,<sup>50</sup> and the power struggle between rival factions renders Libya virtually lawless with no government to monitor the flow of goods and persons across the border.<sup>51</sup> In consequence, the smuggling networks in Libya thrive and migrants, attempting to obtain a better life, are sold in lucrative markets like chattel.<sup>52</sup>

#### B. Pressure to Migrate and its Effects on the Slave Trade

International migration serves as the only survival option for thousands of people who “embark on journeys hoping to find a better place to live.”<sup>53</sup> Economic and social circumstances force thousands of African migrants to risk their lives in pursuit of better opportunities.<sup>54</sup> However, the journey to obtain a better life contains many risks and can be life-threatening for migrants.<sup>55</sup> As a country with a large Mediterranean coastline, Libya receives the largest flow of African migration.<sup>56</sup> Migrants flee the south to escape the remnants of wars that

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45. *Id.*

46. *Id.*

47. *Id.*

48. *See Why is Libya so Lawless?*, *supra* note 21.

49. Atlantic Council, *Foreign Actors in Libya’s Crisis*, *supra* note 20, at 8.

50. Sakuma, *supra* note 13.

51. *See id.*

52. *Id.*

53. Yameogo, *supra* note 6.

54. *See id.*

55. *Id.*

56. Sakuma, *supra* note 13.

left nations in ruin.<sup>57</sup> From the east, migrants flee to escape “a life of indefinite military servitude and violent conflict.”<sup>58</sup> From the west, migrants evade poverty and arbitrary imprisonment from governments.<sup>59</sup>

Further, sources indicate that the unjust structural growth policies of the International Monetary Fund (“IMF”) and the World Bank create perpetual circumstances of poverty in African countries,<sup>60</sup> which contribute to the pressures for African migration to Europe. The World Bank seeks to provide financing, policy guidance, and technical assistance to the governments of developing countries.<sup>61</sup> Structural growth policies are implemented by the World Bank to “lay the foundation for economic growth by helping lower inflation, smooth out consumption and investment, and reduce government deficits.”<sup>62</sup> The IMF keeps track of the global economy, lends developing countries loans, and facilitates international trade.<sup>63</sup> Despite the purpose of the IMF and World Bank, Western corporations and governments<sup>64</sup> have benefited from these high-interest payments from African countries for years through Structural Adjustment Programs, which stunt economic growth and increase poverty.<sup>65</sup> Under the Structural Adjustment Programs, in an “effort” to attract foreign investment that will reduce debt and poverty, African governments are encouraged to raise interest rates, sell state-owned businesses to private interests, boost exports, and alleviate barriers for foreign investors by lowering tariffs and reducing

57. *Id.*

58. *Id.*

59. *Id.*

60. See ASAD ISMI, IMPOVERISHING A CONTINENT: THE WORLD BANK AND THE IMF IN AFRICA 5 (2004); Ikejiaku, *supra* note 5; Jasmine Jacobs, *IMF Loans of Terror: 5 Countries Crippled After Foreign Aid*, ATLANTA BLACK STAR, (Apr. 3, 2014), <https://atlantablackstar.com/2014/04/03/imf-loans-terror/>; Michael Hodd, *Africa, the IMF and the World Bank*, 86 AFR. AFF. 331, 336 (1987).

61. *The World Bank Group and the International Monetary Fund (IMF)*, WORLD BANK, <https://www.worldbank.org/en/about/history/the-world-bank-group-and-the-imf> (last visited Oct. 12, 2019).

62. Khaled Abdel-Kader, *What are Structural Policies?*, 50 FIN. & DEV., Mar. 2013, at 46, 47.

63. See ISMI, *supra* note 60.

64. *Id.*

65. Ikejiaku, *supra* note 5, at 5

import duties.<sup>66</sup> The loans given to African countries and the structural adjustment policies implemented through the World Bank and IMF are counterproductive.<sup>67</sup> The Structural Adjustment Programs require the governments of African countries to decrease public spending in areas such as food subsidies, education, and medical care.<sup>68</sup>

A report from the Structural Adjustment Participatory Review Program identified several ways in which the structural adjustment policies have contributed to further poverty and marginalization while growing economic inequalities.<sup>69</sup> For example, the spending cuts to education and health resulted in a severe increase in impoverishment.<sup>70</sup> Additionally, the privatization of national assets and vital public services has allowed corporations to “remove resources and profits from countries as well as increase rates for water and electricity which has hit the poor the hardest.”<sup>71</sup> Further, the Structural Adjustment Programs resulted in lower-incomes, increased debt, an increase in disease, and low educational levels throughout the African countries in which the adjustments were implemented.<sup>72</sup> Due to the lack of opportunities, poor living conditions, and extreme poverty in their countries, migration is the only option for the majority of the African migrants to survive.<sup>73</sup>

These pressures to migrate render African migrants vulnerable to exploitation, human trafficking, and slavery.<sup>74</sup> Most African migrants have sold everything they own to afford the trip through Libya to the

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66. See ASAD ISMI, IMPOVERISHING A CONTINENT: THE WORLD BANK AND THE IMF IN AFRICA 5 (2004); Ikejiaku, *supra* note 5; Jasmine Jacobs, *IMF Loans of Terror: 5 Countries Crippled After Foreign Aid*, ATLANTA BLACK STAR, (Apr. 3, 2014), <https://atlantablackstar.com/2014/04/03/imf-loans-terror/>; Michael Hodd, *Africa, the IMF and the World Bank*, 86 AFR. AFF. 331, 336 (1987); STRUCTURAL ADJUSTMENT PARTICIPATORY REVIEW INTERNATIONAL NETWORK, THE POLICY ROOTS OF ECONOMIC CRISIS AND POVERTY 173 (1st ed. 2002) [hereinafter SAPRIN].

67. Ikejiaku, *supra* note 5, at 5

68. ISMI, *supra* note 60.

69. See SAPRIN, *supra* note 66, at 173.

70. *Id.* at 164–65.

71. ISMI, *supra* note 60, at 6.

72. See SAPRIN, *supra* note 66, at 158–59, 168–69, 184.

73. See Yameogo, *supra* note 6.

74. *Id.*

Mediterranean.<sup>75</sup> Libya's 1,000-mile coastline lacks the government forces to monitor crossings, which leaves the border virtually open.<sup>76</sup> Smugglers take advantage of the open border by tightly packing hundreds of migrants into non-seaworthy vessels and shuttling the vessels to Italy.<sup>77</sup> Migrants often struggle to survive in crossing the sea due to the unsafe and overcrowded boats or in one of the overcrowded Libyan detention centers run by smugglers on the coastline.<sup>78</sup> Beginning in 2014, migrant sea crossings rose more than four-fold.<sup>79</sup> In 2018, the International Organization for Migration estimated that over 600,000 migrants traveling through Libya are subjected to human rights violations and abuse, as "rent-seeking armed groups proliferate and engage in smuggling, trafficking and exploitation of this group."<sup>80</sup> About a half-million migrants have made the crossing over the Mediterranean sea, and over 10,000 migrants have died in the attempt.<sup>81</sup> Further, over a half-million migrants are currently marooned in Libya.<sup>82</sup> The recent stricter regulations by the Libyan coastguard led to fewer boats making it out to sea,<sup>83</sup> and the increased interception and roundup of migrants has resulted in the increased exposure to abuse of migrants traveling through Libya.<sup>84</sup> Thus, smugglers are then left with African migrants in their custody and the would-be passengers become the smugglers' slaves.<sup>85</sup>

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75. Nima Elbagir et al., *Exclusive Report People for Sale*, CNN, <https://www.cnn.com/2017/11/14/africa/libya-migrant-auctions/index.html> (last visited Jan. 21, 2019).

76. Sakuma, *supra* note 13.

77. *Id.*

78. Nour Youssef, *Sale of Migrants as Slaves in Libya Causes Outrage in Africa and Paris*, NY TIMES (Nov. 19, 2017), <https://www.nytimes.com/2017/11/19/world/africa/libya-migrants-slavery.html>.

79. Sakuma, *supra* note 13.

80. *Libya 2018*, INT'L ORG. FOR MIGRATION, <https://humanitariancompendium.iom.int/appeals/libya-2018> (last visited Jan. 21, 2018); *Libya's Migrant Report*, DTM, <http://www.globaldtm.info/libya/> (last visited Jan. 21, 2018).

81. AMNESTY INT'L, LIBYA'S DARK WEB OF COLLUSION 6 (2017) <https://www.amnesty.org/download/Documents/MDE1975612017ENGLISH.PDF>.

82. *Id.*

83. Elbagir et al., *supra* note 75.

84. *See* Sakuma, *supra* note 13.

85. *See id.*

In October 2017, a CNN team traveled to Libya and witnessed men auctioned as slaves.<sup>86</sup> In fact, the CNN team captured this event with live footage.<sup>87</sup> Moreover, the CNN crew were also told about auctions taking place at nine locations throughout Libya.<sup>88</sup> In November 2017, CNN released the film and an exclusive investigative report.<sup>89</sup> Global outrage revealed a dozen men auctioned off as farm workers for as little as \$400 USD.<sup>90</sup> The report indicated that some of the auction sites were located in territory under the jurisdiction of the Government of National Accord.<sup>91</sup> However, the Government of National Accord does not control all of Libya.<sup>92</sup> The alleged locations of the Libyan slave auctions, not governed by the Government of National Accord, for Libyan slave auctions include Zuwara, Castevalde, Sabratah, Garyan, Kabaw, Gadamis, Alrujban, Alzintan, and Sabha.<sup>93</sup> Over the years, according to multiple sources, stories about the beatings, kidnappings, and enslavement of African migrants crossing the Mediterranean have spread.<sup>94</sup> Additionally, these sources have revealed that African migrants are sold in Libya by non-Africans who are complicit with African traffickers.<sup>95</sup> The CNN

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86. Elbagir et al., *supra* note 75.

87. *Libya's Slaves: 'I was Sold'*, CNN (Nov. 13, 2017), <https://www.cnn.com/videos/world/2017/11/13/libya-migrant-slave-victory-lon-orig-md-ek.cnn>.

