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The World's Inaction Perpetuates Eritrean Slavery: an International Legal Community Issue

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I. Introduction

Eritrea forces its people into slavery. Eritreans are subject to the forced compulsory conscription into the state's National Service.¹ Eritrea's conscription system is different than other countries' systems because Eritrea mandates service without alternatives for those unfit to serve, conscription is unpaid, female enlistment is required, and service is indefinite.² Other countries' conscription systems offer alternative services, pay for conscripts, exempt females from enlisting, and have a definite period of enlistment.³ Additionally, Eritrean conscripts are forced into commercial sexual exploitation, mining, and other dangerous work.⁴ Technically, Eritrea prohibits forced labor, but not even the government follows its own rule.⁵ Meanwhile, the international legal community has done little to find justice for Eritrean slaves, meaning the Eritrean government effectively has a pass for their heinous conduct.

Other than courts, the international legal community can act through sanctions. No sanctions have been implemented against Eritrea for slavery, despite the United Nations ("UN") sanctioning other countries like North Korea for slavery.⁶ The United Nations Security Council

¹ Home Office, *Country Policy and Information Note Eritrea: National Service and Illegal Exit*, GOV.UK (Apr. 4, 2023), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1020555/ERI_CPIN_National_service_and_illegal_exit.pdf.

² Cent. Intel. Agency, *Military Service Age and Obligation*, THE WORLD FACTBOOK (Mar. 8, 2019), <https://www.cia.gov/library/publications/resources/the-world-factbook/fields/333.html> [<https://web.archive.org/web/20190308081229/https://www.cia.gov/library/publications/resources/the-world-factbook/fields/333.html>].

³ *Id.*

⁴ Dep't of Lab., *No Advancement – Efforts Made but Complicit in Forced Child Labor*, CHILD LABOR AND FORCED LABOR REPORTS (2021), <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/eritrea#:~:text=In%202021%2C%20Eritrea%20is%20receiving,use%20of%20forced%20child%20labor.>

⁵ *Id.*

⁶ Hum. Rts. Watch, *World Report 2021: North Korea* (2021).

(“UNSC”) sanctioned Eritrea in 2009 for its disruption of Somali peace.⁷ Eritrea funded Somali rebel forces, like Al-Shabab and Al-Qaeda. As a result, the UNSC froze Eritrean assets, imposed travel restrictions, and banned the State from importing or exporting weapons.⁸ Such sanctions were “inevitable” and were in furtherance of justice.⁹ In 2018, sanctions were lifted after Eritrea stopped funding Al-Shabab and Eritrea’s relationship with Ethiopia improved.¹⁰

The international legal community has been failing Eritrean slaves despite it having the ability to “fix” the Eritrean slavery problem. Eritrea is under the jurisdiction of the African Union (“AU”), AU judicial agencies, and the UN. No country has brought a case against Eritrea using ad hoc nor hybrid tribunals, despite both methods being effective.¹¹ Suits against violators can be brought against the Eritrean government, corporations using slave labor, Eritrean military leaders, and funding sources of enslavement practices. Only one case successfully found justice for former Eritrean slaves.¹² This leads to the bearing question: why won’t the international legal community help Eritrean slaves?

This paper will examine the various methods the international legal community has failed to intervene in the Eritrean slavery problem. A brief history of Eritrea and its slavery will be

⁷ Atitya Chhor et al., *U.N. Security Council hits Eritrea with sanctions*, CABLE NEWS NETWORK (Dec. 23, 2009),

<http://www.cnn.com/2009/WORLD/africa/12/23/un.eritrea.sanctions/index.html>.

⁸ *Id.*

⁹ Matina Stevis et al., *Thousands flee isolated Eritrea to escape life of conscription and poverty*, WALL STREET JOURNAL (Feb. 2, 2016), <https://www.wsj.com/articles/eritreans-flee-conscription-and-poverty-adding-to-the-migrant-crisis-in-europe-1445391364>.

¹⁰ Laetita Bader, *They are Making Us into Slaves, Not Educating Us*, HUMAN RIGHTS WATCH (Aug. 8, 2019), <https://www.hrw.org/report/2019/08/09/they-are-making-us-slaves-not-educating-us/how-indefinite-conscription-restricts>.

