

Abolition of Slavery, Human Trafficking and Forced Labour Perspectives of International Law and Islamic Law – the Libya of the Post-Gaddafi Regime as a Case Study

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Abstract

Slavery, human trafficking and forced labour are anti-human and unacceptable practices that cut across cultures, nationalities, and dogmas, while taking on different dimensions. International law, Islamic law and various national laws have declared these practices illegal within their respective legal frameworks. However, owing to factors associated particularly with internationalism, including weak enforcement mechanisms, these practices have continued unabated around the world. The practices have taken on a new dimension in Libya because of the political turmoil in that country. This has opened doors for the transnational mafia to engage in the practices and has effectively made African youths easy prey. As a Muslim majority country, Libya is a member of the United Nations Organisation and Pan-African, Islamic and Arab organisations. It is therefore bound by the relevant laws of these international organisations aimed at eliminating the menace of slavery, human trafficking and forced labour that had become established practices in the country. If Libya has remained politically unsettled, it is necessary to ask the question: Can these international and Islamic norms be enforced? This article attempts to explore the historical background of slavery in Africa and its abolition through the instruments of both modern international law and Islamic law. It is also an attempt to contextualise Libya within the theoretical frameworks of those principles and their application in a country that is faced with challenges associated with the breakdown of law and order.

Keywords: slavery; forced labour; human trafficking; international law; religion;



Libya; African youths; Islamic law; regional and international stakeholders

Introduction

Slavery, human exploitation, and subjugation are illegal under international law. Rules in international conventions, international custom, general principles of law, as well as court decisions at different judicial levels declare these acts illegal and prohibited. Renowned jurists and legal commentators have also maintained a similar position in a variety of their texts and comments. International law, including states' statutory regulations such as the British Slavery Abolition Act of 1883, provide a plethora of binding and non-binding norms and details of applicable rules in some multilateral treaties, specific state obligations regarding slavery and a similar act of holding others in bondage or captivity against their will.¹ The aim of those rules was to prohibit slavery and trading in slaves and to make compliance with those rules obligatory '*erga omnes*' – a collective global issue that gives every state a legal interest in its protection.² These rules and conventions had created awareness globally of what constitutes slavery and its varieties such as forced labour, debt bondage or servile marriage, and trafficking in persons.³ An early step in this direction was the enactment of the 1926 Slavery Convention, otherwise known as the 'Convention to Suppress the Slave Trade and Slavery', which was introduced by the League of Nations and first ratified by 99 participating countries in 1926.⁴ It was registered in the *League of Nations Treaty Series* on 9 March 1927, the same day it came into effect.⁵ The convention was aimed at the elimination of slavery and the slave trade.⁶

Libya's population is 97 per cent Muslim.⁷ Accordingly, it becomes a matter of interest to ascertain what the position of Islam is on slavery and human trafficking that had become phenomena following the collapse of the Muammar Gaddafi government in that country. At its inception, Islam maintained a position on slavery out of the general

¹ AY Rassam, 'Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law' (1998–1999) 3030(39) *Virginia Journal of International Law* 305–306.

² *Barcelona Traction, Light & Power Co Ltd (Belg v Spain)*, 1970 ICJ 3, 33–34.

³ See, generally, J Allain, *Slavery in International Law: Of Human Exploitation and Trafficking* (Martinus Nijhoff Publishers 2012).

⁴ United Nations, Treaty Collection, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-2&chapter=18&lang=en> (accessed 5 August 2020).

⁵ *League of Nations Treaty Series*, vol 60, 254–270.

⁶ *League of Nations Treaty Series* (n 5).

⁷ Religion in Libya, <<http://muslimpopulation.com/africa/Libya/Religion%20in%20Libya.php>> (accessed 5 August 2020).

practices of pre-Islamic Arabia,⁸ as it did on other social issues that were prevalent in that society at the time, for example, alcoholism. However, Islam adopted radically different approaches to the Arab slave trade which had previously endemic based on social-political factors relevant to the situation on the ground. It is argued that Islam brought about radical reform to the existing system of slavery through several measures that were both gradual and enduring. Under *Shari'ah*, for example, slaves are regarded as human beings who have rights based on their being human. Similarly, a Muslim slave stands in an equal position to a Muslim freeman in spiritual and ritual matters, while they are considered superior to the free non-Muslims.⁹

Slavery: Theoretical and Historical Perspectives

Slavery is a condition in which one person is owned as property by another and is under the owner's control, especially in involuntary servitude.¹⁰ Technically, it is a method of holding other fellow human beings as chattels and commercial objects for economic exploitation – including buying and selling for the purposes of forced labour.¹¹ Slaves are generally held against their will from the moment they are captured (during wars, civil insurrections or conflicts), purchased (in labour or slave markets) or born to slaves under the control of their masters. From that moment they are automatically deprived of their basic rights of freedom, refusal to work, or demand to be compensated.¹²

Historically, slavery was institutionalised and accepted as normal in most communities and civilisations. Slavery was known to be a legitimate business during the early period of civilisations, including ancient Egypt, Mesopotamia, India and China dating back to 3500 BC.¹³ For example, slavery was mentioned in the Code of Hammurabi as a recognised institution and, of course, a legitimate trade. In several articles of this code slavery was mentioned as a legitimate social and trade practice.¹⁴

⁸ See, generally, L Bernard, *Race and Slavery in the Middle East* (Oxford University Press 1990), particularly Chapter 1.

⁹ M Vanessa, *The Qajar Pact* (IB Tauris 2005) 150–151.

¹⁰ Farlex, *The Free Dictionary*, <<https://www.thefreedictionary.com/slavery>> (accessed 5 August 2020); L Brace, *The Politics of Property: Labour, Freedom and Belonging* (Edinburgh University Press 2004) 162.

¹¹ See Art 4 of the Human Rights Acts, Equality and Human Rights Commission, <<https://www.equalityhumanrights.com/en/human-rights/human-rights-act>> (accessed 5 August 2020) 2.

¹² Brace (n 10) 62.

¹³ KM Charles, *The Near East: Archaeology in the 'Cradle of Civilization'* (Routledge 1993); S Upinder, *History of Ancient and Early Medieval India: from the Stone Age to the 12th Century* (Pearson Education 2008) 137.

¹⁴ See Arts 15, 16, 17, 18, 19 and 20 of Mesopotamia, 'The Code of Hammurabi'. <<https://web.archive.org/web/20110514033802/http://www.wsu.edu/~dee/MESO/CODE.HTM>> (accessed 5 August 2020).

A distinguished political scientist, Forsythe, notes that at the beginning of the 19th century approximately three-quarters of people in the world were entrapped in slavery and slave-bondage.¹⁵ They were captured into slavery through various methods and agencies, such as pirates, who offered their captives for sale. A criminal, for example, might be sentenced to slavery; an unpayable debt could subject a person to slavery; poverty-stricken individuals sold their children; and circumstantially the children of slaves were themselves slaves – although with a cheap supply of labour available through war, not many owners would allow their slaves the diversion of raising a family.¹⁶ Slavery was recognised and accepted as a norm in the old civilisation of Sumer located in the southernmost part of Mesopotamia between the Tigris and the Euphrates rivers, in the area that later became Babylonia and is now southern Iraq, from around Baghdad to the Persian Gulf.¹⁷ It was also known to almost all ancient civilisations.¹⁸ It was a combination of debt-slavery, punishment for crime, the enslavement of prisoners of war, child abandonment, and the birth of slave children to slaves.¹⁹

In ancient Greece, slavery was an important factor in economic growth even though this notion was recognised only after the emergence of the city-states.²⁰ It was a normal and an accepted practice and formed an integral part of this society, as it did in others, including ancient Israel and early Christian societies.²¹ It is believed that in the ancient Athens, for example, most citizens owned at least one slave and also that slavery was not only a natural practice but also a necessity.²² It was also believed that in some

¹⁵ DP Forsythe, *Encyclopaedia* (Oxford University Press 2009) 399.

¹⁶ ‘An Evil of Civilization’ *HistoryWorld*, <<http://www.historyworld.net/wrldhis/plaintexthistories.asp?historyid=ac41>> (accessed 11 August 2020).

¹⁷ ‘Sumer’, *Ancient Region, Iraq*, <<https://www.britannica.com/place/Sumer>> (accessed 11 August 2020).

¹⁸ ‘Historical Survey: Slave-owning Societies’ *Encyclopaedia Britannica*, <<https://www.britannica.com/topic/slavery-sociology/Historical-survey>> (accessed 12 August 2020).

¹⁹ See, generally, WV Harris, ‘Demography, Geography and the Sources of Roman Slaves’ (1999) 89 *The Journal of Roman Studies*, <<https://www.hsozkult.de/journals/id/zeitschriften-148>> (accessed 12 August 2020).

²⁰ V Cuffel, ‘The Classical Greek Concept of Slavery’ (1966) 27(July–September) *Journal of the History of Ideas*, 323–342.

²¹ J Byron, *Slavery Metaphors in Early Judaism and Pauline Christianity: A Traditio-historical and Exegetical Examination* (Mohr Siebeck 2003) 40; R De Vaux and J McHugh, *Ancient Israel: Its Life and Institutions* (Wm B Eerdmans Publishing 1997) 80; JM Roberts, *The New Penguin History of the World* (5 rev edn Penguin 2007) 176–177, at 223.

²² Byron (n 21) and Roberts (n 21).

ancient Greek city-states approximately 30 per cent of the population were slaves, while at the same time paid and slave labour were considered equally important.²³

In the 1st century BC, Rome consolidated control over the entire Mediterranean world, and Greece lay vanquished along with scores of other formerly independent lands – yet something special was seen in Greece and, therefore, the saying goes that ‘Greece, the captive, made her savage victor captive’.²⁴ The Romans borrowed the institution of slavery from the Greeks and the Phoenicians.²⁵ It is revealed that the Roman Republic’s expansion led to the enslavement of whole populations, which made cheap labour available for work on Rome’s farms and in its homes. The Roman slaves were recruited from all over Europe and the Mediterranean lands.²⁶

It is historically established that slaves were taken in their thousands in Roman military campaigns; some estimates put the population of Rome at more than half slave.²⁷ In England, the native Britons were enslaved after invasion by Anglo-Saxons. Slavery was a normal practice in England’s rural economy, as destitute agricultural workers placed themselves and their families in a form of debt bondage to landowners.²⁸ In the aftermath of the Black Plague, Europe’s slave trade revived in response to the labour shortage. The slaves came from all over Europe, the Middle East and North Africa.²⁹ Portuguese traders brought the first large cargo of slaves from West Africa to Europe by sea, therefore beginning the Atlantic slave trade.³⁰ Spanish explorers brought the first African slaves to a Spanish settlement in what was to become the United States – the first African Americans. In the same year, they mounted the first known slave revolt in the Americas.³¹ Massachusetts was the first British colony to legalise slavery.³²

²³ TR Martin, *Ancient Greece: From Prehistoric to Hellenistic Times* (Yale University Press 2000) 66, 75–77.