88. *Id.*

89. *Id.*

90. *Libya Migrant 'Slave Market' Footage Sparks Outrage*, BBC NEWS (Nov. 18, 2018), <https://www.bbc.co.uk/news/world-africa-42038451>; Channel 4 News, *Rescued African Migrants Say They are Fleeing Slavery*, YOUTUBE (Jun. 28, 2017), <https://www.youtube.com/watch?v=lnSgWGuj3jE>; *Libya's Slaves: 'I was Sold'*, *supra* note 87; *Reports of Migrant Slave Trade in Libya*, CBS (Jan. 5, 2018), <https://www.cbsnews.com/video/reports-of-migrant-slave-trade-in-libya/>.

91. Elbagir et al., *supra* note 75.

92. *See id.*

93. *Id.*

94. *See, e.g., id.; Libya Migrant 'Slave Market' Footage Sparks Outrage*, BBC NEWS (Nov. 18, 2018), <https://www.bbc.co.uk/news/world-africa-42038451>; Channel 4 News, *Rescued African Migrants Say They are Fleeing Slavery*, YOUTUBE (Jun. 28, 2017), <https://www.youtube.com/watch?v=lnSgWGuj3jE>; *Libya's Slaves: 'I was Sold'*, *supra* note 87; *Reports of Migrant Slave Trade in Libya*, CBS (Jan. 5, 2018), <https://www.cbsnews.com/video/reports-of-migrant-slave-trade-in-libya/>; Aryn Baker, *'It Was As if We Weren't Human.'* *Inside the Modern Slave Trade Trapping African Migrants*, TIME (Mar. 14, 2019), <https://time.com/longform/african-slave-trade/>.

95. *See* Karasapan & Shah, *supra* note 3.

special report attributed the sharp fall in African migrant arrivals in Europe to the emergence of the Libyan slave markets.<sup>96</sup>

Under Libyan law, the criminalization of illegal entry has resulted in the arbitrary and indefinite detention of migrants.<sup>97</sup> Under Article 10 of the Constitutional Declaration of 2011, the right to asylum is apparent.<sup>98</sup> However, Libyan authorities failed to echo this right in national legislation or to establish a system to petition for asylum.<sup>99</sup> Libya is a part of the 1969 African Unity Convention Governing the Specific Aspects of the Refugee Problems in Africa, but did not fulfill its obligations to recognize the rights migrants to asylum nor to extend protections to migrants fleeing prosecution.<sup>100</sup> Additionally, Libya declined to sign the 1951 Refugee Convention and validate the legitimacy of the Office of the United Nations High Commissioner for Refugees.<sup>101</sup>

An Amnesty International Report revealed that Libyan security officials cooperate with armed groups and criminal gangs for mutual financial gain.<sup>102</sup> In the detention centers, migrants suffer torture and other abuse “in appalling conditions, extortion, forced labour and killings at the hands of Libyan officials, militias and smugglers.”<sup>103</sup> As of 2018, the General Directorate for Combating Illegal Migration held up to 20,000 migrants and refugees.<sup>104</sup> Since 2018, thousands of other migrants and refugees are held in captivity by criminal gangs and militias.<sup>105</sup> Officials of the General Directorate for Combating Illegal Migration, in charge of managing the detention centers, are often involved in the mistreatment of migrants and refugees, extracting ransom from the

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96. Youssef, *supra* note 78.

97. Hackwill, *supra* note 11.

98. AMNESTY INT’L, *supra* note 81, at 7. Technically the constitution is in effect until a new Constitution is formed, but the members of the Presidential Council have not been able to meet. *Id.*; *A Quick Guide to Libya’s Main Players*, European Council on Foreign Relations, [https://www.ecfr.eu/mena/mapping\\_libya\\_conflict#](https://www.ecfr.eu/mena/mapping_libya_conflict#).

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* at 6.

103. *Id.*

104. *Id.* at 7.

105. *Id.*

detainees or their families in exchange for release from detention.<sup>106</sup> The report also indicated that the Libyan slave market has grown since the shocking footage of migrants being sold like chattel appeared in November 2017.<sup>107</sup>

### C. International and Regional Responses

After publishing the exclusive report on African migrants sold by smugglers in Libya, CNN alerted Libyan authorities and handed over footage of the evidence to the Office of the Prosecutor at the International Criminal Court.<sup>108</sup> On November 17, 2017, following the exclusive CNN report, Libya opened a formal investigation into slave auctions occurring in Libyan slave markets.<sup>109</sup> An official from the United Nations-backed government within Libya's Anti-Illegal Immigration agency stated that a committee was formed to identify the location of the auctions and to convict the responsible parties for the acts against humanity.<sup>110</sup> Further, the committee was tasked with determining whether the locations of the auctions were under the control of the internationally recognized Government of National Accord.<sup>111</sup> In addition, the International Organization for Migration, an intergovernmental organization, gained interest in the investigation.<sup>112</sup> However, the International Organization for Migration warned that "the smuggling networks [we]re becoming stronger, more organized and better equipped."<sup>113</sup>

On November 19, 2017, protestors gathered near the Libyan Embassy in central Paris to protest the migrant auctions in Libya and urge

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106. *Id.* at 8.

107. *Id.* at 6.

108. Lauren Said-Moorhouse, *Libya Opens Investigation into Slave Auctions Following CNN Report*, CNN, <https://www.cnn.com/2017/11/17/africa/libya-slave-auction-investigation/index.html> (last updated Nov. 17, 2017, 4:20 PM).

109. *Id.*

110. *See id.*

111. *Id.*

112. *Id.*

113. *Id.* (internal quotations omitted).

authorities to act quickly.<sup>114</sup> Further, after scoring a goal, Paul Pogba, a footballer who plays for Manchester United and the French national team, celebrated with a handcuff action to highlight the issue of African migrants sold into slavery in Libyan auctions.<sup>115</sup> On November 20, 2018, Alpha Condé, the President of the African Union, joined Federica Mogherini, High Representative of the European Union for Foreign Affairs, in condemning slavery in Libya in a press release.<sup>116</sup> The President and High Representative agreed that the European Union, African countries, and the African Union must work together to actively combat human trafficking and smuggling networks.<sup>117</sup> Similarly, the United Nations Secretary-General Antonio Guterres stated that he was “horrified” by the reports of African migrants auctioned and sold as slaves.<sup>118</sup> Further, he said that the slavery occurring in Libya “has no place in our world and these actions are among the most egregious abuses of human rights and may amount to crimes against humanity.”<sup>119</sup> Secretary-General Antonio Guterres also urged countries to implement the UN Convention Against Transnational Organized Crime and its protocol for human trafficking.<sup>120</sup>

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114. Dakin Andone, *Protesters Gather Near Libyan Embassy After CNN Report on Migrant Auctions*, CNN, <https://www.cnn.com/2017/11/19/europe/libya-slave-protests-paris/index.html> (last updated Nov. 20, 2017, 5:20 AM).

115. Lauren Said-Moorhouse, *Paul Pogba Dedicates Goal to Migrants Sold as Slaves in Libya*, CNN, <https://www.cnn.com/2017/11/20/sport/paul-pogba-libya-slave-auctions/index.html> (last updated Nov. 20, 2017, 7:31 AM); Paul Pogba (@paulpogba), INSTAGRAM (Nov. 18, 2017), [https://www.instagram.com/p/Bbp2t11nbKt/?utm\\_source=ig\\_embed](https://www.instagram.com/p/Bbp2t11nbKt/?utm_source=ig_embed).

116. Press Release, Alpha Condé & Federica Mogherini, Joint Press Release by the High Representative/ Vice-President Federica Mogherini and President of the African Union (Nov. 20, 2017, 8:44 PM) (available at [https://eeas.europa.eu/headquarters/headquarters-Homepage/35895/joint-press-release-high-representative-vice-president-federica-mogherini-and-president\\_en](https://eeas.europa.eu/headquarters/headquarters-Homepage/35895/joint-press-release-high-representative-vice-president-federica-mogherini-and-president_en)).

117. *Id.*

118. UN Chief ‘Horrified’ at Buying and Selling of African Migrants in Libya, UN NEWS (Nov. 20, 2017), <https://news.un.org/en/story/2017/11/636702-un-chief-horrified-buying-and-selling-african-migrants-libya>.

119. *Id.* (internal quotations omitted).

120. *Id.* (explaining that the protocol is an important legal instrument that attempts to eradicate the smuggling of migrants and promote cooperation amongst States to combat human trafficking).

On November 21, 2017, the United Nations-backed Libyan Government of National Accord acknowledged the violations against African migrants.<sup>121</sup> However, the internationally recognized government asked for regional and global actors to help alleviate the violations against African migrants and stated that the practical solution is to address the problems that cause migrants to leave their homes.<sup>122</sup> In response to the outrage, both global and regional actors started to address the issue.<sup>123</sup> The Nigerian government and its officials began working with authorities and the International Organization for Migration to return Nigerians to their home country.<sup>124</sup> On November 22, 2017, France called an emergency meeting of the United Nations Security Council about the Libyan slave trade, and President Emmanuel Macron stated that the auctions are a crime against humanity.<sup>125</sup> Likewise, delegates at a United Nations Security Council meeting on human trafficking requested that international law be enforced to investigate and prosecute human trafficking crimes.<sup>126</sup> Also, the Security Council unanimously adopted Resolution 2388 (2017) in an effort to counter human trafficking.<sup>127</sup> During the meeting, Libya's representative stated that authorities initiated the investigation to hold perpetrators accountable and asked the members of the Security Council to help as a

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121. Raja Razek & Lauren Said-Moorhouse, 'Where is the World?': Libya Responds to Outrage Over Slave Auctions, KITV 4 ABC, <http://www.kitv.com/story/36913801/where-is-the-world-libya-responds-to-outrage-over-slave-auctions> (last updated Nov. 25, 2017, 7:08 PM).

122. *See id.*

123. Emanuella Grinberg, *France Calls for UN Security Council Meeting on Libya Slave Auctions*, CNN, <https://www.cnn.com/2017/11/22/africa/french-president-libya-slave-auctions/index.html> (last updated Nov. 22, 2017, 10:21 PM); *France Calls UN Security Council Meeting Over Libya Slave Auctions*, FRANCE24 (Nov. 22, 2017, 5:58 PM), <https://www.france24.com/en/20171122-france-calls-un-security-council-meeting-libya-slave-auctions-macron>; Stephanie Busari, *Hundreds of Migrants Stranded in Libya are Returned to Nigeria*, CNN, <https://www.cnn.com/2017/11/29/africa/nigeria-migrants-returned-libya/index.html> (last updated Nov. 29, 2017, 6:56 PM).