¹¹ Caitlin E. Carroll, *Hybrid Tribunals are the Most Effective Structure for Adjudicating International Crimes Occuring Within a Domestic State*, SETON HALL UNIVERSITY LAW STUDENT SCHOLARSHIP (2013),

https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1090&context=student_scholarship.

¹² *Nevsun Res. Ltd. v. Araya*, 1 S.C.R. 166 (2020).

discussed. Then, a showing of how the UN's relationship with Eritrea indirectly led to Eritrea's instability. The UN has done so little by calling for the Eritrean government to stop its illegal practices and refusing to refer Eritrea to the International Criminal Court ("ICC"). Third, the weaknesses of the AU will be considered; no AU judiciary can hold Eritrea accountable because the AU lacks legitimacy and does not have adequate enforcement mechanisms. Fourth, universal jurisdiction will be presented and analyzed, proving to be the more effective methods of seeking justice. Two case studies will be brought, one being a case against the European Union and the other against a Canadian mining company. Lastly, recommendations will be considered. The first recommendation is for the AU, and the second recommendation would be used under universal jurisdiction. Overall, this text seeks to explore the methods of holding slavery violators accountable, the effectiveness of such methods, and potential solutions to Eritrea's slavery problem.

II. Eritrea's history that led to instability and slavery.

Eritrea's history shows how the international community inevitably left the country in a state of insecurity. In 1941, Britain seized Eritrea from fascist Italy, but Britain didn't want authority over Eritrea.¹³ Britain left Eritrea's fate to the UN, who put Eritrea under Ethiopian authority.¹⁴

¹³ Martin Plaut, *Eritrea and forced labor: a history in photos*, FREEDOMUNITED (Sept. 7, 2020), <https://www.freedomunited.org/eritrea-and-forced-labor-a-history-in-photos/>.

¹⁴ *Id.*

In 1961, Eritrean rebel groups formed and started a liberation movement; a liberation war with Ethiopia ensued.¹⁵ Eritreans won independence in 1991, which was recognized by the UN and Ethiopia.¹⁶

In 1997, the Eritrean Constitution was ratified but not entered into force.¹⁷ Article 16(3) of the Constitution prohibits slavery, as stated “no person shall be held in slavery or servitude nor shall any person be required to perform forced labor not authorized by law.”¹⁸ Additionally, Article 565 of the Eritrean Transitional Criminal Code prohibits enslavement. The Criminal Code punishes violators with 5-20 years of imprisonment, unless when slavery is allowed by law.¹⁹ The National Service Proclamation of 11/199 prohibits child recruitment into the conscription system.²⁰ Such laws have been ineffective and unenforced by the Eritrean government.²¹

Eritrean President Isaias Afwerki soon emerged as a dictator in which he refused elections, imprisoned critics without trial, and worsened Ethiopian relations.²² “Peace” was eventually established in 2000 between the Eritrean President and Ethiopian Prime Minister.²³

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *The Const. of Eri.*, WIPO (1997), [https://www.wipo.int/wipolex/en/legislation/details/8937#:~:text=Notes%20The%20Constitution%20of%20Eritrea,21\(4\)%20and%2023](https://www.wipo.int/wipolex/en/legislation/details/8937#:~:text=Notes%20The%20Constitution%20of%20Eritrea,21(4)%20and%2023).

¹⁸ The Constitution of Eritrea, May 23, 1997, art. 16 (3) (Eri.).

¹⁹ Dep’t of State, *Country Narratives: Countries A Through F*, TRAFFICKING IN PERSONS REPORT 2010 (2010), <http://www.state.gov/g/tip/rls/tiprpt/2010/142759.htm> [<https://web.archive.org/web/20100617151358/http://www.state.gov/g/tip/rls/tiprpt/2010/142759.htm>].

²⁰ *Id.*

²¹ *Id.*

²² Plaut, *supra* note 14.