²⁴ As written by the Roman poet Horace: see R Garland, ‘Greece and Rome: An integrated History of the Ancient Mediterranean’, <<https://www.thegreatcourses.com/courses/greece-and-rome-an-integrated-history-of-the-ancient-mediterranean.html#:~:text=Greece%20and%20Rome%3A%20An%20Integrated%20History%20of%20the,different%20cultures%20intersected%2C%20coincided%2C%20and%20at%20times%20collided>> (accessed 12 August 2020).

²⁵ ‘Slavery’, *The Encyclopaedia Americana* (1981) 19.

²⁶ *ibid.*

²⁷ ‘Slavery’s Roots: War and Economic Domination’, <<https://www.freetheslaves.net/SlaveryinHistory>>.

²⁸ Slavery’s Roots (n 27).

²⁹ *ibid.*

³⁰ *ibid.*

³¹ *ibid.*

³² *ibid.*

In the course of history, slavery was formerly abolished and became illegitimate, first by virtue of the British Slavery Abolition Act 1833³³ and later by other international legal instruments such as the UN Slavery Convention signed at Geneva on 25 September 1926 and the Protocol amending the Slavery Convention signed in the same year.³⁴ The United Nations Universal Declaration of Human Rights in 1948³⁵ was a landmark in the struggle against human exploitation, particularly against slavery and the slave trade. Despite these developments, slavery has persisted and taken on new dimensions. Currently, slavery continues in the form, among other things, of debt bondage, human trafficking, illegal child adoptions, the recruitment of child soldiers, and forced marriages.³⁶

It must be noted from the outset that, although slavery had been practised for more than a thousand years, the status of the victims regarding their economic and social well-being was largely different in accordance with the methodology and approaches applied to subjugate them to slavery within the times and spaces of their usage and procedure.³⁷

Slavery: An Islamic Perspective

Libya, as stated above, is a Muslim majority country. However, slavery and human trafficking have been thriving especially in the post-Ghaddafi government era. It is pertinent, therefore, to examine slavery from an Islamic perspective.

Scholars of Islam may take exception to Bernard's assertion, ascribing the endorsement of slavery by all world religions, including Islam. Lewis observes that:

it existed in all the ancient civilizations of Asia, Africa, Europe, and pre-Colombian America. It had been accepted and even endorsed by Judaism, Christianity, and Islam, as well as other religions of the world.

It is argued that Islam from the outset maintained that freedom was the natural situation for human beings and in line with this it limited the opportunities to enslave people, commended the freeing of slaves and regulated the way slaves were treated. Despite the prevalence of slavery and trading in slave merchandise in all parts of the globe at that

³³ Act of Parliament of the United Kingdom.

³⁴ United Nations, Belarus, 'Slavery Convention', <<https://un.org/en/documents/human-rights/258-prohibition-of-torture-and-slave-labor/4203-slavery-convention>> (accessed 5 August 2020).

³⁵ United Nations, 'Universal Declaration on Human Rights', General Assembly of the United Nations, 1948.

³⁶ 'Modern Slavery Compared to Historical Slavery', <<http://www.bbc.co.uk/ethics/slavery/modern/modern1.shtml#section2>> (accessed 14 June 2014).

³⁷ See, generally, HS Klein and B Vinson, *African Slavery in Latin America and the Caribbean* (2nd edition, Oxford University Press 2007).

point in time, Islam treated slaves as human beings. The Prophet Muhammad taught that slaves were to be regarded as human beings with dignity and rights and not just as property, and that freeing slaves was a virtuous act. This unique position of Islam may have helped to create a culture in which slaves became much more assimilated into the community than they were in the West.³⁸ Why Islam could not introduce a radical approach to its eradication from the outset is discussed below.

Pre-Islamic Arabia, as the ancient and early medieval civilisations did, accepted and acquiesced in the practices of slavery and the slave trade. There were slaves of foreign ancestry as well as aborigines. For example, Zayd ibn Harithah, who later became an adopted son of the Prophet Muhammad, was originally an Arab slave.³⁹ A number of factors accounted for the phenomenon of slavery in pre-Islamic Arab lands. These include wars of attrition, the custom of child abandonment by the kidnapping or, occasionally, the sale of small children.⁴⁰ Generally, there were two classes of slave – those who were purchased and those who were born into the master’s household. The slave master exercised complete rights of ownership over the latter. The female slaves were, on the other hand, forced into prostitution for the monetary gain of their masters.⁴¹ It has been reported that the slaves of non-Muslim masters in that early period of Islam suffered brutal punishments.⁴² For example, Sumayyah bint Khayyat was killed with a spear by Abu Jahl when she refused to denounce her Islamic faith. She was known to be the first famous martyr of Islam. In contrast to that, Abu Bakr paid a ransom to free Bilal from Umayya ibn Khalaf, who was then his master who subjected him to punishment. Heavy stones were placed on his chest as a punishment and to force him to renounce his Islamic faith and convert to paganism.⁴³ Basically, it is forbidden for a Muslim to hold fellow Muslims, Christians, Jews, Sabians and Magians as slaves except during war. Conversion to Islam is considered a warrant for their master to set them free because of their piety, otherwise the master was under an obligation to teach them the Islamic faith.⁴⁴ Smith and Gervase observe that, contrary to the rules guiding the

³⁸ ‘Slavery in Islam’, BBC Religion, <<http://www.bbc.co.uk/religion/religions/islam/history/slavery1.shtml>> (accessed 12 August 2020).

³⁹ P Bearman, Th Bianquis, CE Bosworth, E van Donzel and WP Heinrichs (eds), *The Encyclopaedia of Islam: Second Edition Online* (EJ Brill 1960–2005).

⁴⁰ B Lewis, *Race and Slavery in the Middle East* (Oxford University Press 1990) 4.

⁴¹ M Isaac, *Slavery in the Ancient Near East* (Oxford University Press 1949) 54–58.

⁴² *ibid.*

⁴³ ‘Slaves and Slavery’, *Encyclopaedia of the Qur’an* online, <<https://referenceworks.brillonline.com/browse/encyclopaedia-of-the-quran>> (accessed 12 August 2020).

⁴⁴ RW Bulliet, *The Earth and Its Peoples: A Global History* (Cengage Learning 2010) 226.

treatment of slaves as laid down in Islamic law, Muslims' treatment of the slaves under them violated those rules.⁴⁵

However, historical accounts show that Muslims have engaged in slavery and the slave trade throughout history. For example, after the conquest of North Africa and most of the Iberian Peninsula between 632 AD and 750 AD, Muslims were major importers of slaves from central and eastern Europe.⁴⁶ It is also reported that the Muslim authority of Iberia engaged in slave raiding and bought slaves from European slave dealers.⁴⁷ Constable notes in this regard that

Muslim and Jewish merchants brought slaves into al-Andalus from Eastern Europe and Christian Spain, and then re-exported them to other regions of the Islamic world.⁴⁸

Slavery in the Post-Industrial Revolution Era

The emergence of the nation-state, which was conceived as a geographical entity that can be identified as deriving its political legitimacy from serving as a sovereign nation, was a landmark in the annals of history. It can be compared and contrasted with the multinational state, city-state, empire, confederation and other state formations with which it may overlap. The key distinction is the identification of a people with a polity in the 'nation state'.⁴⁹ When the concept took a firm grip of Europe the ancient civilisations, kingdoms and empires began a gradual and steady collapse. Some historical accounts reveal that this landmark development began in the 16th century.⁵⁰ The pursuit of the ideals of a nation state led to the search for inexpensive raw materials and then the markets in which to translate such products into business transactions. This sole ulterior motive in a nation state with the industrial essential means was probably responsible for the conquest of nations such as those in India, the Far East, Africa and the Caribbean.⁵¹

⁴⁵ G Smith and W Gervase, *Islam and the Abolition of Slavery* (Oxford University Press 2006) 2–5.

⁴⁶ JP Rodriguez, *The Historical Encyclopaedia of World Slavery, Vol 1, A–K*. (ABC–CLIO 1997) 565.

⁴⁷ OR Constable, *Trade and Traders in Muslim Spain: The Commercial Realignment of the Iberian Peninsula, 900–1500* (Cambridge University Press 1996) 203–204.

⁴⁸ *ibid.*

⁴⁹ P Radan, *The Break-up of Yugoslavia and International Law* (Psychology Press 2002) 14; AM Boll, *Multiple Nationality and International Law* (Martinus Nijhoff Publishers 2007) 67; DJ Elazar, *Covenant and Civil Society: The Constitutional Matrix of Modern Democracy* (Transaction Publishers 1998) 129.

⁵⁰ PD Cole, 'Cole: Western Development, Slave Trade and Slavery (1)', *The Guardian*, 23 June 2014, <<http://nrguardiannews.com/>> (accessed 23 June 2014).

⁵¹ Cole (n 50).