124. Busari, *supra* note 123.

125. Grinberg, *supra* note 123; FRANCE24, *supra* note 123.

126. *See* Security Council Reiterates its Condemnation of Trafficking in Persons, Unanimously Adopting Resolution 2388 (2017) (Nov. 21, 2017), <https://www.un.org/press/en/2017/sc13081.doc.htm>.

127. *Id.*

community.<sup>128</sup> In addition, Spain's Foreign Ministry expressed deep concern towards the treatment of African migrants held captive in Libyan slave markets.<sup>129</sup> Spain also urged Libya to adopt and implement the United Nations Protocol Against Transactional Crime and Human Trafficking.<sup>130</sup>

On November 18, 2017, Moussa Faki Mahamat, African Union chairman, released a statement that called for the immediate end to slavery in Libya and asked the African Union to help defend the human rights of African migrants.<sup>131</sup> Further, the Chairman stated that the slave auctions in Libya are a responsibility for both international and regional actors.<sup>132</sup> Sources indicate that the crisis in Libya stems from the chaos created by Muammar Gaddafi's overthrow and blame international actors.<sup>133</sup>

Additionally, Amnesty International claims that the European Union is complicit in the human rights violations against migrants in Libya because of its support for the Libyan authorities, who torture both refugees and migrants, and often work with smugglers.<sup>134</sup> Despite the fact that Libya's United Nations-backed government has limited control over its territories, the European Union has sent over £327.9 million to Libya, mostly channeled through U.N. agencies, to deter migrants from crossing the Mediterranean.<sup>135</sup> The agreement on migration policy between European Union leaders includes training and gear for Libyan coastguard, increased efforts to block smuggling routes, "better"

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128. *Id.*

129. Razek & Said-Moorhouse, *supra* note 121.

130. *Id.*

131. Press Release, Moussa Faki Mahamat, Chairperson, African Union, Statement of the Chairperson of the African Union Commission on the Plight of African Migrants in Libya (Nov. 18, 2017) (on file with the African Union).

132. *Id.*; Youssef, *supra* note 78.

133. See Elbagir et al., *supra* note 75; Dominic Tierney, *The Legacy of Obama's 'Worst Mistake' There's a Problem With the American Way of War*, THE ATLANTIC (Apr. 15, 2016), <https://www.theatlantic.com/international/archive/2016/04/obamas-worst-mistake-libya/478461/>.

134. Hackwill, *supra* note 11.

135. *Migrant Crisis: EU Leaders Plan Secure Migrant Centres*, BBC NEWS (June 29, 2018), <https://www.bbc.com/news/world-europe-44652846>; Maggie Michael et al., *Making Misery Pay: Libya Militias Take EU Funds For Migrants*, ASSOCIATED PRESS (Dec. 31, 2019), <https://apnews.com/9d9e8d668ae4b73a336a636a86bdf27f>.

conditions in the Libyan migrant reception centers, and more involvement with the countries that surround Libya to control influx.<sup>136</sup>

Sources have indicated that the European Union abandoned its humanitarian values to secure borders.<sup>137</sup> In fact, the medical charity Médecins Sans Frontières stated that “Libya is not a safe place and blocking people in the country or returning them to Libya makes a mockery of the EU’s so-called fundamental values of human dignity and rule of law.”<sup>138</sup> The European aid to strengthen border security in Libya creates an infrastructure for the exploitation of African migrants.<sup>139</sup> Instead of attempting to prevent migrant arrivals to Europe, the European Union should take action to protect the rights of the refugees and migrants.<sup>140</sup>

Despite the growing outrage, the internationally recognized Government of National Accord has taken few actions.<sup>141</sup> Further, few updates have been given on the on-going investigation of Libyan slave auctions and the response to the exclusive CNN report has lost momentum.<sup>142</sup> The lack of a strong, functional central government serves as a major setback in eradicating slavery.

### III. FRAMEWORKS FOR REDRESSABILITY

Before the Libyan Political Agreement, the National Transitional Council served as the “de facto government of Libya for ten months between 2011 and 2012,” after the Libyan civil war,<sup>143</sup> as the only legitimate representative of Libya.<sup>144</sup> On September 16, 2011, the United

136. Council Meeting Conclusion (EC) No. 9/18 of 28 June 2018 (C 3) 1.

137. See, e.g., *id.*

138. *MSF Warns of Inhumane Detention Conditions in Libya as EU Discusses Migration*, DOCTORS WITHOUT BORDERS (Feb. 2, 2017) <https://www.doctorswithoutborders.org/what-we-do/news-stories/news/msf-warns-inhumane-detention-conditions-libya-eu-discusses-migration>.

139. Hackwill, *supra* note 11.

140. AMNESTY INT’L, *supra* note 81, at 61.

141. See Razek & Said-Moorhouse, *supra* note 121.

142. See *id.*

143. See NATIONAL TRANSITIONAL COUNCIL – LIBYA, <http://ntclibya.org/> (last visited Mar. 3, 2019).

144. *UK Expels Gaddafi Diplomats and Recognizes Libya Rebels*, BBC NEWS (July 27, 2011), <https://www.bbc.com/news/uk-politics-14306544>.

Nations General Assembly recognized the right of the National Transitional Council to hold Libya's seat at the United Nations.<sup>145</sup> On September 20, 2011, the African Union also recognized the National Transitional Council as the legal representative of Libya.<sup>146</sup> Although the National Transitional Council handed power over to the Government of National Accord on August 8, 2012,<sup>147</sup> the National Transitional Council implemented a Constitutional Declaration to serve as the basis of rule until a permanent Constitution is ratified through a plebiscite.<sup>148</sup> Despite debates between the High National Elections Commission, the House of Representatives, and the High Council of State on a constitutional draft,<sup>149</sup> the legislative bodies have not ratified a permanent Constitution.<sup>150</sup> Thus, the Constitutional Declaration still operates as the governing document of Libya, and the Libyan Political Agreement stresses adherence to the Constitutional Declaration.<sup>151</sup>

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145. U.N.G.A., After Much Wrangling, General Assembly Seats National Transitional Council of Libya as Country's Representative for Sixty-Sixth Session (Sep. 16, 2011), <https://www.un.org/press/en/2011/ga11137.doc.htm>.

146. Ed Cropley, *African Union Finally Recognizes Libya's NTC*, REUTERS (Sept. 20, 2011, 12:49 PM), <https://www.reuters.com/article/us-libya-africa/african-union-finally-recognizes-libyas-ntc-idUSTRE78J4JE20110920>.

147. *Libya's Transitional Rulers Hand Over Power to Elected Assembly*, THE GUARDIAN (Aug. 8, 2012, 8:39 PM), <https://www.theguardian.com/world/2012/aug/09/libya-power-elected-assembly>.

148. *Libya Constitutional Declaration*, WIPO, <https://wipolex.wipo.int/en/text/496462> (last visited Mar. 3, 2019).

149. *Debates on Constitutional Draft Rekindle Tensions Between HNEC, HCS and HOR*, LIBYA-ANALYSIS.COM (Dec. 12, 2018), <http://www.libya-analysis.com/category/house-of-representatives/>. The constitutional draft would require a minimum of 51% of yes votes in each of Libya's three regions. *Id.* On December 6, 2018, Emad Sayeh, the head of the High National Elections Commissions, announced that a constitutional referendum would be held around the end of February 2019. *Id.*; Sami Zaptia, *HNEC Commences Permanent Constitution Referendum Process*, LIBYA HERALD (Dec. 6, 2018), <https://www.libyaherald.com/2018/12/06/hnec-commences-permanent-constitution-referendum-process/>.

150. See Toaldo, *supra* note 39; *Libya*, WIPO IP PORTAL <https://wipolex.wipo.int/en/legislation/profile/LY> (last visited Mar. 3, 2019) (showing the most recent governing constitutional document as the Constitutional Declaration of 2011).

151. Libyan Political Agreement of 2015 at 3 (available at <https://unsmil.unmissions.org/sites/default/files/Libyan%20Political%20Agreement%20-%20ENG%20.pdf>) ("Stressing their adherence

Under Article (7) of the Constitutional Declaration, Libya must respect human rights and basic freedoms and “commit itself to join the international and regional declarations and charters which protect such rights and freedoms.”<sup>152</sup> Further, the right to asylum is guaranteed and the extradition of political refugees is prohibited under Article (10).<sup>153</sup> However, a ban against human trafficking is not expressly written in the Constitutional Declaration.<sup>154</sup> The Libyan Political Agreement recognizes the Government of National Accord as the sole government in control over all of Libya, declares that the House of Representatives is the only legislative authority, and gives legitimate state authorities the power to enforce Libyan laws.<sup>155</sup> Even with the express authority given under the Libyan Political Agreement to the House of Representatives and Government of National Accord,<sup>156</sup> the rival centers of power are not likely bound by the terms of the Libyan Political Agreement or the Constitutional Declaration unless the rival governments and parliament concede power to the Government of National Accord. Thus, the destabilized government structure will not be remedied until the rival governments concede power to the Government of National Accord and the House of Representatives can vote on a constitution. This note will propose solutions to eradicate slavery in Libya through concerted actions of Libya’s three centers of power—the Government of National Accord, the Government of National Salvation, and the authorities in Tobruk and al-Bayda, which contain the Libyan National Army headed by Khalifa Haftar.<sup>157</sup>

Further, sources have indicated that alleviating the problems in African countries that cause Sub-Saharan Africans to migrate would be the best solution to eradicate slavery in Libya.<sup>158</sup> Although alleviating the problems in African countries will likely help decrease the number of migrants enslaved in Libya, that approach would better serve as a long-

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to the Constitutional Declaration, respect to the independence of the judiciary and complying with its rulings and decisions.”).

152. *Libya Constitutional Declaration*, *supra* note 148.

153. *Id.*

154. *See id.*

155. *See* Libyan Political Agreement, *supra* note 151, at 3, 4, 20.

156. *See id.*; Toaldo, *supra* note 39.

157. *See* Toaldo, *supra* note 39.

158. *See supra* text accompanying note 120.

term goal strategically crafted to handle the unique challenges of each African country due to the years of social and economic injustices that Sub-Saharan Africans have faced.<sup>159</sup> Therefore, this note proposes a more holistic approach by offering solutions that can be accomplished at both the national and supranational level along with other cooperative solutions.