²³ *Id.*

The border was finalized; however, troops are currently stationed there.²⁴ As of 2018, relations did not improve much, as the border remains closed and tensions are prevalent.²⁵

In late 2020, Eritreans fought against Ethiopian minority groups in Tigray, Ethiopia and the UN Special Advisor on Genocide described the Eritrean-initiated conflict and massacres as “ethnic violence.”²⁶ Eritrean forces also committed war crimes of sexual violence.²⁷ In 2021, Eritrea informed the UNSC of its involvement in the conflict, which implicated Eritrea for illegally interfering with Ethiopian affairs.²⁸

A. The Eritrean National Service has “slavery-like” conditions.

In 1995, the Eritrean National Service was established, requiring Eritreans aged 18 to 40 years old to “spend 18 months in active national service” with duties lasting up to the age of 50.²⁹ In reality, the National Service is indefinite and commentators describe the Eritrean government as “keeping young Eritreans in perpetual bondage.”³⁰ The Eritrean government justifies indefinite conscription by claiming the National Service needs to be strong enough to withstand potential military threats.³¹ The government does not enforce exemptions for students, mothers, pregnant women, married women, and persons with disabilities.³²

²⁴ *Id.*

²⁵ *Id.*

²⁶ Lila Hassan, *500,000 Refugees, ‘Slavery-like’ Compulsory Service, No National Elections, Border Conflicts & Secret Prisons*, PUBLIC BROADCASTING SERVICE (May 4, 2021), <https://www.pbs.org/wgbh/frontline/article/5-human-rights-crises-in-eritrea/>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Bader, *supra* note 11.

³⁰ GAIM KIBREAB, *THE ERITREAN NATIONAL SERVICE* 55 (James Curry et al. eds., 1st ed. 2017).

³¹ *Id.*

³² Bader, *supra* note 11.

In 2000, the Eritrean government implemented the National Commission for the Demobilization and Re-Integration Programme as to facilitate the demobilization of eventually 200,000 combatants; this was never implemented.³³

Eritreans attempt to evade the National Service because of the conditions they face, which are described as “slavery-like.”³⁴ National Service conscripts are not given breaks or leave from duty.³⁵ They are paid the equivalent of a “few” dollars a month and endure poor living conditions.³⁶ If the government catches an evader, the evader is subject to torture or imprisonment.³⁷ Family members of conscripts are also punished if the conscripts attempt to evade.³⁸ Thousands of family members have been collectively punished due to evasions in Eritrea.³⁹

The EU actively tries to reduce its influx of Eritrean refugees.⁴⁰ As of 2020, about 200,000 were in the Eritrean National Service.⁴¹ In 2020, the Eritrean population was about 3.5 million people, a decreasing number caused by evasions.⁴² As of 2021, over 500,000 refugees fled Eritrea, and the number of refugees is increasing.⁴³

³³ GAIM KIBREAB, *supra* note 33, at 57.

³⁴ *Id.*

³⁵ *Eritrea: Crackdown on Draft Evaders’ Families*, HUMAN RIGHTS WATCH (Feb. 9, 2023, 3:40 PM), <https://www.hrw.org/news/2023/02/09/eritrea-crackdown-draft-evaders-families>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Stevis, *supra* note 10.

⁴¹ Cent. Intel. Agency, *Eritrea*, THE WORLD FACTBOOK (May 2, 2023), <https://www.cia.gov/the-world-factbook/countries/eritrea/#military-and-security>

⁴² *Eritrea*, THE WORLD BANK (2021), <https://data.worldbank.org/country/ER>.

⁴³ Hassan, *supra* note 29.

Today, Eritrean conscripts work in military and non-military capacities.⁴⁴ Non-military positions consist of agriculturalists or teachers.⁴⁵

B. The National Service as legally recognized slavery.

Eritrean conscripts are deemed slaves in international criminal law but not human rights law. International criminal law sources such as the ICC and the Slavery Convention define slavery as the “status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised,” while such ownership being exercised by compulsory uncompensated labor.⁴⁶ This is also the accepted definition in customary international law.⁴⁷ The Slavery Convention of 1926 clarifies that forced labor can only be used for “public purposes” as long as the laborers receive adequate remuneration and the territory ends the forced labor as soon as possible.⁴⁸ The United Nations clarified that conscription is deemed a “public purpose.”⁴⁹ However, human rights legal bodies such as the International Covenant on Civil and Political Rights prohibit slavery and state “no one shall be held in slavery...no one shall be required to perform forced or compulsory labor...[which] shall not include...any service of a military character.”⁵⁰

⁴⁴ See Bader, *supra* note 11.