The invention of an engine powered by coal, and later oil, and the production of steel marked a new beginning in the mass movement of human beings and goods on land and sea, and in the air, across the globe. Consequently, a new chapter was opened in history and a 'survival of the fittest' culture as propounded by Charles Darwin was rekindled. Cole puts it thus:

the world only had space for the survival of the fittest. Unfit species were gobbled up by the fittest and science was the food to conquer all nature. Through science, a regime of super fit individuals and countries would inherit the earth, thus creating the dominance of secularism over the prevalent religiosity.⁵²

To realise this mentality, a means had to be devised and a price had to be paid.⁵³ The means was cheap labour and the price was slavery. As a result, the slave trade was embraced massively and brutally and technically executed in order to realise the wealth of the modern nations through the production of sugar, cotton, tobacco, coffee and maize, all on the back of a seemingly endless supply of cheap labour.⁵⁴ This was how the social, political and economic engines of France, the United Kingdom, Germany, Belgium, the Netherlands and, of course, the United States were fraudulently lubricated. It was reported that approximately 40 million innocent human beings were forced out of their African abodes in a century and a half for the New World, which had a dramatic effect on global demography.⁵⁵ Historians argue that the effects of this massive loss on the African continent alone had no parallel in history.⁵⁶ This exercise was executed based on the racial superiority of one group over another. It is true that there was slavery everywhere in the world but it was so clearly identified with racism – until the emergence of the African slave trade. This was a new phenomenon and one on an unprecedented scale.⁵⁷

The trans-Atlantic slave trade was a key impetus to the Industrial Revolution in Britain and on account of that trade Britain achieved enormous industrial development from 1750 onwards, which made it one of the wealthiest countries in the world.⁵⁸ It is noted that the economic fortunes and rapid development attained by the British Empire were contemporaneous with the slave trade, especially when it was at its peak and its

⁵² *ibid.*

⁵³ *ibid.*

⁵⁴ *ibid.*

⁵⁵ *ibid.*

⁵⁶ *ibid.*

⁵⁷ *ibid.*

⁵⁸ R Natalie, 'Slave Trade & the Industrial Revolution' (posted July 2007), <<https://www.studymode.com/essays/Slave-Trade-The-Industrial-Revolution-118336.html>> (accessed 12 August 2020).

involvement was historically monumental too – it played the biggest role in the trade compared to any other European country.⁵⁹

By the turn of the 17th century, the British had transported colossal numbers of slaves – estimated to have been about twice as many slaves as the Dutch, which was its closest competitor in the trans-Atlantic slave trade.⁶⁰ Natalie notes that in the 18th century the British provided more than 1 000 ships to prosecute the slave-trade enterprises and approximately three million people were transported in this regard. It was on account of this that its industrial development was given a considerable fillip.⁶¹ It was also on account of this that the British engaged in triangular trade, which played an important role in the rise of the British economy during that period.⁶²

Abolition of Slavery and the Slave Trade – Factors and Controversy

Over a period of 350 years (circa 1500–1850), approximately 14–21 million Africans were captured and sold in the Atlantic slave trade.⁶³ It has been estimated that between 1700 and 1810 British merchants alone transported almost three million Africans across the Atlantic. The massive and huge economic and power fortunes that the British derived from slavery and the slave trade is indisputable. What is considered paradoxical in this regard is that it was also the same British who led the struggle to bring this system to an end.⁶⁴ In July 1833, the British House of Commons passed a Bill to abolish the slave trade throughout its colonies. The House of Lords followed suit on 1 August of that year.⁶⁵ The factors that led to this dramatic move had been the subject of controversy among writers, academics, and historians. However, some of those factors include a change in economic interests, resistance from the victims of slavery and the slave trade, parliamentary reform and ferocious campaigns by various religious and human rights groups.⁶⁶

The shift in economic interest began shortly after 1776, when America secured its independence from Britain. The British sugar trade in its colonies – including Jamaica and Barbados – fell dramatically as the Americas were now capable of trading directly with the French and Dutch in the West Indies.⁶⁷ Also, in the aftermath of the Industrial

⁵⁹ Natalie (n 58).

⁶⁰ *ibid.*

⁶¹ *ibid.*

⁶² *ibid.*

⁶³ See HW French, ‘On Both Sides, Reason for Remorse’ *New York Times*, 15 April 1998, 4.

⁶⁴ J Oldfield, ‘British Anti-slavery’, <<http://www.bbc.co.uk/history/british/empireseapower/antislavery01.shtml>> (accessed 26 June 2014).

⁶⁵ ‘The Abolition Project’, <<https://www.abolitionist.com/>> (accessed 12 August 2020).

⁶⁶ *ibid.*

⁶⁷ *ibid.*

Revolution of the 18th century, Britain no longer needed slave-based goods. Because of its economic achievements, it was more able to prosper from new systems which required high efficiency through free trade and free labour. Therefore, it shifted its economic target from sugar to cotton, which later became the major crops to feed its industries in some of its cities, including Manchester and Salford. Consequently, these cities became the industrial centres of world importance of that period.⁶⁸

Another factor was the resistance launched by the enslaved people themselves. This resistance began in various parts of the country of their masters. It was argued that although the resistance had started right from the inception of the trade, the inspiration to resist the system stiffly began later within the territories of the slave merchants. For example, the French Revolution brought ideas of liberty and equality, which inspired those seeking an end to slavery. Toussaint L'Ouverture was said to have led a successful slave revolt in Haiti.⁶⁹ Similarly, there were major slave revolts in Barbados in 1816, Demerara in 1822 and Jamaica between 1831 and 1832.⁷⁰ It was noted that these revolts took the British government by surprise. They now realised that the cost and danger of retaining slavery in the West Indies were not only too high but also dangerous and intimidating: 'In places such as Jamaica, many terrified plantation owners were finally ready to accept abolition rather than risk a widespread war.'⁷¹

It is also noted that the parliamentary reform that was taking place in Britain at that time was an important factor. The British parliament had undergone major reform in 1832, with two-thirds of those who supported slavery being swept from power. These were the once powerful West India Lobby that now had lost its political strength and, therefore, the Bill for the abolition of slavery and the slave trade could sail through parliament.⁷² It has been noted that despite the passage of the Act, the enslaved people were not automatically and immediately free; they were to become 'apprentices' for six years. Compensation of 20 million pounds was to be paid to the planters. But this proposal was met with stiff resistance and strong protests that eventually forced the government to abolish the apprenticeship system on 1 August 1838.⁷³

Campaigns by Christian religious groups, although set against the historical past of Christendom, formed another important factor in the anti-slavery campaign. It has been recalled that in the early years of Christianity slavery was a normal feature of the economy and society in the Roman Empire, and that it persisted in different forms and

⁶⁸ *ibid.*

⁶⁹ *ibid.*

⁷⁰ *ibid.*

⁷¹ *ibid*⁷² *ibid.*

⁷² *ibid.*

⁷³ *ibid.*

with regional differences well into the Middle Ages.⁷⁴ The argument advanced by pro-slavery Christian supporters was that the slave trade was countenanced and authorised by God in the days of Abraham. It has also been observed that most of the notable Christian personalities of that early period, including Saint Augustine, accepted slavery as an inevitable phenomenon. However, some other key figures, such as Saint Patrick, were opposed to it.⁷⁵ Christian theologians who favoured the practice of slavery maintained their position on the authorities of both the Old and the New Testaments. Historically, this had called into question the position of the Christians who were against slavery.⁷⁶ It has also been noted that 18 centuries after the advent of Christianity, the campaign for the elimination of slavery had become a global phenomenon. Therefore, the Christian groups that engaged in the campaign for the abolition of slavery found it difficult to apply Christian theology and teachings in support of their arguments. Instead, they turned from the specific references to the practice in the tradition to a more general appeal to concepts such as ‘the spirit of Christ’ and textual argumentation.⁷⁷ Once the campaign for freeing enslaved people had assumed a universal dimension, it was now driven forward not only by the formal abolition campaign but also by a coalition of non-conformist churches as well as Evangelicals in the Church of England.⁷⁸

International Law and the Abolition of Slavery and the Slave Trade

Under international law, the abolition of slavery is regulated by the rules of treaties, conventions and declarations. The Universal Declaration on Human Rights is the pre-eminent omnibus international-law code that provides specifically for the abolition of slavery. Article 4 of this law provides that ‘no one should be held in slavery or servitude, slavery in all of its forms should be eliminated’.⁷⁹

It is noted that the foundation of international law (or the law of nations) as it is understood today lies firmly in the development of Western culture and political organization.⁸⁰ Therefore, modern international law can better be described as ‘Eurocentric’. Likewise, the concept of the abolition of slavery is rooted, first, in the

⁷⁴ ‘Africa and Slavery’, <<https://www.defendevropa.com/2019/culture/african-holocaust/>> (accessed 12 August 2020).

⁷⁵ *ibid.*

⁷⁶ ‘History of Abolitionism (Slavery and Tobacco) in the United States’, <<http://medicolegal.tripod.com/>> (accessed 12 August 2020).

⁷⁷ *ibid.*

⁷⁸ *ibid.*

⁷⁹ United Nations, ‘Universal Declaration on Human Rights’, General Assembly of the United Nations, 1948.

⁸⁰ MN Shaw, *International Law* (5th edn Cambridge University Press 2003) 13.

1807 Abolition of Slavery Act of Great Britain.⁸¹ Historically, European nations used international law to authorise and justify their indulgence in slavery, the slave trade and ownership of human beings. In the first decade of the 19th century, an estimated 609 000 slaves arrived in the New World.⁸² This was a period when Britain controlled large parts of the world through its colonial expansionism project. Consequently, in passing the Slavery Abolition Law, the British Parliament abolished slavery in many of its colonial territories.

Slavery connotes tendencies towards the use of force such as oppression, tyranny, subjugation, curtailment, and exertion perpetrated by individuals or groups against other individuals. The natural responses to these tendencies arose from the call for freedom from slavery which historically emerged before the 19th century under the phrase ‘freedom from oppression and tyranny’. These responses were expressed through several declarations, for example, the United States Declaration of Independence,⁸³ the French Declaration of the Rights of Man and of the Citizen,⁸⁴ and the recent African Charter of Human Rights, which was adopted in 1981.⁸⁵ The totality of these legal declarations could be summed up as a call for freedom from all those tendencies. However, they served as practical signal to deal with the issue of slavery globally.

One of the first steps taken at a global level to deal with a human rights issue was the promulgation of the 1890 General Act of the Brussels Conference. The state signatories to this Act declared their willingness to establish international mechanisms to secure the complete suppression of the Atlantic slave trade and slavery in all its forms.⁸⁶ Similar responsibilities were undertaken by state parties to the Convention to Suppress the Slave Trade and Slavery under the authority of the League of Nations.⁸⁷ In 1926 a further, practical step was again taken at a global level towards the eradication of slavery and the slave trade by the proclamation of the Slavery Convention. The convention was signed in Geneva on 25 September 1926 and entered into force on 9 March 1927. This was later followed by the Supplementary Convention which entered into force in 1957. The 1926 convention attempted to define what constitutes slavery and the slave trade under its Article 1(1) and (2) respectively. It provides that:

⁸¹ ‘The Abolition Project: The 1807 Act and Its Effects’, <http://abolition.e2bn.org/slavery_113.html> (accessed 17 February 2020).

⁸² See generally Martinez, J. S., *The Slave Trade and the Origins of International Human Rights Law*, Oxford University Press, (2012).

⁸³ ‘Declaration of Independence’, United States of America, 4 July 1776.

⁸⁴ ‘Declaration of the Rights of Man and of the Citizen’, National Assembly of France, 26 August 1789.

⁸⁵ ‘African Charter on Human and Peoples’ Rights’, African Union, 27 June 1981.