#### A. National Solutions

In order to eradicate slavery in Libya, anti-human trafficking legislation must be implemented once Libya gains a stable government. Therefore, Libya must look at the national level for legislation to end slavery. Foreign interference in the self-government of Libya as a sovereign nation has proven extremely detrimental. However, where the international community can be of use is as a model to look at the successes and failures of possible legislative solutions. As a result, this section examines the anti-human trafficking models set forth by the United Kingdom's Modern Slave Act 2015 and the United States Trafficking Victims Protection Act. The provisions in both the Modern Slave Act 2015 and the Trafficking Victims Protection Act mirror the requirements for anti-human trafficking legislation suggested by the United Nations Resolution 2388 (2017).

##### *i. The United Kingdom*

The United Kingdom implemented the Modern Slave Act 2015<sup>160</sup> to eradicate modern slavery, to ensure that offenders receive severe punishments for the crimes, and to give victims protection and support.<sup>161</sup> Member of the Parliament, Theresa May, former Prime Minister of the United Kingdom, and Lord Bates sponsored the bill from the Home Office.<sup>162</sup> Member of Parliament Theresa May indicated that:

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159. See discussion *infra* Section II.B.

160. Modern Slavery Act 2015, c. 30 (UK).

161. Home Office, *Modern Slavery Act 2015*, GOV.UK (Jun. 10, 2014), <https://www.gov.uk/government/collections/modern-slavery-bill> [hereinafter *UK Slavery Act Overview*].

162. *Id.*

Young girls are raped, beaten, passed from abuser to abuser and sexually exploited for profit. Vulnerable men are tricked into long hours of hard labour before being locked away in cold sheds or rundown caravans. People are made to work in fields, in factories, and on fishing vessels. Women are forced into prostitution, and children systematically exploited. Domestic workers are imprisoned and made to work all hours of the day and night for little or no pay.

In the UK the scale of this hidden crime is significant. New research carried out by the Home Office estimates that in 2013, the number of potential victims in the UK was between 10,000 –13,000. We know that this number not only represents victims trafficked into the UK, but British adults and children too. The National Crime Agency estimates that in 2013, the UK was the third most common country of origin of identified victims.

We must put a stop to these crimes and stamp out modern slavery. That is why I have introduced a Modern Slavery Bill – the first of its kind in Europe – to ensure tough penalties are in place, alongside important protections and support for victims.<sup>163</sup>

After the bill completed the parliamentary stages in both Houses, the bill received formal agreement from the Queen, becoming an Act of Parliament.<sup>164</sup>

The Modern Slave Act 2015 consolidates existing slavery and human trafficking offenses, encompasses two civil orders to prevent modern slavery, establishes an Anti-Slavery Commissioner, and contains a provision for the protection of modern slavery victims.<sup>165</sup> Under the Modern Slave Act 2015, the response of law and enforcement is strengthened due to the facts that an offender can receive life imprisonment, the assets of perpetrators can be seized and allocated towards victim compensation payments, and the Act strengthens law

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163. Theresa May, *Foreword to HM GOV'T, MODERN SLAVERY STRATEGY 5* (2014) (UK), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/383764/Modern\\_Slavery\\_Strategy\\_FINAL\\_DEC2015.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/383764/Modern_Slavery_Strategy_FINAL_DEC2015.pdf).

164. *UK Slavery Act Overview*, *supra* note 161.

165. Karen Bradley & Theresa May, Home Office, *Historic Law to End Modern Slavery Passed*, GOV.UK (Mar. 26, 2015), <https://www.gov.uk/government/news/historic-law-to-end-modern-slavery-passed>.

enforcement powers at sea.<sup>166</sup> Further, the Modern Slave Act 2015 provides greater protection for victims because the statutory defense allows for modern slavery to be properly criminalized, courts have new powers to order offenders to pay Reparation Orders to victims, child victims of trafficking can receive child advocates, and these special measures are now extended to all victims of human trafficking.<sup>167</sup> In addition, the Modern Slave act provides statutory guidance for victims on an overseas domestic worker visa through assistance with identifying victims, providing support services, and adding protections.<sup>168</sup>

The strategy of the Modern Slave Act 2015 encompasses a framework to successfully combat modern slavery and contains four main focus areas—pursue, prevent, protect, and prepare—to reduce the threat of and vulnerability to modern slavery.<sup>169</sup> The first goal of pursuit is to prosecute and disrupt the “individuals and groups responsible for modern slavery.”<sup>170</sup> The second goal of prevention focuses on the deterrence of people engaging in modern slavery.<sup>171</sup> The third goal of protection aims to strengthen safeguards against modern slavery by protecting vulnerable persons from exploitation and raising awareness of the crime.<sup>172</sup> Lastly, the fourth goal of preparations aims to decrease the damage caused by modern slavery through the improvement of victim identification, enhanced support, and protection for victims.<sup>173</sup>

The Anti-Slavery Commissioner (“Commissioner”) also plays a large role in combatting human trafficking in the United Kingdom. The Commissioner must ensure “that modern slavery issues are tackled in a coordinated and effective manner across the whole of the UK.”<sup>174</sup> Further, the Commissioner must work with law enforcement agencies,

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166. See generally Modern Slavery Act 2015, c. 30 (UK). See also Bradley & May, *supra* note 165.

167. See generally Modern Slavery Act 2015, c. 30 (UK). See also Bradley & May, *supra* note 165 (specifying that courts have the power to pay reparation orders to victims, and child victims of trafficking can receive child advocates.).

168. See generally Modern Slavery Act 2015, c. 30 (UK). See also Bradley & May, *supra* note 165.

169. MODERN SLAVERY STRATEGY, *supra* note 163, at 28.

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.* at 29.

local authorities, and international partners to reassure the identification of victims, and the stoppage, detection, investigation, and prosecution of modern slavery crimes.<sup>175</sup> Additionally, under the Modern Slavery Strategy, the government also indicated that the National Crime Agency will help coordinate the responses of law enforcement about modern slavery and also help to tackle international modern slavery at the border of the United Kingdom.<sup>176</sup>

The National Crime Agency of the United Kingdom established the National Referral Mechanism to identify victims of human trafficking or modern slavery.<sup>177</sup> Additionally, the National Referral Mechanism ensures that victims receive adequate and appropriate economic and social support.<sup>178</sup> Prior to April 29, 2019, the National Referral Mechanism allowed the Modern Slavery Human Trafficking Unit to collect data about victims, which helped to determine the scope of human trafficking and modern slavery in the United Kingdom.<sup>179</sup> On April 29, 2019, the Home Office “assumed responsibility for all areas of the NRM, including referrals, decision making and data collection.”<sup>180</sup> After the implementation of the Modern Slave Act 2015, the National Referral Mechanism was extended to victims of slavery as well.<sup>181</sup> The National Referral Mechanism defines modern slavery as human trafficking and/or slavery, such as servitude, forced labor, or compulsory labor.<sup>182</sup> In 2018, to receive a referral to the National Referral Mechanism, the potential victims of human trafficking or modern slavery must first be referred to by one of the United Kingdom’s competent authorities.<sup>183</sup> As of 2019, the National Referral Mechanism pioneers methods to disrupt human traffickers and leads its own investigations on modern slavery.<sup>184</sup> Additionally, the National Referral Mechanism advises police forces,

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175. *Id.*

176. *Id.* at 32.

177. *Modern Slavery and Human Trafficking*, NAT’L CRIME AGENCY, <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/modern-slavery-and-human-trafficking> (last visited Nov. 15, 2019).

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

regional crime units, and international law enforcement on tactics and intelligence such as the disruption and prosecution of identified offenders, best evidence and operational practice, and victim care.<sup>185</sup>

During the anniversary of the Modern Slave Act 2015, a year after its implementation, Member of the Parliament Theresa May indicated that the United Kingdom must continue to actively expand on the system until modern slavery is eradicated.<sup>186</sup> Member of the Parliament Theresa May proposed several solutions to enhance the effectiveness of the Modern Slave Act 2015 such as implementing the first government task force on modern slavery, commissioning an independent review of the Act, inspecting police forces to ensure that proper records are kept and that the crime of human trafficking are given priority, and partnering with law enforcement agencies across the world to track gangs who commit human trafficking.<sup>187</sup> Additionally, in an effort to lead the fight against modern slavery on a global stage, as a United Nations Sustainable Development Goal, Member of the Parliament Theresa May stated that the United Kingdom will “be using over £33 million from our aid budget to create a five-year International Modern Slavery Fund focused on high-risk countries, where we know victims are regularly trafficked to the UK.”<sup>188</sup> Since the implementation of the Modern Slave Act 2015, the number of reported potential victims has increased and the National Crime Agency indicated that the number of suspected victims of modern slavery more than doubled within three years.<sup>189</sup>

As the first legislation of its kind in Europe,<sup>190</sup> the Modern Slavery Act 2015 serves as a model for other countries. For example, Australia introduced a Modern Slavery Bill to the Parliament of Australia in 2018 and used the United Kingdom as a model.<sup>191</sup> Australia’s Modern Slavery

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185. *Id.*

186. Theresa May, *My Government Will Lead the Way in Defeating Modern Slavery*, TELEGRAPH (July 30, 2016), <https://www.telegraph.co.uk/news/2016/07/30/we-will-lead-the-way-in-defeating-modern-slavery/>.

187. *Id.*

188. *Id.*

189. *Modern Slavery and Trafficking ‘in Every UK Town and City’*, BBC NEWS (Aug. 10, 2017), <https://www.bbc.com/news/uk-40885353>.

190. *See id.*

191. Gareth Hutchens & Ben Doherty, *Modern Slavery Bill Welcomed, But No Penalties for Breaching Act*, GUARDIAN (June 28, 2018),

Act 2018 established a Modern Slavery Reporting Requirement, which requires certain large businesses to make annual Modern Slavery Statements to address the risks of modern slavery in their operations and supply chains.<sup>192</sup> Under the Modern Slavery Act 2018, modern slavery encompasses servitude, child labor, forced labor, debt bondage, slavery-like practices, forced marriages, and deceptive recruiting.<sup>193</sup>

Similar to Australia,<sup>194</sup> the Modern Slave Act 2015 can serve as a model to combat modern slavery in Libya. In particular, the implementation of a task force, an Anti-Slavery Commissioner, and a National Referral Mechanism would serve as vital tools to eradicate slavery in Libya.<sup>195</sup> This could serve as a solution for the various sources of power in Libya or strictly the Government of National Accord. A task force could adopt the four focus areas of the Modern Slave Act 2015 Strategy (pursue, prevent, protect, and prepare).<sup>196</sup> Local, regional, and global actors could serve on the task force to aid with the implementation of anti-human trafficking legislature and in the adoption of strategies to combat modern slavery in Libya.