⁴⁵ *Id.*

⁴⁶ Jean Allain, *The Definition of ‘Slavery’ in General International Law and the Crime of Enslavement within the Rome Statute*, OFFICE OF THE ICC PROSECUTOR (Apr. 26, 2007), https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/069658BB-FDBD-4EDD-8414-543ECB1FA9DC/0/ICCOTP20070426Allain_en.pdf.; Slavery Convention art. 1, ¶ 1, Sept. 25, 1926, 60 L.N.T.S. 254.

⁴⁷ *Rule 94. Slavery and Slave Trade*, INTERNATIONAL HUMANITARIAN LAW DATABASES, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule94#:~:text=instruments.%5B12%5D,Definition%20of%20slavery%20and%20slave%20trade,right%20of%20ownership%20are%20exercised%E2%80%9D> (last visited May 9, 2023).

⁴⁸ Slavery Convention art. 5.

⁴⁹ *Id.*

⁵⁰ International Covenant on Civil and Political Rights art. 8, Dec. 15, 1966, 999 U.N.T.S. 171.

Under international criminal and customary international law, Eritrea exercises ownership of Eritreans by forcing conscripts into indefinite military service.⁵¹ They also exercise control by not allowing the conscripts to work elsewhere, not paying adequately for their work, and forcing them into such labor.⁵² The Slavery Convention applied here would view the Eritrean National Service workers as working for public purposes because they are conscripts. However, the conscripts do not receive adequate pay and the Eritrean government is not demobilizing them, so they are deemed slaves under international criminal law.⁵³ In contrast, under human rights law, Eritrean conscripts are exempt from being considered slaves because they are in service of military character, despite them performing forced labor.⁵⁴ Therefore, Eritrean conscripts are slaves under international criminal law but not human rights law.

It is worth mentioning there are varying perspectives on the differences between conscription and slavery. Conscription is the mandatory enrollment of people into military service.⁵⁵ Scholars believe conscription is a form of modern-day government-initiated slavery and that both conscription and slavery are “involuntary servitude.”⁵⁶ Applying the definitions by the scholars, conscripts are slaves. However, applying the definition accepted by international criminal law, the difference between conscription and slavery would be the lack of adequate remuneration in slavery.

⁵¹ See Bader, *supra* note 11.

⁵² See *id.*

⁵³ See Slavery Convention art. 5.

⁵⁴ See International Covenant on Civil and Political Rights art. 8.

⁵⁵ *Conscription*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/conscription> (last visited May 8, 2023).

⁵⁶ Bryan Caplan, *How Could the Draft Not Be Slavery?*, ECONLIB (May 15, 2011), https://www.econlib.org/archives/2011/05/how_could_the_d.html; Laura T. Murphy, *Survivors of Slavery: Modern-Day Slave Narratives 1, 3, 5* (Columbia University Press ed., 2014); James B. Whisker et al., *Slavery Throughout the Ages 278* (Nova Science ed., 2021).

III. United Nations' Involvement with Eritrea Through a Failed ICC Attempt

The Rome Statute establishes the powers of the ICC.⁵⁷ To be heard by the ICC tribunal, the crime “must have been committed in a state which is party to the ICC” or the “person who has committed offense must be a national of a state party to the ICC Statute.”⁵⁸ Because Eritrea has not ratified the Rome Statute, the ICC does not have jurisdiction over Eritrean matters.⁵⁹

A. Eritrean conscripts are not protected under Rome State Article 7.

One must determine whether Eritrean conscripts can be protected under Article 7 of the Rome Statute. Article 7 of the Rome Statute prohibits crimes against humanity, including enslavement.⁶⁰ Customary international law also prohibits slavery, deeming it a crime against humanity.⁶¹ For a claim to be considered enslavement, there must be a showing (1) the perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty; (2) the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (3) the perpetrator knew the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.⁶²

⁵⁷ *Understanding the International Criminal Court*, INTERNATIONAL CRIMINAL COURT (2020), <https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf>

⁵⁸ Goddena Asmera, *Prosecuting the main perpetrators of international crimes in Eritrea: Possibilities under international law*, JOURNAL FOR JURIDICAL SCIENCE, Sept. 5, 2007, at 76, 100.