⁸⁶ Rassam (n 1) 330.

⁸⁷ Convention to Suppress the Slave Trade and Slavery, 25 September 1926, Art 1, 46 Stat 2191.

Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised; and that the slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.⁸⁸

Article 5 of the convention draws a distinction between ‘forced labour’ and ‘slavery’, stipulating that signatories to the convention must ‘take all necessary measures to prevent compulsory or forced labour from developing *into conditions analogous to slavery*’.

Experts argue that the definition under this article was not only restrictive but also descriptive. It restrictively describes the ‘chattel slavery’ commonly understood as the plantation slavery in the United States, as was the case in the 18th and 19th centuries. They argue that, although chattel slavery was significantly more widespread, it was not limited to one country alone.

Shortly after the Protocol amending the 1926 Slavery Convention of 1955 came into force, the International Labour Organization (ILO), along with expert bodies of the United Nations (UN), undertook further studies and found that despite the adoption of the Protocol, slavery continued to thrive. Therefore, the UN was called upon to intensify efforts at all levels to abolish slavery and expand its definition of ‘slavery’ to include

not only literal slavery but also certain institutions and practices having the same effects as slavery, such as debt bondage, serfdom, and the exploitation of the labour of women and children.⁸⁹

In adopting these recommendations, the Economic and Social Council endorsed the 1957 Supplementary Convention on the Abolition of Slavery, the Slave Trade and

⁸⁸ ‘Slavery Convention’, Geneva: Office of the United Nations High Commissioner for Human Rights, 25 September 1926, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx>> (accessed 12 August 2020).

⁸⁹ See, generally, E Lawson, *Encyclopaedia of Human Rights 1349 (Edward Lawson edition)*, Taylor & Francis, (1991).

Institutions and Practices Similar to Slavery ('Supplementary Convention')⁹⁰ with a view to 'intensify[ing] national as well as international efforts to abolish evils'.⁹¹

It was in view of this deficiency that the 1956 Supplementary Convention on Slavery was promulgated. This was aimed at prohibiting debt bondage, serfdom and forced marriage on payment of money without the option of acceptance or rejection. Similarly, it also aimed at prohibiting the so-called 'traditional right' of a husband to transfer his wife to another person and forcing a woman to be inherited upon the death of her husband against their will, or any practice of subjecting a child under 18 years to serfdom or any kind of forced labour.⁹²

Experts also argued that these conventions, as in the case of any other international legislation, lacked effective enforcement mechanisms. It is noted that neither documents outlined the consequence nor an incentive for signatories to abide by their provisions even though it was expected that signatories would adapt their national laws for their domestication with the assistance of the UN, where necessary.

It is pertinent to bring into focus the Human Rights Committee and the International Covenant on Civil and Political Rights (ICCPR). ICCPR is the legal instrument that governs the Human Rights committee. It came into force on 23 March 1976. Article 8(1) of this covenant provides that: 'No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.' Article 8(2) provides that 'No one shall be held in servitude', whereas Article 8(3) states that:

(a) No one shall be required to perform forced or compulsory labour; *(b)* Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labour in pursuance of sentence to such punishment by a competent court; No one shall be required to perform force or compulsory labour.⁹³

Human Rights: Pan-Islamic, African and Arab Charters

The UN Universal Declaration on Human Rights (UDHR), the Slavery Convention (SC), the new ILO Protocol on Forced Labour, Modern Slavery and Human

⁹⁰ Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 30 April 1957, 266 UNTS 40.

⁹¹ Lawson (n 89) 1355 footnote 67.

⁹² Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices. Office of the United Nations High Commissioner for Human Rights, 7 September 1956.

⁹³ General Assembly, 'International Covenant on Civil and Political Rights', 2200A (XXI). Office of the United Nations High Commissioner for Human Rights, 1966, <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> (accessed 12 August 2020).

Trafficking⁹⁴ and the ICCPR are some of the international legal instruments dealing with human rights in all their ramifications. They serve not only as templates, but also have a strong impact on various local, regional and continental laws on human rights. It is pertinent to bring into focus the African Charter of Human and Peoples' Rights, the Organization of Islamic Cooperation (OIC) Charter and the Arab Charter on Human Rights. These three international legal instruments contain provisions declaring the violation of human rights, slavery and human trafficking illegal. Libya, as a member of the African Union (AU), the OIC and the Arab League, is a signatory to these three legal instruments.

African Charter of Human and Peoples' Rights

The African Charter of Human and Peoples' Rights, otherwise known as the 'Banjul Charter', is an international human rights law that is aimed at protecting and guaranteeing human rights and promoting fundamental freedoms at the African continental level. The law was promulgated in the era of the Organisation of African Unity (OAU) which was later changed to AU at its Assembly of Heads of State and Government which adopted a resolution in 1979 for the setting up of a committee of experts to prepare a legal instrument in line with what obtained in other continents such as Europe and America. A draft of this instrument was unanimously approved at the 18th Assembly of the then OAU which took place in Nairobi, Kenya in June 1981.⁹⁵ This charter makes provision for civil and political rights, economic, social and cultural rights as well as peoples' rights and group rights.

Civil and political rights under this charter include:

- freedom from discrimination,⁹⁶
- equality;⁹⁷

⁹⁴ The new legally binding ILO Protocol on Forced Labour, modern slavery and human trafficking aims to strengthen global efforts towards combating forced labour, trafficking and slavery-like practices: International Labour Organization, Forced labour, modern slavery and human trafficking, <<https://www.ilo.org/global/topics/forced-labour/lang-en/index.htm#:~:text=The%20new%20legally-binding%20ILO%20Protocol%20on%20Forced%20Labour,combat%20this%20crime.%20ILO%20videos%20on%20forced%20labour>> (accessed 10 August 2020).

⁹⁵ African Union Archive, 'African Charter of Human and Peoples' Rights', <<https://au.int/sites/default/files/treaties/7770-treaty001africancharteronhumanandpeoplesrightse.pdf>> (accessed 7 August 2020).

⁹⁶ Articles 2 and 18(3).

⁹⁷ Article 3.

- life and personal integrity;⁹⁸
- dignity;⁹⁹
- freedom from slavery;¹⁰⁰
- freedom from cruel, inhuman or degrading treatment or punishment;¹⁰¹
- to due process concerning arrest and detention;¹⁰²
- to a fair trial;¹⁰³
- freedom of movement;¹⁰⁴
- freedom to political participation;¹⁰⁵ and
- to property.¹⁰⁶

The charter also makes extensive provisions for economic, social and cultural rights, which include the right to:

- work;¹⁰⁷
- healthcare;¹⁰⁸
- education;¹⁰⁹
- life;¹¹⁰

⁹⁸ Article 4.

⁹⁹ Article 5.

¹⁰⁰ Article 5.

¹⁰¹ Article 5.

¹⁰² Article 6.

¹⁰³ Articles 7 and 25.

¹⁰⁴ Article 12.

¹⁰⁵ Article 13.

¹⁰⁶ Article 14.

¹⁰⁷ Article 15.

¹⁰⁸ Article 16.

¹⁰⁹ Article 17.

¹¹⁰ Article 4.

- development;¹¹¹
- self-determination;¹¹²
- peace and security;¹¹³ and
- a generally satisfactory environment.¹¹⁴

Organisation of Islamic Cooperation (OIC) Human Right Charter

The OIC is a pan-Islamic inter-governmental organisation established to serve as the collective voice of the Muslim world; to safeguard and protect their interests for the promotion of international peace and harmony among various people of the world.¹¹⁵ It is the second largest organisation next to the UN with a membership of 57 states spread over four continents.¹¹⁶ The first OIC Charter, which laid down the objectives and principles of the organisation and fundamental purposes to strengthen the solidarity and cooperation among the Member States, was adopted by the 3rd ICFM Session held in 1972. This charter was amended to keep pace with contemporary developments in the world. The charter in its present form was adopted by the 11th Islamic Summit held in Dakar on 13–14 March 2008 to become the pillar of OIC future Islamic action in line with the requirements of the 21st century.¹¹⁷

On 5 August 1990, after almost five decades of its existence, OIC foreign ministers ratified the Cairo Declaration on Human Rights in Islam (CDHRI). The charter was a description of human rights from the Islamic perspective and a form of response to the UN's 1948 Universal Declaration of Human Rights (UDHR). The charter was intended to serve as a framework for the Member States on issues of human rights and their relation to Quranic law and *Shari'ah*.¹¹⁸ A formal revision of the charter was carried out in June of 2008. In its revised version, the charter made provision for a wide range of rights, including fundamental freedoms, good governance and human rights in all OIC Member States. It is interesting to note that the OIC endorsed both the international law

¹¹¹ Article 22.

¹¹² Article 20.

¹¹³ Article 23.

¹¹⁴ Article 24.

¹¹⁵ MOIC, OIC, <<https://www.modeloic.org/oic/>> (accessed 10 August 2020).

¹¹⁶ *ibid.*

¹¹⁷ *ibid.*

¹¹⁸ K Joseph, 'What is the Organization of Islamic Cooperation?', <<https://www.worldatlas.com/articles/what-is-the-organisation-of-islamic-cooperation.html>> (accessed 10 August 2020).

on human rights together with the Universal Declaration of Human Rights in its revised version of the charter.¹¹⁹

Chapter 1 on ‘Objectives and Principles of the Organization’ provides inter alia:

to promote and to protect human rights and fundamental freedoms including the rights of women, children, youth, elderly and people with special needs as well as the preservation of Islamic family values¹²⁰

to safeguard the rights, dignity and religious and cultural identity of Muslim communities and minorities in non-Member States¹²¹

to cooperate in combating terrorism in all its forms and manifestations, organised crime, illicit drug-trafficking, corruption, money laundering and human trafficking.¹²²

Under Chapter 10 of the Charter on the Independent Permanent Commission on Human Rights it is provided that:

the Independent Permanent Commission on Human Rights shall promote the civil, political, social and economic rights enshrined in the organisation’s covenants and declarations and in universally agreed human rights instruments, in conformity with Islamic values.¹²³

As can be seen from the above OIC Charter on human rights, there is a clear impact of the UN’s charter, and even though there is no mention of ‘slavery’ the mere mention of ‘rights and dignity’ is an indication that slavery is abhorred. The charter is clearly specific about the prohibition of ‘money laundering and human trafficking’. It follows that any member of the organisation should not condone the practice of human trafficking, which, of course, has a direct link to slavery and forced labour.