In addition to the task force, a Libyan National Referral Mechanism should be established to help identify both victims of modern slavery and the criminals responsible for the crime.<sup>197</sup> Appointing an Anti-Slavery Commissioner to work with a task force, local authorities, and international partners could also aid in coordinating efforts to tackle modern slavery throughout Libya.<sup>198</sup> Similar to the United Kingdom, the Libyan Anti-Slavery Commissioner should oversee the identification of both victims and criminals, hold authorities accountable in keeping

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<https://www.theguardian.com/australia-news/2018/jun/28/modern-slavery-bill-welcomed-but-no-penalties-for-breaching-act>.

192. Modern Slavery Act 2018 (Cth) § 3 (Austl.).

193. Abigail McGregor & JP Wood, *Modern Slavery Act: What Businesses in Australia Need to Know*, NORTON ROSE FULBRIGHT (Aug. 2019), <https://www.nortonrosefulbright.com/en/knowledge/publications/06a565ee/modern-slavery-act-what-businesses-in-australia-need-to-know>.

194. *See generally* Modern Slavery Act 2018 (Austl.).

195. *See* discussion *supra* Section III.A.i.

196. MODERN SLAVERY STRATEGY, *supra* note 163, at 28.

197. *See Modern Slavery and Human Trafficking*, *supra* note 177.

198. *See* discussion *supra* Section III.A.i.

accurate records, work to tackle modern slavery at the Libyan border, and ensure the prosecution of modern-day slavery.<sup>199</sup>

Under the United Kingdom model of the National Referral Mechanism (“Mechanism”), victims must first contact competent authorities to be referred to the Mechanism.<sup>200</sup> However, sources have indicated that Libyan authorities are complicit in both the selling and arbitrary detention of African migrants.<sup>201</sup> This challenge would likely render the Mechanism ineffective and unfair if Libyan authorities were in charge of referring victims to the National Referral Mechanism. Thus, unlike the United Kingdom’s National Referral Mechanism that requires potential victims to first contact competent authorities,<sup>202</sup> potential victims of modern slavery should be allowed to directly contact the National Referral Mechanism for relief. Further, to ensure fairness in the prosecution and proper detention of the criminals, the African Union could aid Libyan authorities. Funding for the National Referral Mechanism also presents a problem due to the fact Libya has been faced with an ongoing financial crisis since 2011.<sup>203</sup> However, a potential solution is that the United Kingdom offers an International Modern Slavery Fund focused on high-risk countries.<sup>204</sup> Despite the lack of funding, the European Union could contribute funds to start a National Referral Mechanism.

Libya should also adopt the penalties under the Modern Slave Act 2015 that enable human traffickers to receive life imprisonment and the ability to seize human traffickers’ assets as compensation for victims.<sup>205</sup> The possibility of life imprisonment for committing the crime of modern slavery serves as a great deterrent to modern slavery.<sup>206</sup> Further, migrants would largely benefit from the compensation due to the fact that most migrants risk everything to make the journey through Libya.<sup>207</sup>

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199. See discussion *supra* Section III.A.i.

200. See discussion *supra* Section III.A.i.

201. Hackwill, *supra* note 11.

202. *Modern Slavery and Human Trafficking*, *supra* note 177.

203. *Why is Libya so Lawless?*, *supra* note 21.

204. May, *supra* note 186.

205. See *UK Slavery Act Overview*, *supra* note 161; Bradley & May, *supra* note 165.

206. See *UK Slavery Act Overview*, *supra* note 161; Bradley & May, *supra* note 165.

207. See *UK Slavery Act Overview*, *supra* note 161.

ii. *United States*

In the United States, human trafficking is considered a modern-day form of slavery and is a crime under both federal and international law, as well as under the laws of every state.<sup>208</sup> Congress established the Thirteenth Amendment of the United States Constitution to outlaw chattel slavery and involuntary servitude except in the punishment of a crime,<sup>209</sup> and Congress has the broad power to pass laws that eradicate slavery under Section Two, the enabling clause.<sup>210</sup> For example, under Section Two, Congress implemented the Trafficking Victims Protection Act (“Act”).<sup>211</sup>

The amended Act provided “the tools to combat trafficking in persons both worldwide and domestically.”<sup>212</sup> Additionally the Act allowed the establishment of the State Department’s Office to Monitor and Combat Trafficking in Persons (“Office”) and the President’s Interagency Task Force to Monitor and Combat Trafficking in Persons (“Task Force”) to aid with anti-trafficking efforts.<sup>213</sup> The Office is required to publish a Trafficking in Persons report annually—the report entails a description and rank of the efforts of countries to combat human trafficking.<sup>214</sup> The Act also established the Interagency Task Force to Monitor and Combat Human Trafficking, which contributes to the implementation of the Trafficking Victims Protection Act.<sup>215</sup> Under the Act, there are several

208. *Federal Law, NAT’L HUM. TRAFFICKING HOTLINE*, <https://humantraffickinghotline.org/what-human-trafficking/federal-law> (last visited Jan. 21, 2019).

209. U.S. CONST. amend. XIII, § 1.

210. *Id.* § 2.

211. Jamal Greene & Jennifer Mason McAward, *A Common Interpretation: The Thirteenth Amendment*, NAT’L CONST. CTR., <https://constitutioncenter.org/blog/a-common-interpretation-the-thirteenth-amendment> (last visited Mar. 8, 2019).

212. *International and Domestic Law*, U.S. DEP’T OF ST., <https://www.state.gov/j/tip/laws/> (last visited Jan. 21, 2019).

213. *Id.*

214. *Current Federal Laws*, POLARIS, <https://polarisproject.org/current-federal-laws> (last visited Mar. 8, 2019) [hereinafter POLARIS] (describing the Trafficking Victims and Protections Act of 2000 as the cornerstone of federal human trafficking legislation and the various amendments to the Act and reauthorizations).

215. *Id.*

ways to prosecute and prevent human trafficking, protect victims and survivors, and the federal crime contains severe penalties.<sup>216</sup>

There are three elements required to meet the definition of human trafficking under the Trafficking Victims Protection Act.<sup>217</sup> Element one requires an action of recruiting, harboring, moving, or obtaining a person by a particular means.<sup>218</sup> Element two requires the particular means of element one to be by force, fraud, or coercion for a particular purpose.<sup>219</sup> Lastly, element three shows that the act must be for the purpose of involuntary servitude, debt bondage, slavery, or sexual exploitation.<sup>220</sup>

The Trafficking Victims Protection Act provides a three-pronged approach to combat human trafficking—prevention, protection, and prosecution.<sup>221</sup> Prosecution involves utilizing the appropriate laws that criminalize human trafficking, and jailing the human traffickers who exploit other humans for financial gain.<sup>222</sup> Under protection, victims must be identified, and provided with shelter, medical care, witness protection, and repatriation when necessary.<sup>223</sup> Prevention requires raising awareness of human trafficking and “promoting a paradigm shift that seeks to reduce the demand for the ‘fruits’ of human trafficking.”<sup>224</sup> In addition the Trafficking Victims Protection Act of 2000 mandates that restitution must be paid to the victims of human trafficking.<sup>225</sup>

The Trafficking Victims Protection Act establishes a T visa, “which allows victims of human trafficking, and their families to become temporary U.S. residents and eligible to become permanent residents after three years.”<sup>226</sup> The William Wilberforce Trafficking Victims Protection Reauthorization Act, passed by Congress in 2008, serves as “a

216. *Id.*

217. *See* Trafficking Victim Protection Act, 22 U.S.C. § 7102(11)(B) (1990).

218. *Id.*

219. *Id.*

220. *Id.*

221. *Trafficking Victims Protection Act*, FIGHT SLAVERY NOW!, <https://fightslaverynow.org/why-fight-there-are-27-million-reasons/the-law-and-trafficking/trafficking-victims-protection-act/trafficking-victims-protection-act/> (last visited Jan. 21, 2019) [hereinafter FIGHT SLAVERY].

222. *Id.*

223. *Id.*

224. *Id.*

225. POLARIS, *supra* note 214.

226. *Id.*

way to provide unaccompanied minor children with a way to return to their homes.”<sup>227</sup> The Act allows a U.S. Citizenship and Immigration Services asylum officer to interview all asylum seekers, as well as the unaccompanied minor children.<sup>228</sup> The asylum officer then determines whether the asylum seeker has a “credible fear” of torture or persecution to determine whether the asylum seeker is eligible to continue the process to seek asylum.<sup>229</sup> After the interview, asylum seekers must seek physical evidence to demonstrate credible fear and explain potential discrepancies in front of an immigration judge who will decide their eligibility for asylum.<sup>230</sup> For unaccompanied migrant children not eligible to stay in the United States, the State Department is required to ensure that the children are repatriated to their country of nationality safely.<sup>231</sup>

In Libya, once the House of Representatives can draft and implement a Constitution, the representatives could adopt the language of the Thirteenth Amendment from the United States Constitution to ban slavery.<sup>232</sup> Under the language in Section two, the Libyan government will have the ability to create laws that ban modern slavery.<sup>233</sup> The more effective approach would likely be to implement a statute similar to the Trafficking Victims Protection Act due to the fact that Libya has yet to adopt a permanent Constitution.<sup>234</sup> This approach would require a federal mandate and Libyan authorities would likely have to enforce the mandate by actively seeking out the auctioning places to persecute perpetrators.

Similar to the persons protected under the Trafficking Victims Protection Act, victims of human trafficking in Libya should receive the proper medical, shelter, and witness protection.<sup>235</sup> These shelters would likely need enhanced security due to the possibility that shelters could be targeted by human traffickers. The opportunity to receive restitution

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227. *Trafficking Victims Protection Reauthorization Act Safeguards Children*, NAT'L IMMIGR. F. (May 23, 2018), <https://immigrationforum.org/article/trafficking-victims-protection-reauthorization-act-safeguards-children/>.