⁵⁹ *Id.* at 101.

⁶⁰ Rome Statute art. 7, July 17, 1998, 2187 U.N.T.S. 90.

⁶¹ *Rule 94*, *supra* note 53.

⁶² *Elements of Crimes*, INTERNATIONAL CRIMINAL COURT (Sept. 2002), <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>.

The Prosecutor v. Dominic Ongwen is the only decided ICC case on enslavement and provides some clarification on defining the above elements.⁶³ The ICC found the *Ongwen* defendant guilty of slavery amongst other counts of crimes against humanity and sentenced him to 25 years of imprisonment.⁶⁴ The defendant is currently in ICC custody.⁶⁵ The only other ICC enslavement case is *The Prosecutor v. Joseph Kony and Vincent Otti*, which is pending.⁶⁶

Regarding the first element, a deprivation of liberty includes “exacting forced labor or reducing a person to servile status.”⁶⁷ Deprivation of liberty does not require ill-treatment, but a deprivation of one’s freedom is sufficient.⁶⁸ Compulsory uncompensated labor is a form and a factor of deprivation of liberty.⁶⁹

Here, the perpetrator would be the Eritrean government, exercising power over its people. They are exercising power over the right to ownership by requiring that Eritrean adults serve as conscripts in the National Service.⁷⁰ The deprivation of liberty in this case would be exacting forced labor from Eritreans.⁷¹ Eritrean conscripts are also uncompensated, which is considered in deprivation of liberty.⁷² So, the first element in an enslavement crime against humanity would be satisfied in this matter.

⁶³ *Prosecutor v. Dominic Ongwen*, ICC—02/04-01/15 A A2, Appeal Chambers Decision (Jan. 21, 2022).

⁶⁴ Press Release, *Dominic Ongwen sentenced to 25 years of imprisonment*, INTERNATIONAL CRIMINAL COURT (May 6, 2021), <https://www.icc-cpi.int/news/dominic-ongwen-sentenced-25-years-imprisonment>.

⁶⁵ *Id.*

⁶⁶ *Prosecutor v. Kony et al.*, ICC—02/04-01/05, Case Information Sheet (Apr. 2018).

⁶⁷ *Ongwen*, at ¶ 3.

⁶⁸ *Id.*

⁶⁹ Allain, *supra* note 52.

⁷⁰ See *Elements of Crimes*, *supra* note 69.

⁷¹ See *Ongwen*, ¶ 3.

⁷² See Allain, *supra* note 52.

The second element can be broken into two parts: “directed against the civilian population” and “committed as a part of a widespread and systematic attack.” An attack in a crime against humanity “encompasses any mistreatment of the civilian population” and does not require armed force.⁷³

The ICC protects civilian victims in elements two and three.⁷⁴ The International Labor Organization defines civil conscription as the obligation “of civilians to perform mandatory labor for the government” and clarifies that labor should be free-willing.⁷⁵ However, neither the ICC nor international law explicitly defined “civilian,” yet countries define “civilians” differently. A plurality of countries generally define “civilian” as those who do not directly partake in hostilities.⁷⁶ The issue here is, if a civilian is forced into hostilities against their will, are they still unprotected by the ICC?

Not many countries have addressed this question. The distinction between conscripts and civilians is important because of the protections that civilians face. International humanitarian law protects civilians from dangerous military operations and from attack.⁷⁷ The Geneva Convention Relative to the Protection of Civilian Persons in Time of War, which is international criminal law, outlines the importance of protecting civilians, but it defines civilian as those who take “no part in hostiles” and “perform no work of a military character.”⁷⁸ Israel distinguishes

⁷³ *Prosecutor v. Dario Kordic & Mario Cerkez*, IT-95-14/2-A, Appeal Chambers Judgment, ¶ 666 (Dec. 17, 2004).

⁷⁴ *Crimes against humanity*, BLACK’S LAW DICTIONARY (2d ed. 1995).

⁷⁵ CO29- Forced Labour Convention art. 2 § 2, June 1930, 39 U.N.T.S. 55.