Arab Charter on Human Rights (ACHR)

The Arab League, formally the League of Arab States, is a regional organisation with membership cutting across the Arab world, Africa and Western Asia. It was formed and inaugurated in Cairo on 22 March 1945 with an initial membership of six states.¹²⁴

¹¹⁹ *ibid.*

¹²⁰ Article 14.

¹²¹ Article 16.

¹²² Article 18.

¹²³ Article 15.

¹²⁴ Egypt, Iraq, Jordan, Lebanon, Saudi Arabia and Syria. Syria was suspended from the league in 2011.

Currently it has 22 countries as its members, with one on suspension.¹²⁵ The objectives of the league are to

draw closer the relations between member states and co-ordinate collaboration between them, to safeguard their independence and sovereignty, and to consider in a general way the affairs and interests of the Arab countries.¹²⁶

The league adopted its Arab Charter on Human Rights (ACHR) on 22 May 2004. The document affirms the principles enunciated in the UN Charter on the Universal Declaration of Human Rights, the International Covenants on Human Rights as well as the Cairo Declaration on Human Rights in Islam. It contains articles providing for several traditional human rights, including the right to:

- liberty and security of persons;
- equality of persons before the law;
- protection of persons from torture; and
- own private property.

It also provides for certain freedoms:

- to practice religious observance; and
- of peaceful assembly and association.

Even though the instrument has been acknowledged as a step in the right direction, it has been criticised for setting human rights standards in the region where it is applicable below the level of internationally recognised norms.¹²⁷

Libya as a Muslim majority country is a member of international organisations including the UN, the AU, the OIC and, naturally, the Arab League. It is a signatory to various international covenants, treaties and particularly the human rights instruments at least at African regional and Arab League levels. It is argued that Libya's foreign policy must have been influenced by both international law and Islamic law. But what

¹²⁵ See, generally, WM Robert, *The League of Arab States: A Study in Regional Organization* (Princeton University Press 1965).

¹²⁶ Article 2 of the Pact of the Leagues of Arab States, 22 March 1945; 'The Avalon Project – Documents in Law, History and Diplomacy', <<https://avalon.law.yale.edu/20thcentury/arableag.asp>> (accessed 11 August 2020).

¹²⁷ SM Pekkanen, J Ravenhill and F Rosemary (eds), *Oxford Handbook of the International Relations of Asia* (Oxford University Press 2014) 593.

is the position of Islamic law on slavery, human trafficking and forced labour? This forms the focus of analysis in the next part of this study.

Libya: Islam and Slavery

Although Libya is a Muslim majority country, its legal system has been influenced by multiple foreign sources. These include Ottoman, French, Italian and Egyptian legal sources.¹²⁸ With the emergence of the Great Socialist People's Libyan Arab Jamahiriya, Libya has moved towards a legal system that includes a degree of *Shari'ah* but with various deviations from it.¹²⁹ Traditionally, Libyans are committed to the Islamic belief and values. But what is the Islamic perspective on slavery, human trafficking and forced labour that have become a critical issue in Libya, especially after the demise of its ruler, Muammar Ghaddafi? This forms the focus of this part of the study.

Islamic Perspective on Slavery

Islam's approach to the abolition of slavery is gradual on account of several historical and factual reasons. The persistent commands in the Qur'an were, in effect, first, to treat slaves like other fellow human beings and, second, to set them free. The combined effect of this approach is to indicate that the institution of slavery was abhorrent and one that the Islamic system and values would pursue for its eventual abolition.

It must be noted that from the outset Islam introduced measures that imposed the welfare of the slaves on those who were responsible for their captivity or enslavement. For example, it made it the responsibility of the Islamic government to provide reasonable food and clothing to captives regardless of their religion. Similarly, where captives or prisoners were under the control of an individual, then the responsibility for their welfare rested with that individual.¹³⁰

A writer and author of a classical text on slavery argues that Islam was from the outset a faith which formally disallowed its adherents from enslaving co-religionists.¹³¹ He noted that Islamic law went further by prohibiting the enslavement of Christians and

¹²⁸ WA Otman and E Karlberg, 'The Libyan Legal System and Key Recent Legislation' in Waniss **Otman** and Erling **Karlberg**, *The Libyan Economy: Economic Diversification and International Repositioning* (Springer 2007) 63–86.

¹²⁹ *ibid*; WA Otman, E Karlberg and AE Mayer, 'Reinstating Islamic Criminal Law in Libya', in DH Dwyer (ed) *Law and Islam in the Middle East* (Greenwood Publishing Group 1990) 99–115.

¹³⁰ SA Maududi, *Introduction of Ad-Dahr, 'Period of Revelation'* (Pakistan: Islamic Press 1967) 159.

¹³¹ R Blackburn, *The Making of New World Slavery, From the Baroque to the Modern 1492–1800* (Verso 1998) 42.

Jews so long as they were living peaceably under an Islamic system of government and paying a special tribute.¹³² He quoted Lewis with approval, where the latter asserts that:

The Qur'an, like the Old and New Testaments, assumes the existence of slavery. It regulates the practice of the institution and thus implicitly accept it ... But Quranic legislation subsequently confirmed and elaborated in the Holy Law, brought two major changes to ancient slavery which were to have far-reaching effects. One of these was the presumption of freedom; the other, the ban on the enslavement of free person except in strictly defined circumstances.¹³³

Lewis further maintains that the Arabian slave 'was now no longer merely a chattel but was also a human being with a certain religious and hence asocial status and with certain quasi-legal rights'.¹³⁴

Two historical situations call for a review in this regard. First, slavery was a normal and widespread practice in the pre-Islamic societies and the popular view is that Islam did not abolish slavery at the outset: like the previously revealed Abrahamic Holy Books,

the Qur'an accepted the institution of slavery as an established part of the lives of believers. At the outset, it thus sought to humanize and regulate the practice of slavery rather than seek its outright and immediate abolition.¹³⁵

Second, the prevalent culture of warfare in pre-Islamic societies served as impetus for the slave trade as war captives were exchanged for monetary and economic values. Third, owing the vulnerability that prevailed during that turbulent war period, many even preferred to be slaves under a safe environment to being exposed to the dangers of violent killings and torture. Islam came and, faced with this critical and challenging situation, in the spirit of reformation, it is argued, the Qur'an and *Sunnah* greatly encouraged and recommended the manumission and human treatment of slaves.¹³⁶

Some are of the view that Islam institutionalised and authorised slavery, citing verses of the Qur'an to support this.¹³⁷ For example, Jahanbaksh argues that slavery was common in pre-Islamic times and accepted by many ancient legal systems and it continued under Islam. He says that although Islam is much credited with moderating

¹³² *ibid.*

¹³³ *ibid*; R Blackburn and B Lewis, *Race and Slavery in the Middle East* (Oxford University Press 1990), especially in ch 1.

¹³⁴ Blackburn and Lewis (n 133).

¹³⁵ BK Freeman, 'Slavery, Freedom, and the Doctrine of Consensus in Islamic Jurisprudence' (1998) 11 *Harvard Human Rights Journal*, 1.

¹³⁶ MA Baderin, *International Human Rights and Islamic Law* (Oxford University Press 2003) 86, quoting Qur'an 2:177; 4:92, 9:60; 24:33; 58:3 and 90:13.

¹³⁷ Qur'an 4:3; 4:24; 16:71; 16:75; 23:1-5; 23:5-6; and 33:50.

the age-old institution of slavery – which was also accepted and endorsed by the other monotheistic religions, Christianity and Judaism, and was a well-established custom of the pre-Islamic world – it has never preached the abolition of slavery as a doctrine.¹³⁸ Ruthven shares this view, reiterating that the condition of slaves, like that of women, may well have improved with the coming of Isowinglam, but the institution was not abolished any more than it was under Christianity during this period.¹³⁹ This spirit was demonstrated and translated into a practical act by the Prophet and his Companions, who liberated slaves who had come under their control in several ways.¹⁴⁰

It should be asserted that, although there is no direct injunction to abolish slavery, Islamic law also contains no direct provisions authorising or supporting the practice of taking or possessing slaves.¹⁴¹ Therefore, there is unanimity among Muslim jurists and scholars that freeing slaves is an act to be recommended, and in practical terms it is the first of the options prescribed in the Qur'an as expiation for certain sins.¹⁴² This Islamic approach has become a point of contention among scholars and jurists. Some of them maintain that this approach serves as an indication of a leaning towards the abolition of slavery, and that slavery should therefore be considered as abolished under Islamic law.¹⁴³ Others hold a contrary view arguing that, although the steps adopted and introduced by Islam towards slaves may be commendable, Islam still recognises the taking of slaves. Tabadeh, for example, argues that

should the legal condition for the enslavement of anyone be proven ... Islam would be bound to recognise such slavery as legal, even though recommending the freeing of the person¹⁴⁴

An-Na'im challenges this position. However, he expresses reservations about the continuing existence of rules on slavery in the traditional authorities of Islamic jurisprudence and argues that this is a fundamental human rights issue in waiting for Muslims to be specific about the abolition of slavery in Islamic law.¹⁴⁵ Baderin observes in this regard that the problem of slavery could not have been solved radically in isolation of the prevailing social circumstances of that period. He notes further that

¹³⁸ See, generally, F Jahanbaksh, *Democracy and Religious Modernism in Iran* (Brill Academic Publishers 2001).

¹³⁹ See, generally, M Ruthven, *Islam in the World* (2nd rev edn Penguin Books Ltd 2000).

¹⁴⁰ SA Maududi, *Human Rights in Islam* (The Islamic Foundation 1993) 20.

¹⁴¹ Baderin (n 136) footnote 139.

¹⁴² Qur'an 4:92 and 58:3.

¹⁴³ Baderin (n 136) 86–87, quoting with approval F Malekan, *The Concept of Islamic International Criminal Law: A Comparative Study* (Springer 1994) 83–89.

¹⁴⁴ S Tabandeh, *Muslim Commentary on the Universal Declaration of Human Rights* (FJ Goulding 1970) 27.

¹⁴⁵ Baderin (n 136), quoting AA An-Na'im, *Towards an Islamic Reformation: Civil Liberties, Human Rights and International Law* (Syracuse University Press 1990) 172–175.

while Islam had, on the one hand, endured the practice due to the social factors of that period, on the other hand, it simultaneously promoted slavery's gradual abolition.¹⁴⁶ He continues that as most Muslim countries have ratified international instruments on the abolition of slavery or slavery-like practices, it means that there is consensus in Muslim states against slavery. This development, he argues, amounts to *Ijma'*, which is an important first among the secondary sources of law in Islamic jurisprudence.¹⁴⁷ It follows that by *Ijma'* Muslims have unanimously abolished slavery. It stands to reason that if Islam had sanctioned slavery, the Muslims could not have had the capacity to declare it prohibited either expressly or by implication. They could do this simply because the Qur'an and the *Sunnah*, which are the primary sources of law, had given enough of an indication towards the abolition of slavery practice.