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. U.S. CONST. amend. XIII, § 1.

233. *Id.* § 2.

234. See discussion *supra* Section III.A.ii.

235. See FIGHT SLAVERY, *supra* note 221.

under the proposed Act would also aid migrants in reestablishment.<sup>236</sup> Libya would likely also benefit from establishing an office similar to the State Department's Office to Monitor and Combat Trafficking in Persons to allow local, regional, and global actors the opportunity to aid in anti-human trafficking efforts and the implementation of legislation to eradicate modern slavery.<sup>237</sup>

In addition to the three elements required under the Trafficking Victims Protection Act, including: (1) harboring or obtaining or moving a person by (2) force or coercion for the act of (3) slavery;<sup>238</sup> the Libyan government could expand the elements to also involve language that also penalizes people who are complicit in modern slavery. For example, the Libyan authorities in the detention centers who sell migrants and refugees to criminal gangs, militias, and smugglers<sup>239</sup> could receive the same penalties as human traffickers.<sup>240</sup> Added language to criminalize accomplice behavior or solicitation would enable Libyan authorities who are complicit in the selling of African migrants to be prosecuted under the Act.

The repatriation aspect of the Trafficking Victims Protection Act would likely serve as a major problem for migrants and refugees because most flee their countries to seek better opportunities in Europe as the last survival option.<sup>241</sup> Providing physical evidence of persecution serves as a burden for most migrants and refugees because most migrants and refugees leave and or sell everything that they have to make the trip to Europe.<sup>242</sup> Since the right to asylum is apparent under Article 10 of the Constitutional Declaration of 2011,<sup>243</sup> Libya should also implement this right in national legislation or establish a system to set up asylum.

Implementing a system to recognize the right to asylum or establishing a system to set up asylum would fulfill Libya's obligations to recognize the right migrants have to asylum and extend protections to

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236. *See id.*

237. *See* POLARIS, *supra* note 214.

238. *Id.*

239. Hackwill, *supra* note 11.

240. *See* POLARIS, *supra* note 214.

241. *See* FIGHT SLAVERY, *supra* note 221; *Trafficking Victims Protection Reauthorization Act Safeguards Children*, *supra* note 227.

242. *See* Elbagir et al., *supra* note 75.

243. *See* discussion *supra* Section III.

migrants fleeing prosecution.<sup>244</sup> Thus, the repatriation aspect of the Trafficking Victims Protection Act could be supplemented with legislation that recognizes the right to asylum with less stringent requirements like presenting physical evidence.<sup>245</sup> However, Libya would have to establish an authoritative body to handle claims of asylum under the new legislation implemented. Additionally, perhaps international actors could contribute funds to the protection of the victims of modern slavery and to the refurbishment of migrant detention centers.

## B. Supranational

The violations against African migrants transcends the national boundaries and interests of Libya. This section examines solutions at the supranational level through analyzing how multinational political unions have the power to help eradicate slavery and provide protections to migrants in Libya. Therefore, this section focuses on the various approaches of the United Nations and United Nations High Commissioner for Refugees (“UNHCR”) to prevent human-trafficking and provide support to migrants.

### *i. The United Nations Approach*

On November 21, 2017, the United Nations Security Council (“Security Council”) adopted Resolution 2388 (2017) (“Resolution”), during its 8111<sup>th</sup> meeting in an effort to reiterate its condemnation of human trafficking.<sup>246</sup> The Resolution serves a particular purpose to combat the sale of human beings by the Islamic State in Iraq, as well as the violations and abuses by Boko Haram, Al-Shabaab, the Lord’s Resistance Army and other groups that involved in sexual slavery, sexual exploitation, and forced labor.<sup>247</sup>

During the meeting, the Security Council emphasized the importance of gathering and conserving evidence to hold the people responsible for

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244. *See id.*

245. *See* discussion *supra* Section III.A.ii.

246. S.C. Res. 2388 (Nov. 21, 2017); Press Release, Security Council, Security Council Reiterates its Condemnation of Trafficking in Persons, Unanimously Adopting Resolution 2388, U.N. Press Release SC/13081 (Nov. 21, 2017).

247. S.C. Res. 2388, *supra* note 246.

their human rights violations, such as the trafficking of people.<sup>248</sup> The Resolution was also established as an action to counter human trafficking as established through international law under the Security Council resolution 2331 (2016), which is the protocol established to prevent, suppress, and punish human trafficking.<sup>249</sup> By adopting and implementing Resolution 2388 (2017), the Security Council intended to enforce international law by investigating crimes and prosecuting human trafficking cases.<sup>250</sup> Additionally, the Security Council requested that the Secretary-General implement and guarantee the inclusion of assessments in human trafficking situations and during the training of mission personnel.<sup>251</sup> This would aid in identifying, confirming, answering and reporting human trafficking violations within countries.<sup>252</sup>

During this meeting, many delegates expressed disgust over the released images of African migrants and refugees in Libya being auctioned as slaves.<sup>253</sup> In response, Libya's representative condemned the auctioning of migrants as slaves and stated that the authorities initiated an investigation to hold the perpetrators accountable.<sup>254</sup> Additionally, he asked the "international community to help his country address challenges posed by irregular mass migration through Libya rather than using such media misrepresentations for defamatory purposes."<sup>255</sup> However, Libya's representative failed to indicate whether Resolution 2388 (2017) could serve as a practical solution to combat the modern slavery occurring in Libya.<sup>256</sup> Further, the representatives all agreed that the responsibility for the migration exceeded national capacity and that a "practical solution" was to consider the various pressures that cause such large flows of migration.<sup>257</sup>

Resolution 2388 (2017)<sup>258</sup> mandates that upon adoption, Member States must carry out the mechanisms established under Resolution 2331

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248. *Id.* ¶ 10.

249. *Id.* at 1.

250. *Id.* ¶ 3.

251. *Id.* ¶ 26.

252. *Id.*

253. Press Release, *supra* note 246.

254. *Id.*

255. *Id.*

256. *See id.*

257. *Id.*

258. S.C. Res. 2388, *supra* note 246, at 1.

(2016) to help investigate, monitor, and report human trafficking.<sup>259</sup> After the implementation of Resolution 2331 (2016), Member States must immediately adopt laws to combat human trafficking and to adopt mechanisms to identify victims.<sup>260</sup> Further, Resolution 2331 (2016) encourages the participation of actors such as United Nations entities and regional actors such as INTERPOL and the International Organization for Migration to support Member States upon request.<sup>261</sup>

Although Resolution 2388 (2017) and Resolution 2331 (2016) provide a framework for redressability,<sup>262</sup> Libya would still need a model for anti-human trafficking laws and a mechanism that identifies the victims of human trafficking. Further, the three centers of power and two rival parliaments would likely all need to implement the steps to combat modern slavery if power is not conceded to the Government of National Accord and House of Representatives. Additionally, Libya would likely need financial resources and external help with the implementation of laws and the mechanism that identifies victims of human trafficking. Under this approach, Libya should also request the help of United Nations entities to aid in the goal of combating modern slavery in Libya.<sup>263</sup>

ii. *UNHCR's Role in Combatting Human Trafficking: A Study of Europe*

The United Nations High Commissioner for Refugees (“UNHCR”) helps coordinate international action to protect refugees and migrants.<sup>264</sup> Further, the UNHCR also provides humanitarian assistance to internally displaced persons who fit the legal definition of a refugee under the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol.<sup>265</sup> States that become Parties to the 1951 Convention relating to

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259. S.C. Res. 2331 (Dec. 20, 2016).

260. *Id.* ¶ 2(d).

261. *Id.* ¶ 17

262. See Press Release, *supra* note 246.

263. *Id.*

264. *What We Do*, UNHCR, <https://www.unhcr.org/en-us/what-we-do.html> (last visited Mar. 8, 2019).

265. Michael Moussalli, Director of International Protection, Foreword to UNCHR, Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, at 1,

the Status of Refugees and the 1967 Protocol can validate the presence of the UNHCR and allow for its assistance.<sup>266</sup> Moreover, geographical restrictions in certain States can occur.<sup>267</sup> During times of displacement, the UNCHR provides critical emergency assistance in the form of sanitation, healthcare, shelter, blankets, household goods, food, and clean water.<sup>268</sup> The UNCHR also arranges transport and assistance packages for refugees or migrants who return home, as well as income-generating plans for those who relocate.<sup>269</sup>

The UNCHR focuses on two categories of human trafficking victims: “[R]efugees and other persons of concern to UNHCR who may fall prey to traffickers looking to take advantage of their vulnerability, and people who have been trafficked – some of whom can be recognised as refugees under the 1951 Convention and thereby in need of and entitled to international protection.”<sup>270</sup> Due to the fact that Europe’s external border countries have become popular transit routes, re-trafficking is a growing trend.<sup>271</sup> Thus, the UNCHR cooperated with national governments, intergovernmental organizations, and non-governmental organizations to tackle the human trafficking problem in Europe.<sup>272</sup> To combat Europe’s human trafficking problem, the UNHCR is involved in the development of anti-trafficking laws, membership of anti-trafficking coordination fora, training and capacity building, pre-screening and referral, and prevention.<sup>273</sup> One major response is the establishment of safe houses and shelters in transit destinations where victims can be placed following their detention; however, victims are not often informed about the limits

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HCR/IP/4/Eng/REV.1 (Jan. 1992 ed.) (available at <https://www.unhcr.org/4d93528a9.pdf>).

266. *Id.*

267. See UNHCR, *States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol* (April 2015) (available at <https://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf>).

268. See *What We Do*, supra note 264.

269. *Id.*

270. Malika Floor, *UNHCR’s role in combating human trafficking in Europe*, 25 FORCED MIGRATION REV. 23, 23 (2006), <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/peopletrafficking/floor.pdf>.