⁷⁶ *Practice relating to No. 6. Civilians’ Loss of Protection from Attack*, INTERNATIONAL HUMANITARIAN DATABASES, <https://ihl-databases.icrc.org/pt/customary-ihl/v2/rule6> (last visited May 9, 2023).

⁷⁷ *Id.*

⁷⁸ Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 15(b), Oct. 21, 1950, 75 U.N.T.S. 287.

innocent civilians from hostile civilians: innocent civilians do not partake in direct hostilities if they are forced to do so by terrorists.⁷⁹ A terrorist engages in “violent, criminal acts committed by individuals and/or groups who are...associated with...nations.”⁸⁰ However, Germany deems the fact that a civilian forced to partake in hostilities is irrelevant.⁸¹

Here, Eritrean conscripts are forced into the National Service, many of them working in non-hostile positions such as agriculturalists and teachers that face poor working conditions and inadequate pay.⁸² Although those engaging in non-hostile positions are more likely to be seen as “civilians,” they are still conscripted in the military and must serve when needed.⁸³ Under the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Eritrean conscripts would likely not be civilians because they took some part in hostilities by virtue of working for the National Service.⁸⁴ However, in Israel, Eritrean conscripts would be innocent civilians because the conscripts are forced to engage in hostilities by the Eritrean government.⁸⁵ The Eritrean government would be seen as a terrorist because they take part in violent acts against Eritrean conscripts and the Eritrean government is associated with Eritrea the nation.⁸⁶ In contrast, the German definition of civilian would deem the Eritrean conscripts as not civilians because their distinction of the two would be irrelevant.⁸⁷ There is no definitive accepted

⁷⁹ *Practice relating to No. 6. Civilians’ Loss of Protection from Attack*, *supra* note 83.

⁸⁰ U.S. Dep’t of Just., *Terrorism*, FEDERAL BUREAU OF INVESTIGATION (2022), <https://www.fbi.gov/investigate/terrorism>.

⁸¹ *Practice relating to No. 6. Civilians’ Loss of Protection from Attack*, *supra* note 83.

⁸² *See Bader*, *supra* note 11.

⁸³ *See Geneva Convention Relative to the Protection of Civilian Persons in Time of War* art. 15(b).

⁸⁴ *See Id.*

⁸⁵ *See Practice relating to No. 6. Civilians’ Loss of Protection from Attack*, *supra* note 83.

⁸⁶ *See Id.*

⁸⁷ *See Id.*

definition of “civilians” accepted by the ICC, but the Geneva definition probably holds the most weight. So, Eritrean conscripts are likely not civilians.

Regarding the second part of the second element, “widespread” means the attack was large-scale, which can be determined by the number of victims.⁸⁸ “Systematic” is the organized nature of the violent acts and the fact that they are not coincidental.⁸⁹ An example of “systematic” would be a pattern of non-accidental crimes in similar conduct.⁹⁰

Here, assuming Eritreans conscripts are not civilians, they would likely not have recourse based on the meaning of “widespread” and “systematic.” Considering that the current conscript population of Eritrea is 200,000 and the total population of Eritrea is 3.5 million, 3.2 million Eritreans would be civilians.⁹¹ An argument could be made that the Eritrean government attacks the civilian population by punishing the families of National Service evaders. This could be a viable argument considering that thousands of Eritrean family members are punished for conscript evaders.⁹² However, the government is not punishing family members by forcing them into enslavement, so this would be a very weak argument. So, putting both parts of the second element together, the civilian population of Eritrea would not be seen as victim to a widespread or systematic attack.

For the third element, the perpetrator must have knowledge of the attack.⁹³ *Mens rea* can be shown by (1) “the intent to commit underlying offense” and “(2) knowledge of broader

⁸⁸ *Crimes Against Humanity*, CENTER FOR JUSTICE AND ACCOUNTABILITY, <https://cja.org/human-rights-issues/crimes-against-humanity/#:~:text=An%20attack%20is%20widespread%20if,directed%20against%20any%20civilian%20population> (last visited May 9, 2023).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ See Cent. Intel. Agency, *supra* note 47; see also *Eritrea*, *supra* note 48.

⁹² See *Eritrea: Crackdown on Draft Evaders’ Families*, *supra* note 40.