In another perspective, Ahmad argues that the Qur'anic statement that: 'what their right hands own' was a 'temporary' institution that existed at the time and was allowed in the early Islamic society. He argues further that

Islam called for the freeing of sex slaves, making sex permitted only inside the institution of marriage. More generally, freeing a slave was encouraged as a way of expiating wrongdoings and shortcomings.¹⁴⁸

He is emphatic that nowhere in the Qur'an is a Muslim permitted to engage further in slavery and the slave trade, whereas it makes freeing a slave a good deed to redeem previous wrongdoings.¹⁴⁹

Although the attitude of Islamic law may appear to be to simply praise the slave-owner who releases a slave, rather than condemning the one who keeps them, in all, it technically leans towards slavery's eventual total eradication. An analysis of some Prophetic traditions and Qur'anic verses confirms this contention. For example, the Prophet was quoted as having said:

Allah says I will quarrel with these people on the Day of Resurrection, and he with whom I quarrel, I overcome him ... the second is he who sells a free man (or woman) and devours the proceeds.¹⁵⁰

¹⁴⁶ Baderin (n 136) 87.

¹⁴⁷ *ibid.*

¹⁴⁸ Qur'an 58:3; 5:89.

¹⁴⁹ Clarence-Smith, W. G., *Islam and the Abolition of Slavery*, New York: Oxford University Press, (2006), pp. xxvi, 293.

¹⁵⁰ Reported by Al-Bukhari and Ibn Maja.

Another tradition states ‘there are three people whose prayers Allah will not accept. One of them is he who enslaves a freeman’. An excerpt from the Qur’an has been interpreted to support the same sentiment. For example, it says:

[if your slaves] seek a writing (of emancipation), give them such writing, if you find that there is good and honesty in them. And give them something (yourselves) out of the wealth of Allah which He has bestowed upon you.¹⁵¹

The Prophet was also quoted to have said that: ‘Whoever frees a Muslim slave, Allah will save all the parts of his body from the (Hell) Fire as he has freed the body-parts of the slave.’¹⁵² And on his death-bed, the Prophet stated that ‘on the Day of Judgement, I will be the advocate of non-Muslim subjects who were oppressed’.¹⁵³

Slave owners were also encouraged to allow slaves to earn their freedom ‘those your right hands own who seek emancipation, contract with them accordingly, if you know some good in them, and give them of the wealth of God that He had given you’. This is further confirmed in the Qur’an: ‘and (have We not) shown him the two highways? But he has made no effort on the path that is steep (Aqaba). And what will explain the Aqaba? It is freeing the bondsman/slave.’¹⁵⁴ Abu Huraira reported that

I heard Abu’l-Qasim (peace and blessings of Allah be upon him) say: ‘Whoever accuses his slave when he is innocent of what he says will be flogged on the Day of Resurrection, unless he is as he said.’¹⁵⁵

Commenting on the act of a slave owner freeing their slaves – otherwise known as manumission – Ibn ‘Umar was quoted to have remarked:

There is no more reward in it than the equivalent of this, but I heard the Messenger of Allah (peace and blessings of Allah be upon him) say: ‘Whoever slaps his slave or beats him, his expiation is to manumit him.’¹⁵⁶

It was also related that

Umar ibn al-Khattaab was once passing by and saw some slaves standing and not eating with their master. He got angry and said to their master: ‘What is wrong with people

¹⁵¹ Qur’an 24:33.

¹⁵² Reported by Abu Huraira.

¹⁵³ Al-Mawardi.

¹⁵⁴ Qur’an 90.

¹⁵⁵ Al-Bukhari (6858).

¹⁵⁶ Muslim (1657).

who are selfish towards their servants?’ Then he called the servants, and they ate with them.

As can be seen from the above, the repeated and consistent divine directives in both the Qur’an and the *Sunnah*, first, to treat slaves humanely and, second, to free them, indicate that the institution of slavery was one that Islam considers abhorrent and sought to abolish by a gradual approach.

Prohibition of Forced Labour: An Islamic Perspective

Ijtihad is the liberal process of interpreting the basic sources of law, namely, the Qur’an and the *Sunnah*.¹⁵⁷ By sustaining the process of *Ijtihad*, Islamic law evolved over the centuries since its inception from the 7th century. Labour law, in its regulated, complex and diverse methods as it is known today, was not in vogue in the early period of Islam. However, there are abundant references in both the Qur’an and the *Sunnah* attesting to the fact that Islam prohibits forced labour. It was through the *Ijtihad* mechanism that what is now known as Islamic labour law was formulated.

Islamic labour law prohibits forced labour as well as the exploitation of labour.¹⁵⁸ The Qur’an clearly states:

So fulfil the measure and weight and do not deprive people of their due and cause not corruption upon the earth after its reformation. That is better for you, if you should be believers.¹⁵⁹

To show that this principle is applicable to both men and women, it says: ‘... to men is allotted what they earn, and to women what they earn.’¹⁶⁰ In this regard, the Prophet was quoted to have said: ‘Give the hired man his wages before his sweat dries.’¹⁶¹

Against the tendency of forced labour, Islamic labour law requires the observation of four principles, namely:

¹⁵⁷ R Aslan, ‘No God but God’ – *The Origins, Evolution and Future of Islam* (Arrow Books 2006) 165.

¹⁵⁸ AA Zulfiqar, ‘Religious Sanctification of Labour Law: Islamic Labour Principles and Model Provisions’ (2007) 9(2) *University of Pennsylvania Journal of Labour and Employment Law*, 421ff.

¹⁵⁹ Qur’an 7:85.

¹⁶⁰ Qur’an 4:32.

¹⁶¹ Ibn Makah, 2:817.

- First, that it is imperative that an employer of labour fulfil their contractual obligation. Therefore, it is stated in the Qur'an, 'be faithful to your pledge to God when you enter into a pact.'¹⁶²
- Second, the Islamic tradition prescribes earnest payment of wages upon a worker's completion of the agreed terms of the contract.¹⁶³
- Third, when there is an agreement to work, the terms and conditions of payment must be clearly spelt out prior to the execution of the agreement.
- Fourth, in another tradition, the Prophet Muhammad was quoted to have said that 'if you are employing a worker, you have to tell him how much he will be compensated for his labour'. Forced labour and the exploitation of labourers and workers usually entail the disregarding of at least one, but more frequently of several, of these rules and regulations.

Islamic jurisprudence considers work not only as a legitimate act for earning a livelihood but also as an act of worship. Therefore, the rights of both employer and employee are recognised and regulated to protect the interests of all. Similarly, the concept of a contract in Islam does not exist as an ordinary rule merely to take care of legitimate private necessities. The very basis of a contract is to serve as an agreement between God and man. That explains why the terms of an agreement must be clear and transparently observed and executed before work begins to ensure that the worker's rights and interests are protected, and also to motivate the worker to work honestly and diligently. A contract in Islam is not a mere mundane affair between the contracting parties, but a sacred act and covenant with God. Therefore, the Qur'an states: 'O you who believe! Fulfil the obligations.'¹⁶⁴

Similarly, the work to be done *ab initio* has to be lawful for both employer and employee. This further implies that if the work is lawful, the procedures for carrying it out must also be lawful. The employee must not betray their employer by performing below the standard stipulated in the contract; for their part, the employer must not also underpay or delay payment to the employee.

In another consideration, forced labour is considered harmful because it impugns the rights and integrity of its victims. Islam condemns the infliction of harm; inflicting hardship and harm, whether intentional or not, is therefore prohibited. Accordingly,

¹⁶² Qur'an 5:1.

¹⁶³ Al-Mutaqqi al-Hindi, 'The treasure of workers in normative words and deeds', *Al-Burhan fi Alamat al-Mahdi*, Translation from Arabic by Mohamed Y., at p. 14.

¹⁶⁴ Qur'an 5:1.

subjecting any person to hard labour is likewise prohibited. The Qur'an condemns the infliction of harm when it states that: 'He (God) has chosen you and has not laid upon you in religion any hardship.'¹⁶⁵ The same sentiment is repeated in another verse from the Qur'an, where it says: 'Allah (God) desires for you ease. He desires not hardship for you.'¹⁶⁶ In whatever way it is imposed, forced labour is often excruciating and harmful, and so Islam therefore prohibits these types of practice.

In 2002, the Grand Mufti of Saudi Arabia issued a *fatwa* condemning the abuse of the foreign workforce by Saudi employers. In that *fatwa*, he stated that 'blackmailing and threatening [foreign] labourers with deportation if they refuse the employers' terms, which breach the contract, is not allowed'.¹⁶⁷ It was in the light of this that a decree recently promulgated by the Saudi Council of Ministers declares explicitly that foreign employees are entitled to keep their travel documents and those of their families. They also have the right to travel anywhere within Saudi Arabia without presenting documentation, something which was previously required.¹⁶⁸

Islam Abolition of Slavery and Forced Labour – A Rundown

Slavery existed for many centuries before Islam. It was a reality on the ground to be dealt with. Islam therefore responded to the challenge of slavery in the following ways:

- The fair treatment of slaves was made mandatory and a general rule to be observed. This, to a greater extent, elevated the status of slaves from the hitherto downgraded

¹⁶⁵ Qur'an 22:78:

¹⁶⁶ Qur'an 2:185; also see United Nations Children's Fund and Al-Azhar University, International Islamic Centre for Population Studies and Research, *Children in Islam: Their Care, Development and Protection – Summary* (2005) 8; available from <www.unicef.org/Egypt/media_2369.html>.

¹⁶⁷ Saudi Arabia Dar Al-Iota' Fatwa, 3 September 2002.

¹⁶⁸ MY Mattar, 'Trafficking in Persons, Especially Women and Children, in Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses' (2003) 26(3) *Fordham International Law Journal*, 729ff; Saudi Arabia, Council of Ministers Decision No 166 of 12/7/1421 AH regulating relations between migrant workers and their employers further stipulates as follows: 'Employers shall not retain the passports of migrant workers or the passports of members of their families. Migrant workers shall be entitled to freedom of movement within the Kingdom of Saudi Arabia provided that they hold a valid residence permit. Migrant workers may apply to governmental and other bodies to avail themselves of the services needed to ensure a decent life for themselves and their families, such as the issuance of driving licences, the purchase of motor vehicles, telephone connections etc., without being obliged to obtain the consent of their employers. The term "sponsor" shall be invalid wherever it appears and shall be replaced by the term "employer".'