271. *Id.*

272. *Id.*

273. *Id.*

on their ability to stay.<sup>274</sup> Further, the failure of some authorities to recognize asylum claims for victims of human trafficking serves as the reason that many victims do not receive international protection.<sup>275</sup>

Although Libya is not a party to the 1951 Convention Relating to the Status of Refugees,<sup>276</sup> Libya can request help from the Office of the United Nations High Commissioner for Refugees and utilize the field office located in Libya.<sup>277</sup> The Office of the United Nations High Commissioner for Refugees could give emergency assistance to the migrants and refugees in Libya.<sup>278</sup> Similar to Europe's solution to combat human trafficking, the United Nations High Commissioner for Refugees could aid in the establishment of shelters and safe houses for migrants affected by modern slavery in Libya.<sup>279</sup> Further, the help with transportation and assistance packages would serve as a major help to the migrants who left everything behind to travel through Libya to reach Europe.<sup>280</sup> The United Nations High Commissioner for Refugees can also provide educational awareness and help migrants understand their rights surrounding asylum and requirements for the length of stay.<sup>281</sup>

### C. Other Cooperative Solutions

In order to eradicate slavery in Libya, regional and global actors must help alleviate the violations against African migrants. This section of the note examines the role of INTERPOL and the African Court on Human Rights in helping to eradicate slavery in Libya.

#### *i. INTERPOL: Operations to Combat Human Trafficking*

INTERPOL is an international organization composed of 194-member countries to create a global network of police, and the members

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274. *Id.* at 24

275. *Id.*

276. AMNESTY INT'L, *supra* note 81, at 7.

277. *See Libya*, UNHCR, <https://www.unhcr.org/libya.html> (last visited Nov.15, 2019).

278. *See What We Do*, *supra* note 264.

279. *See Floor*, *supra* note 279, at 23, 24.

280. *See id.*

281. *See id.*

work together with the General Secretariat to share data on police investigations.<sup>282</sup> Each country contains an INTERPOL National Central Bureau where the domestic police are linked to the global network.<sup>283</sup>

INTERPOL also works to fight human trafficking through empowering police in member countries to investigate and handle cases involving human trafficking.<sup>284</sup> INTERPOL accomplishes this via sharing investigation updates and interview methods with officers, providing tools and systems to share intelligence globally, and working with partners to determine how trafficking can be prosecuted.<sup>285</sup> INTERPOL also combats human trafficking through gathering experts from around the world for events and conferences, having specialist groups to focus on police work and the exchange of operative information, and providing resources that cover general information pertaining to international legislation and law enforcement.<sup>286</sup> Additionally, INTERPOL partners with organizations like Europol, International Organization for Migration, Organization for Security and Co-operation in Europe, UN Women, United Nations Office on Drugs and Crime, and the OSCE Office for Democratic Institutions and Human Rights to best maximize the efforts to eradicate human trafficking.<sup>287</sup>

Further, INTERPOL coordinates operations that “empower national police forces with the skills and international network required to take on human trafficking.”<sup>288</sup> Before any actions in the field are taken, training workshops occur to guarantee that officers on the ground are trained with interview techniques and INTERPOL’s tools and databases.<sup>289</sup> The

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282. *Member Countries*, INTERPOL, <https://www.INTERPOL.int/en/Who-we-are/Member-countries> (last visited Mar. 8, 2019).

283. *Id.*

284. *Our Role in Fighting Human Trafficking*, INTERPOL, <https://www.INTERPOL.int/Crimes/Human-trafficking/Our-role-in-fighting-human-trafficking> (last visited Mar. 8, 2019).

285. *Id.*

286. *Id.*

287. *Partnerships Against Human Trafficking*, INTERPOL, <https://www.INTERPOL.int/Crimes/Human-trafficking/Partnerships-against-human-trafficking> (last visited Mar. 8, 2019).

288. *Operations to Curb Human Trafficking*, INTERPOL, <https://www.INTERPOL.int/Crimes/Human-trafficking/Operations-to-curb-human-trafficking> (last visited Mar. 8, 2019).

289. *Id.*

deployments combine police action with the input from different actors such as “customs and environmental officers, non-governmental organizations, officials from the Ministries of Health and Social Affairs, and prosecutors.”<sup>290</sup>

In 2018, INTERPOL operations aided in the rescue of 600 human trafficking victims, which included about 100 children.<sup>291</sup> For example, Operation Sawiyan 2018 took place in Sudan and nearly 100 victims were rescued from networks involving human trafficking.<sup>292</sup> The operation included 200 Sudanese officers representing national entities such as the Criminal Investigation Department, Human Trafficking, Immigration, Child Protection Unit, and INTERPOL’s National Central Bureau in Khartoum.<sup>293</sup> Under Project Flyway, which helps protect vulnerable North African communities, INTERPOL gave officers operational training on the ground and also worked to provide assistance and protection to the victims rescued during the operation.<sup>294</sup>

In Operation Adwenpa II 2016, the operation across West African borders led to the arrest of migrant smugglers and human traffickers.<sup>295</sup> Over an eight-day period, more than 100 officers identified criminals and victims at key border control points across fourteen African countries through INTERPOL global policing capabilities.<sup>296</sup> “INTERPOL National Central Bureaus coordinated activities on the ground” and used INTERPOL training and tools to detect illegal networks and criminals.<sup>297</sup>

Libya is currently a Member State of INTERPOL<sup>298</sup> and should initiate an operation to aid in the rescue of migrants trafficked into the

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290. *Id.*

291. *Id.*

292. *Id.*

293. *Human Trafficking: 100 Victims Rescued in Sudan*, INTERPOL (Sept. 10, 2018), <https://www.INTERPOL.int/News-and-Events/News/2018/Human-trafficking-100-victims-rescued-in-Sudan>.

294. *Id.*

295. *See Operations to Curb Human Trafficking*, *supra* note 288.

296. *INTERPOL Border Operation Targets Organized Crime Networks Across West Africa*, INTERPOL (Dec. 7, 2016), <https://www.INTERPOL.int/News-and-Events/News/2016/INTERPOL-border-operation-targets-organized-crime-networks-across-West-Africa> (Participating countries in Operation Adwenpa II include: Benin, Burkina Faso, Cote d’Ivoire, Ghana, Gambia, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo).

297. *Id.*

298. *Member Countries*, *supra* note 282.

Libyan Slave markets. Further, the operation could be initiated through Project Flyway and Libyan authorities could receive training on the ground, assistance with the protection of victims rescued during the operation, and tools to both share and store the information collected.<sup>299</sup> Both Libyan and regional authorities could work together to find the victims in the various locations listed throughout the CNN special report and the Libyan coastline.<sup>300</sup>

*ii. African Court on Human and Peoples' Rights*

African countries established the African Court on Human and Peoples' Rights ("Court"), a continental court, to implement a safeguard for the protection of human and peoples' rights in Africa.<sup>301</sup> The African Court reinforces the functions of the African Commission on Human and Peoples' Rights and was established by Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights ("Protocol").<sup>302</sup> In June 1998, Member States from the Organization of African Unity adopted the Protocol in Ouagadougou, Burkina Faso and the Protocol came into action after the ratification of over fifteen countries.<sup>303</sup> Thirty States have ratified the Protocol.<sup>304</sup>

Under Article 3 of the Protocol, the Court has jurisdiction over all cases and disputes submitted to Court concerning the interpretation and application of the African Charter on Human and Peoples' Rights ("Charter"), the "Protocol and any other relevant Human Rights

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299. *Human Trafficking: 100 Victims Rescued in Sudan*, supra note 293.

300. See discussion *supra* Section II.B.

301. *About Us*, AFR. CT. ON HUM. & PEOPLE'S RTS., <http://www.african-court.org/en/#> (last visited Mar. 8, 2019).

302. *Id.*

303. See *id.*

304. *Id.* The thirty states include Uganda, Tunisia, Togo, Tanzania, Senegal, South Africa, Sahrawi Arab Democratic Republic, Rwanda, Niger, Nigeria, Mauritius, Mauritania, Mozambique, Malawi, Mali, Lesotho, Libya, Kenya, Ghana, The Gambia, Gabon, Congo, Comoros, Côte d'Ivoire, Chad, Cameroon, Burundi, Burkina Faso, Benin, and Algeria. *Id.*

instrument ratified by the States concerned.<sup>305</sup> The Court can hear matters of controversy and advisory opinions.<sup>306</sup>

Article 5 allows the Court to receive complaints and or applications from the African Commission of Human and Peoples' Rights, State parties to the Protocol, and African Intergovernmental Organizations.<sup>307</sup> Further, individuals and non-governmental organizations with observer status<sup>308</sup> can submit a claim if the State made a Declaration to accept the jurisdiction of the African Court ("Court").<sup>309</sup> The Declaration allows the citizens of Member States to access the Court.<sup>310</sup>

The source of law for the Court is the Charter and any other human rights documents ratified in a Member State.<sup>311</sup> Under Article 5 of the Charter, all "forms of exploitation and degradation of man[,] particularly slavery, slave trade, torture, cruel, inhuman [or] degrading punishment and treatment shall be prohibited."<sup>312</sup> Article 6 provides that an individual may only be deprived of her freedom as specified by the conditions and reasons set by existing law so that no one should be arbitrarily arrested or detained.<sup>313</sup> Additionally, Article 12 mandates a right to asylum and the right for migrants to return their country absent lawful restrictions.<sup>314</sup>

As of September 2019, the Court received 238 total applications in regard to contentious matters—223 applications submitted from

305. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, art. 3 (Afr.) (available at <http://www.african-court.org/en/images/Protocol-Host%20Agrtmt/africancourt-humanrights.pdf>) [hereinafter African Charter Protocol].

306. *Id.* art. 4.

307. *Id.* art. 5(1).

308. *Id.* art. 5(3).

309. *Id.* art. 34(6). Countries that have made the Declaration are Gambia, Benin, Tanzania, Burkina Faso, Ghana, Mali, Malawi, Côte d'Ivoire, Tunisia. *The Gambia Becomes the Ninth Country to Allow NGOs and Individuals to Access the African Court Directly*, AFR. CT. ON HUM. & PEOPLE'S RTS. (Nov. 23, 2018), <http://www.african-court.org/en/index.php/news/press-releases/item/257-the-gambia-becomes-the-ninth-country-to-allow-ngos-and-individuals-to-access-the-african-court-directly>.

310. *See* African Charter Protocol, *supra* note 305, art. 34(6).

311. *Id.* art. 7.

312. African Charter on Human and Peoples Rights art. 5, <http://www.achpr.org/instruments/achpr/> [hereinafter African Charter].

313. *Id.* art. 6.