The Decision also makes provision for the establishment of a special committee to resolve any problems arising from its application (see 'National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Saudi Arabia' (A/HRC/WG.6/4/SAU/1)).

level. Therefore, slaves, like any other members of society, became entitled to marry, divorce, acquire an education and stand as witnesses in a law court regardless of the parties involved.¹⁶⁹

- Mandatory rules were introduced about freeing slaves: owners of slaves were compelled to set them free by a regulatory method. The Qur'an stipulates by designating 'securing freedom for slaves' as one of the eight heads of expenditure on which the *Zakah* revenue may be expended.¹⁷⁰
- In situations where slaves were able to redeem themselves from slavery by carrying out stipulated labour services, the payment of money or the transferring of assets granting them freedom became mandatory.¹⁷¹
- When slave women or girls gave birth to the child of their masters, the child automatically became a free person.¹⁷²
- When a person is owned as a slave by two masters, one of whom resolves to free the slave to the extent of the fraction, he owns in that slave's value, it becomes the responsibility of the state to pay the balance of this value to secure the slave's total freedom.¹⁷³
- Right from the early period of Islam, freeing slaves was made a meritorious act of charity and under the *Shari'ah*, provisions are made for freeing the slaves in the context of expiations (*kaffarat*) and atonements for certain sinful acts including false oath in jest, deliberate breaking of fast in Ramadan without valid reason as well as the unintended commission of manslaughter and bodily injury.¹⁷⁴
- The exploitation of labour is illegal under Islamic law. Proof of the prohibition of exploitation is contained in the Qur'an, where it is stated that:
- 'So fulfil the measure and weight and do not deprive people of their due and cause not corruption upon the earth after its reformation. That is better for you, if you should be believers.'¹⁷⁵

¹⁶⁹ MH Kamali, *Shariah Law Questions and Answers* (Oneworld 2017) 174.

¹⁷⁰ See Qur'an 9:60; *ibid.*

¹⁷¹ Kamali, (n 169) 174.

¹⁷² *ibid.*

¹⁷³ *ibid.*

¹⁷⁴ *ibid.*

¹⁷⁵ Qur'an 7:85.

- This applies equally to men and women as stated again in the Qur'an thus: '... to men is allotted what they earn, and to women what they earn.'¹⁷⁶ Prophet Muhammad is quoted to have stated that: 'Give the hired man his wages before his sweat dries.'¹⁷⁷
- Forced labour and exploitation are illegal and therefore, employers of labour must, as a rule, fulfil their contractual obligation as stipulated in the Qur'an that: '[b]e faithful to your pledge to God when you enter into pact.' Secondly, under the *Sunnah*, which is the second basic source of law, wages must be paid upon a worker's completion of the agreed-upon contract.¹⁷⁸ Thirdly, prior to entering into a contract of labour, compensation must be specifically and clearly stated in such an agreement. Fourthly, a rule contained in a Hadith of Prophet on labour must be duly observed, namely, that, 'if you are employing a worker, you have to tell him how much he will be compensated for his labour.'¹⁷⁹

Libya under the Post-Gaddafi Regime

As can be seen from the above analysis, slavery has existed as both legitimate and illegitimate practices in different epochs of time. The abolition of slavery was achieved through social and political revolutions but, most importantly, through the instrumentalities of regional and international laws and regulations. When it was eventually abolished, it was expected that humankind must have moved away from the primitivity of the past and entered the modernity of the present. Unfortunately, slavery has persisted, but in new forms – human trafficking, forced labour, etc. As far as international law and relations are concerned, Libya finds itself between the forces of Islamic values and international norms. To what extent these two systems have influenced Libya regarding the issue of slavery and human trafficking forms the focus of this part of the study.

Aftermath of Regime Change

Observers argue that Libya under Muammar Ghaddafi, despite the prevalent political absolute power, was a prosperous nation where peace and security were guaranteed. Soon after the overthrow of his government in 2011 civil war broke out and Libya has been in turmoil and remained in this uncertain and hopeless situation since this time.¹⁸⁰

¹⁷⁶ Qur'an 4:32.

¹⁷⁷ Ibn Maajah 2/817.

¹⁷⁸ Al-Muttaqi al-Hindi, *supra* (note 163), p. 14.

¹⁷⁹ United Nations, *Combating Trafficking in Person in accordance with the Principles of Islamic Law*, United Nations Office on Drug and Crime, New York (2010), 27.

¹⁸⁰ 'A lot of water has passed under the bridge since Libyan leader Muammar Gaddafi was overthrown in 2011', <<https://sputniknews.com/infographics/201710231058475797-libya-before-after-gaddafi/>> (accessed 12 August 2020).

The government is devoid of cohesion and centralised administration. For example, the UN-backed Government of National Accord, which was based in Tripoli, executes government businesses in the western part of the country. The eastern part of the country is under the authority of the Parliament, with headquarters in the city of Tobruk. Thousands of people escape Libya every year by seeking safety elsewhere in order to try to save themselves and their families from the negative effects of the ongoing conflicts in the country.¹⁸¹

It all began when the North Atlantic Treaty Organisation (NATO) countries launched a war against Libya in order to deliberately topple the government of long-time leader Muammar Gadhafi. The United States and its allies launched hundreds of cruise missiles, destroying the government's ability to counter rebel attacks. Since then, Libya has been plunged into turmoil, chaos, bloodshed and political uncertainty.¹⁸²

Consequently, there have been significant changes in the social and political life of Libya with the proliferation of weapons, sectarian insurgencies, violence and lawlessness. The resultant spill-overs affect not only neighbouring countries such as Mali but also other parts of Africa generally and the West African region in particular. The spill-overs typically take on different forms, including human trafficking, slavery and forced labour.

In this chaotic situation of civil war, brigades of armed volunteers emerged in various places reporting to the authorities of local military councils, which became de facto local powers. Some of the largest and most well-equipped brigades were associated with religious sectarian groups transforming themselves into political parties.¹⁸³ There had been reported cases of sporadic attacks and fights among rival militias, and vigilante revenge killings.¹⁸⁴ Civilians were robbed of their properties and their houses were looted by armed men.¹⁸⁵

¹⁸¹ *ibid.*

¹⁸² P Worsnip, 'UN Council wants to Free more Libyan Assets – Envoy' (2011), <<https://af.reuters.com/article/commoditiesNews/idAFN1E7AT16U20111130>> (accessed 12 August 2020).

¹⁸³ DD *Kirkpatrick*, 'In Libya, Fighting May Outlast the Revolution' *The New York Times*, 2 November 2011, <<http://www.nytimes.com/2011/11/02/world/africa/in-libya-the-fighting-may-outlast-the-revolution.html>> (accessed 10 December 2017).

¹⁸⁴ N Meo, 'Libya: Revolutionaries turn on Each Other as Fears grow for Law and Order' *The Telegraph*, 2011, <<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8860684/Libya-revolutionaries-turn-on-each-other-as-fears-grow-for-law-and-order.html>> (accessed 13 August 2020).

¹⁸⁵ *ibid.*

A January 2013 report from the country's Ministry of Interior revealed that the number of murders has risen from 87 in 2010 to 525 in 2012 – a 503% increase – while thefts during the same period had risen from 143 to 783 – a 448% increase.¹⁸⁶

At the outbreak of civil war, a number of measures were taken against the country by the superpowers and particularly international organisations. For example, approximately US\$150 billion in foreign Libyan assets were frozen by the UN Security Council.¹⁸⁷ As a result of this economic strangulation, the payment of wages, the demand for prescribed medication and the reconstruction of the country put serious pressure on Libya's limited supply of cash, causing prices to rise.¹⁸⁸

Libya: Slavery, Human Trafficking

NATO supported a variety of rebel groups fighting on the ground. These groups were controlled by sectarian groups. They were those whose stronghold is based in Misrata that harboured violently racist views. They were reported to have referred to themselves as 'the brigade for purging slaves, black skin'.¹⁸⁹ Rival groups are fighting for control of power; therefore no known central authority is functioning. Many lives were lost, while many others have fled to neighbouring countries.¹⁹⁰

It was in the state of lawlessness and confusion that brigades of armed volunteers in various locations emerged. They were under the control of the locally based military councils, which act as legitimate governments. It is noted that some of the largest, and most well-equipped brigades were affiliated with religious sectarian groups transforming themselves to political set-ups.¹⁹¹ Rival militias, and vigilante revenge groups began to engage killing sprees in sporadic clashes.¹⁹² Innocent civilians were robbed of their properties, and their houses were looted.¹⁹³ The situation had brought adverse effects not only to the neighbouring countries but also other parts of African

¹⁸⁶ See *Libya Herald*, 9 January 2013.

¹⁸⁷ Worsnip (n 182).

¹⁸⁸ Donati, J., and Shuaib, A., 'Libya central bank looks to IMF amid cash crisis', *Reuters* (2011) <https://www.reuters.com/article/us-libya-cbank-idUSTRE7A22K420111103>, (accessed 12 August 2020).

¹⁸⁹ See 'Media Erase, 'NATO Role in Bringing Slave Markets to Libya', <<https://amityunderground.com/western-media-finally-wake-up-to-libyan-slave-trade-but-completely-whitewash-all-western-responsibility-for-its-emergence-libya-gaddafi-nato-us-uk-intervention-slave-trade-failed-state/>> (accessed 25 May 2018).

¹⁹⁰ *ibid.*

¹⁹¹ *Kirkpatrick* (n 183).

¹⁹² Meo (n 184).

¹⁹³ *ibid.*

generally and West Africa region in particular. The adverse effects take different dimensions, including human trafficking, slavery and forced labour.¹⁹⁴

A US leading human rights organisation has observed that Libya militia were ‘terrorizing the displaced residents of the nearby town of Tawergha’, which is the majority black community and bastion of support for Qaddafi and his regime. In similar vein, Human Rights Watch has reported that: ‘The entire town of 30 000 people is abandoned – some of it ransacked and burned – and Misrata brigade commanders say the residents of Tawergha should never return.’¹⁹⁵ Incidences of ethnic cleansing of the black community of Tawergha have also been reported. The combined effects of these atrocities, it is noted, were attributed to the enslavement of African refugees and migrants.¹⁹⁶

Economic Factors Influencing Migration

For young men and women from sub-Saharan Africa looking for greener pasture in Europe, Libya was a destination. Libya was known as a boat launch to Europe for African migrants coming particularly from Niger, Nigeria, Sudan and Chad. They ended up in forced labour or sex slavery in Libya.¹⁹⁷

It has been reported that since 2015, hundreds of thousands of refugees and migrants have travelled through the borders of Libya, crossing the Mediterranean and heading towards Europe and perhaps to the Middle East. Libya is therefore named as ‘Gateway to Europe’. From these transborder mass movements, the business of human trafficking was boosted and the illegal traffickers are cashing in on the unfortunate breakdown of law and order in Libya as well as the desperation of the migrating victims. These refugees and migrants became chattels because traffickers are selling them like cattle to the highest bidder.

¹⁹⁴ ‘A lot of water has passed under the bridge since Libyan leader Muammar Gaddafi was overthrown in 2011’ (n 180).

¹⁹⁵ B Norton, ‘Media Erase NATO Role in Bringing Slave Markets to Libya’, <<https://amityunderground.com/western-media-finally-wake-up-to-libyan-slave-trade-but-completely-whitewash-all-western-responsibility-for-its-emergence-libya-gaddafi-nato-us-uk-intervention-slave-trade-failed-state/>> (accessed 2 June 2018).

¹⁹⁶ *ibid.*

¹⁹⁷ Bailey, J. T., ‘Senator Bailey Statement on Slave Trade in Libya’, *The Senate State of New York*, (2017), https://www.nysenate.gov/sites/default/files/article/attachment/libya_statement.pdf (accessed 2 June 2018).

*One immigrant victim disclosed that ‘They took people and put them in the street, under a sign that said “for sale”’.*¹⁹⁸ It was reported that men and women are sold for between US\$200 and US\$500 each in the Libyan slavery market.¹⁹⁹ Another migrant victim disclosed that: *‘People were tied up like goats, beaten with broom handles and pipes every blessed day, to get the money.’*²⁰⁰ As soon as they are bought by the slavery merchants, they are held for ransom in mass prisons and detention centres. In some other instances, they are used for either forced labour or sexual exploitation. Sometimes, higher prices are put on them and therefore they are resold and their slave masters demand more and more in ransom.²⁰¹ It was reported that CNN journalists ‘went undercover to a slave auction and exposed the grim world of slave traders, who operate in Libya’s capital, Tripoli, selling people for as little as US\$400’.²⁰²

Another example was the case of Yusuf, a 24-year-old Nigerian, reported to be one of thousands of people who embarked on risky journey to Libya hoping to secure a job to enable them to proceed to Europe for greener pastures. Unfortunately, however, it was too late for Yusuf and his likes to discover that they were deceived into submitting themselves to a ‘violent world of slave markets, private prisons, and brutal forced brothels’.²⁰³ Yusuf was eventually sold to traffickers, tortured and, tragically, forced to watch a friend die.²⁰⁴

Women for Sexual Slavery

Sexual slavery has become a lucrative business in Libya. Female migrants who fall victim to it are considered a more valuable commodity in the slave trade business than their male counterparts. It has been reported that in Sabha the clearing house and brothel used for trafficking migrant women was well known.²⁰⁵ An informant revealed:

There is a three-storey building, where the business takes place. Immediately, the women enter the building, that is it – they can’t leave. Some are forced to work there; some are sold elsewhere. It looks just like a normal house, but the local citizens know what is happening there. The person who buys them can sell them on for two or even

¹⁹⁸ R Ratcliffe, posted by M Onas, ‘African Migrants flee Poverty, only to get sucked into Violent Crime’ *The Guardian*, 2017, <<http://africa-online.com/2017/05/26/african-migrants-flee-poverty-only-to-get-sucked-into-violent-crime/>> (accessed 2 December 2018).

¹⁹⁹ *ibid.*

²⁰⁰ *ibid.*

²⁰¹ *ibid.*

²⁰² MB Khalifa, ‘Slave Trade in Libya: Who Controls the Human Trafficking Market in Tripoli?’ 2017, <<https://sputniknews.com/africa/201711231059364386-who-controls-human-trafficking-in-libya/>>.

²⁰³ Ratcliffe (n 198).

²⁰⁴ *ibid.*

²⁰⁵ *ibid.*

four times as much.²⁰⁶ Prices for women start at 3 000 Libyan dinars, around €2 000 – more than twice as much as traffickers pay for men.²⁰⁷

Libya and the Challenges of Compliance with International Norms

From the above analysis of international laws on the prohibition of slavery, human trafficking and forced labour as enunciated in various international conventions, some questions require a brief examination. It has been observed that the internal law-and-order situation in the Middle East region is tumultuous as Iraq, Libya, Syria and Yemen are in turmoil.²⁰⁸ Africa is the world's poorest and most underdeveloped continent. The political instability, internal disputes, unemployment, absence of legislation and law enforcement against human trafficking have contributed to an upsurge in crime.²⁰⁹

To what extent has Libya, as a member of and signatory to those international instruments and norms (under international law and the Islamic jurisprudence), complied with those norms on slavery, human trafficking and forced labour? In answering this question, it is pertinent first to ask whether Libya in the present situation can be called a country. All the indications show that it is better described as a 'failed state'. Libya has been in a state of civil war, with rival militias attacking and killing each other for control of different parts of the country.²¹⁰ The country has been struggling to end violent conflict and rebuild state institutions. External actors have been complicating Libya's situation by funnelling moral and material support in the form of money and weapons through their agents who have put personal interests above those of the Libyan people.²¹¹ All the efforts of the UN to find a lasting peace have proved abortive and have been overshadowed by competing peace conferences sponsored by various foreign governments.²¹² As the country has turned into a 'failed state', its borders remain porous, particularly in the southern Fezzan, facilitating an increase in trafficking and smuggling illicit materials, including weapons.²¹³

In a state of war and a total breakdown of law and order, the implementation of any rule becomes impossible. Therefore, it is extremely difficult to measure compliance with

²⁰⁶ *ibid*, quoting Fasan Olaside, a 27-year-old Nigerian builder who was himself kidnapped and held for ransom twice inside Libya.

²⁰⁷ *ibid*.

²⁰⁸ AH Satti, 'Human Trafficking in OIC Countries' (2017) II(1)Muslim Perspectives, 36.

²⁰⁹ *ibid*.

²¹⁰ C Stephen, 'War in Libya – *The Guardian* briefing', <<https://www.theguardian.com/world/2014/aug/29/-sp-briefing-war-in-libya>>(accessed 11 August 2020).

²¹¹ United States Institute of Peace, 'The Current Situation in Libya – A USIP Fact Sheet', <<https://www.usip.org/publications/2020/03/current-situation-libya>> (accessed 11 August 2020).

²¹² *ibid*.

²¹³ *ibid*.

any international rule in the present state of Libya. In fact, it is a condition that the ongoing civil war in that country has to be brought to an end before there can be any prospect of enforcing international rules to check the menace of slavery, human trafficking and forced labour in Libya.

Recommendations

For the phenomena of human trafficking, forced labour and modern slavery to be eradicated, or at least to be reduced to the barest minimum, the following steps are recommended:

- The UN and other stakeholders must commission a judicial tribunal to deal with and resolve, once and for all, the issue of the historic genocide cases, the abuse of human rights and the trans-Atlantic slave trade. It is obvious that the modern slavery and human trafficking have their roots in this historic antecedent. Moreover, those cases have remained reference points for indicting certain powerful countries conscious of the roles these countries are currently playing in the international affairs. To ignore this fact seems to mean a refusal to address the issue of modern slavery and human trafficking at its roots.²¹⁴
- The International Police Organisation (INTERPOL) should be empowered to establish a sustainable law-enforcement capacity to arrest, investigate and prosecute members of international mafia groups engaging in human trafficking and migrant smuggling rings in vulnerable communities and countries, particularly in the West African sub-region.
- The international community should put in place legal mechanisms to stop the illegal inter-country movement of money or capital. This will prevent African leaders from syphoning off their countries' resources and patrimonies to other parts of the world for their personal interests. Instead, they would be forced to apply those resources to development agendas and create educational and employment opportunities for youths. African youths are deprived and this has led them to search for greener pastures in other parts of the world. In the process, they fall victims to human trafficking and forced labour in the hands of the international mafia.
- The beneficiaries of these phenomena should be forced to pay for their dirty ventures. Products and services derived from human trafficking, forced labour and

²¹⁴ M Kersten, 'What ICC can do to Improve its Relations with African States' 2016, <<https://justiceinconflict.org/2016/11/01/what-the-icc-can-do-to-improve-its-relationship-with-african-states/>> (accessed 13 February 2017).

slavery should be sanctioned and boycotted. Ferocious campaigns should be launched to achieve this.

- Deliberate efforts should be made to embark on mass awareness campaigns. Government agencies, non-governmental and religious organisations as well as mass media and youths should be mobilised to create awareness among the potential victims of this menace of slavery. Awareness campaigns should be intensified among families and social groups by means of social media as a way of encouraging others to contribute to the fight to end slavery in Libya and beyond.²¹⁵ It has also been suggested that some of the awareness-raising initiatives should include sharing educational videos and books on the subject, and following and sharing the organisation's social media posts.²¹⁶

Conclusion

It can be concluded from the analysis of this study that human trafficking, forced labour and slavery are anti-human and unacceptable. The practices cut across cultures, nationalities and dogmas, assuming different dimensions. Wars and conflicts are historically major sources of these menaces. The educational, economic and social deprivations prevalent in many developing countries of Africa and particularly in the West African sub-region have provided fertile ground for trafficking in human beings for forced labour and slavery in the present time. Local, national and international laws have declared these activities illegal. However, due to weak enforcement mechanisms associated with internationalism, human trafficking and forced labour have continued unabated around the world. The unfortunate political turmoil that followed the demise of Muammar Gaddafi triggered civil war in Libya. This has promoted the menaces of human trafficking and forced labour on the continent of Africa. As a result, the transnational mafia involved in these illegal activities are fully active, while desperate African youths are easy prey to them. All efforts must be made to put a stop to this menace; otherwise, the world will regress and degenerate to the dark ages of barbarism and backwardness of the past.

²¹⁵ Friedmann, S., 'How You can Help Fight The Slave Trade in Libya & Beyond;', Bustle, (2017), <https://www.bustle.com/p/how-to-help-stop-libyas-slave-trade-fight-slavery-around-the-world-5554300> (accessed 13 February 2017).

²¹⁶ *ibid.*

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