314. *Id.* art. 12(2), (3).

individuals, twelve applications from non-governmental organizations, and three applications from the Banjul Commission.<sup>315</sup> Further, sixty-two applications have been finalized and there were 172 pending applications.<sup>316</sup> Of the finalized cases, as of March 2019, the African Commission on Human and Peoples' Rights have instituted two cases against Libya for human rights violations guaranteed under the charter.<sup>317</sup>

Once human traffickers are identified by Libyan authorities and officials, the claims could be sent to the African Court on Human and Peoples' Rights for prosecution.<sup>318</sup> Further, Libyan Authorities who arbitrarily detain migrants can be prosecuted under Article 6 of the Protocol.<sup>319</sup> Libya should make a Declaration in accordance with the Protocol to allow non-governmental organizations with observer status and citizens to submit claims to the Court.<sup>320</sup>

## VI. PROPOSED SOLUTION

Until Libya can implement legislation banning modern slavery, Libya<sup>321</sup> should ratify Resolution 2388 (2017) as a human rights document to combat human trafficking.<sup>322</sup> Alternatively, the Constitutional Declaration could be amended to add an article banning

315. *Contentious Matters*, AFR. CT. ON HUM. & PEOPLE'S RTS., <http://www.african-court.org/en/index.php/cases/2016-10-17-16-18-21> (last visited Nov. 15, 2019). "Contentious matters" is the word that the African Court uses to describe claims that a state party has committed a human rights violation. *Id.*

316. *Id.*

317. *See Contentious Matters: Finalized Cases*, AFR. CT. ON HUM. & PEOPLE'S RTS., <http://www.african-court.org/en/index.php/cases/2016-10-17-16-18-21#finalised-cases> (last visited Nov. 15, 2019) (including African Commission on Human and Peoples' Rights v. Great Socialist People's Libyan Arab Jamahiriya and African Commission on Human and Peoples' Rights v. Libya).

318. *See discussion supra* Section III.B.i.

319. *See African Charter, supra* note 312, art.6.

320. *See discussion supra* Section III.C.ii.

321. As mentioned earlier, this note proposes a solution to the three centers of powers and the two rival parliaments. Thus, the following use of Libya encompasses the Government of National Accord, the Government of National Salvation, the authorities in Tobruk and al-Bayda which contains the Libyan National Army headed by Khalifa Haftar, and the two parliaments—the House of Representatives and the Tripoli Parliament. *See discussion supra* Section III.

322. *See discussion supra* Section II.C.

modern slavery, with the language adopted potentially mimicking Article 5 of the African Charter.<sup>323</sup> Resolution 2388 (2017) also mandates that a Member State must implement legislation to combat human trafficking.<sup>324</sup> Although this can be solved by amending Libya's Constitutional Declaration, the Declaration is a temporary document.<sup>325</sup> Therefore, Libya should implement a federal mandate and follow the anti-human trafficking models set forth by the United Kingdom and the United States.<sup>326</sup>

The statute should include the three elements set under the Trafficking Victims Protection Act and should expand the statute to prosecute the accomplices of modern slave trade crimes.<sup>327</sup> The U.S. Trafficking Victims Protection Act also provides several safeguards for victims of human trafficking that Libya should implement.<sup>328</sup> For example, the Trafficking Victims Protection Act allows victims to receive medical care, shelter, witness protection, and repatriation.<sup>329</sup> Although this may present a challenge financially, Libya can validate the presence of the UNCHR to help assist with the migrants who fell victim to modern slavery.<sup>330</sup> The UNCHR could serve a large role in educating migrants, helping migrants travel home safely, providing emergency assistance, and implementing income-generating plans for migrants that relocate.<sup>331</sup> Libya can also request assistance with the UNCHR per Resolution 2388 (2017), which states that United Nations entities are available upon request to Member States.<sup>332</sup>

The Trafficking Victims Protection Act also provides that restitution must be paid to the victims.<sup>333</sup> In contrast, the Modern Slave Act 2015 allows the assets of human traffickers to be seized as the restitution to the victims.<sup>334</sup> As a result, the statute in Libya should also guarantee

323. See discussion *supra* Section III.C.ii.

324. S.C. Res. 2388, *supra* note 246, ¶ 1.

325. See *supra* text accompanying note 149.

326. See discussion *supra* Sections III.A.i, III.A.ii.

327. See discussion *supra* Section III.A.ii.

328. See discussion *supra* Section III.A.ii.

329. See discussion *supra* Section III.A.ii.

330. See discussion *supra* Section III.B.ii.

331. See discussion *supra* Section III.B.ii.

332. See discussion *supra* Section III.B.i.

333. See discussion *supra* Section III.A.ii.

334. See discussion *supra* Section III.A.i.

restitution to the victims and use the seized assets of human traffickers as repayment to the victims.

The strategy for the Modern Slave Act 2015 employs a task force and an Anti-Slavery Commissioner.<sup>335</sup> Similarly, the Office to Combat Trafficking in Persons and the Interagency Task Force to Monitor and Combat Human Trafficking was established to aid with the implementation of the Trafficking Victims Protection Act.<sup>336</sup> In Libya, a task force should be established with both local, regional, and global actors to aid with the implementation of anti-modern slavery legislation and in the adoption of strategies to combat modern slavery. An Anti-Slavery Commissioner from Libya should be appointed over the task force to hold local authorities accountable for the prevention, investigation, and punishment of modern slave crimes.<sup>337</sup> The Anti-Slavery Commissioner must also help to coordinate efforts across Libya to combat modern slavery.<sup>338</sup>

Like the United Kingdom, Libya should also implement a National Referral Mechanism.<sup>339</sup> This would satisfy the obligation under Resolution 2388 to establish a mechanism to identify victims of human trafficking.<sup>340</sup> The African Union and other partners must aid Libya with the establishment of a National Referral Mechanism. Potential victims and other individuals should be allowed to submit reports directly. After the report is submitted, competent authorities must be notified to begin an investigation. The Libyan Anti-Slavery Commissioner must also work to ensure that claims are documented, investigated, and prosecuted properly by Libyan authorities. To train Libyan authorities and to better identify the perpetrators across Libya, Libya should initiate an operation under INTERPOL and utilize the international network.<sup>341</sup> The targeted locations of the operation should occur along the Libyan borders and in the various locations from the CNN special report.<sup>342</sup>

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335. See discussion *supra* Section III.A.i.

336. See discussion *supra* Section III.A.i.

337. See discussion *supra* Section III.A.i.

338. See discussion *supra* Section III.A.i.

339. See discussion *supra* Section III.A.i.

340. See discussion *supra* Section III.B.i.

341. See discussion *supra* Section III.C.i.

342. See discussion *supra* Section II.B.

Under this approach, Libyan authorities must enforce the legislation established. Even if Libyan authorities cannot enforce this legislation among all of Libya, Khalifa Haftar, the leader of the Libyan National Army, could use his military power to aid with the implementation of laws to combat human trafficking.<sup>343</sup> After, Libya could submit claims against guilty parties to the African Court of Human and Peoples' Rights for prosecution.<sup>344</sup> However, Libya must immediately submit a Declaration recognizing the competency of the African Court of Human and Peoples' Rights so that individuals in Libya and non-governmental organizations with observer status can submit claims to the African Court of Human and Peoples' Rights against both human traffickers and Libyan authorities who also commit human rights violations.<sup>345</sup>

Until the Declaration is made, only the African Court of Human and Peoples' Rights, Member States to the Protocol, and African Intergovernmental organizations will be able to submit claims to the Court against the modern slavery occurring in Libya.<sup>346</sup> Upon the implementation of Resolution 2388 (2017), the African Court of Human and Peoples' Rights could use this human rights instrument and or the African Charter to prosecute human traffickers and Libyan authorities who both arbitrarily detain migrants and or sell migrants into the Libyan slave markets.<sup>347</sup> The African Court of Human and Peoples' Rights serves as a vital instrument in helping individuals receive justice against human rights abuses both before and after the implementation of anti-human trafficking legislation in Libya.

Even if Libya cannot implement the laws through federal mandate, then the African Union should partner with the United Nations to establish a National Referral Mechanism to investigate and report claims of modern slavery throughout Libya and all of Africa.<sup>348</sup> The evidence gathered and stored should be handed over to the African Court for the prosecution of perpetrators.<sup>349</sup> Further, instead of pouring money into Libyan authorities, who are complicit in the mistreatment of migrants

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343. See *supra* text accompanying note 120.

344. See discussion *supra* Section III.C.ii.

345. See discussion *supra* Section III.C.ii.

346. See discussion *supra* Section III.C.ii.

347. See discussion *supra* Section III.C.ii.

348. See discussion *supra* Section III.A.i.

349. See discussion *supra* Section III.C.ii.

and refugees, the European Union should work with Libya to police the conditions and treatment of migrants and refugees in the detention system.<sup>350</sup>

## VII. CONCLUSION

Currently, there are human beings that are being auctioned as slaves in Libya.<sup>351</sup> Despite the outrage, global conversations, videos of slave auctions, and the testimonies of many refugees and migrants about the horrors of the slave market and the conditions in the detention centers, few steps have been taken to remedy the human rights abuses and violations happening in Libya. The pressure to migrate has rendered African migrants vulnerable and helpless to the perils of modern slavery.

Although the destabilized government in Libya presents a challenge, Libya must adopt Resolution 2388 (2017) and follow the conventions set forth by both the United Kingdom and the United States to combat modern slavery. Additionally, local, regional, and global actors must extend humanitarian efforts to aid with the implementation of legislation, enforcement of the legislation, prevention of human trafficking, and the protection of victims. Further, the various human rights violations in Libya should be reported to the African Court on Human and Peoples' Rights so that both human traffickers and corrupt Libyan authorities can be prosecuted. Regardless of the approach taken, this inhumane treatment of migrants and refugees must be stopped, and Libya should move quickly to eradicate slavery.

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350. See discussion *supra* Section II.B.

351. See Channel 4 News, *Rescued African Migrants Say They are Fleeing Slavery*, YOUTUBE (Jun. 28, 2017), <https://www.youtube.com/watch?v=lnSgWGUJ3jE>; CNN, *Migrants Being Sold as Slaves in Libya*, YOUTUBE (Nov. 14, 2017), <https://www.youtube.com/watch?v=2S2qtGisT34>; *Libya Migrant Slave Market Footage Sparks Outrage*, BBC NEWS (Nov. 18, 2018), <https://www.bbc.co.uk/news/world-africa-42038451>.