⁹³ *Mental Element*, CASE MATRIX NETWORK, <https://www.casematrixnetwork.org/cmnn-knowledge-hub/elements-digest/art-7/common-elements/2/> (last visited May 9, 2023).

context in which that offense occurs.”⁹⁴ Extenuating or aggravating circumstances are relevant whereas discriminatory intent is not necessary.⁹⁵ Grounds for attack can be national, ethnic, political, racial, or religious.⁹⁶ The International Criminal Tribunal for Yugoslavia (“ICTY”) found that if an attack was directed to a civilian population, it can be inferred the perpetrator knew that his actions were part of the pattern of attack.⁹⁷

Here, we will assume the ICC will read Eritrean conscripts as civilians. Using the *mens rea* test, (1) the government had the intent to commit the underlying offense of slavery as slavery is not “accidental” and (2) the Eritrean government knew it was committing an offense because it expressly outlaws slavery.⁹⁸ The ICC Prosecutor could make a compelling argument that the prisoners endure torture and hard labor as a widespread attack by the government under national grounds. Regardless, the third element will likely not be satisfied unless Eritrean conscripts are seen as civilians. Even under the ICTY interpretation, the attack against conscripts would not be the same as an attack on the civilian population.⁹⁹

Upon analyzing the elements of a crime against humanity for enslavement, one can conclude that the Rome Statute views enslavement narrowly. The fact that the ICC likely does not offer protection for conscripts is a weakness of the ICC powers, especially since conscripts are serving unwillingly. This implies the ICC does not view conscripts as worthy of being protected from slavery. Therefore, it would be difficult to make the case to the UNSC that Eritrea should be referred to the ICC in a crime against humanity because of these limitations.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ See Dep’t of State, *supra* note 20.

⁹⁹ See *Mental Element*, *supra* note 100.

B. Eritrean jurisdiction under the Rome Statute is possible, but unlikely.

Article 15 of the Rome Statute is the only avenue for the ICC to hear a case against Eritrea because Eritrea is not a party to the Rome Statute.¹⁰⁰ Article 15 grants ICC jurisdiction when the UNSC refers a case to the ICC tribunal.¹⁰¹

The UNSC previously recognized Eritrean injustices yet has refused to refer Eritrea to the ICC.¹⁰² The UN Commission of Inquiry recognized the Eritrean government is unwilling to prosecute documented crimes on enslavement.¹⁰³ So, in 2016, the Commission recommended the UNSC refer to the ICC. The Commission outlined the human rights abuses and the lack of internal governmental controls within the country (i.e., no parliament, no constitution, indefinite national service, etc.), but the UNSC declined the Commission's recommendation.¹⁰⁴

The United States and China, both permanent members of the UNSC, objected to the Eritrean referral resolution because they did "not agree with the tough language" in the Commission's report and felt the report lacked an adequate level of sophistication.¹⁰⁵ If the UNSC were to reconsider an ICC referral, it is likely not much would change from 2016. The ICC Prosecutor would have difficulty meeting the elements of enslavement because Eritrean conscripts are likely not civilians, so the UNSC would decline a referral. Hence, it is unlikely the ICC will protect Eritrean slaves through Article 15 or Article 7.

¹⁰⁰ Rome Statute art. 15.

¹⁰¹ *See Id.*

¹⁰² *Eritrea: UN Commission has urged referral to the International Criminal Court*, UNITED NATIONS HUMAN RIGHT OFFICE OF THE HIGH COMMISSIONER (Oct. 28, 2016), <https://www.ohchr.org/en/2016/10/eritrea-un-commission-has-urged-referral-international-criminal-court>.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Resolution to Refer Eritrea to UN Security Council Rejected*, TESFA NEWS (July 1, 2016), <https://tesfanews.net/resolution-refer-eritrea-un-security-council-rejected/>.

IV. The African Union's Minimal Involvement with Eritrean Affairs

The AU was created in 2002 to unify African countries and to promote justice, equality, and freedom.¹⁰⁶ The AU consists of 55 member states, including the State of Eritrea.¹⁰⁷ The AU has “authority to intervene in other countries’ domestic affairs in cases of war crimes, unconstitutional changes of government, genocide, and other human-rights violations,” which theoretically vests more authority than other transnational organizations.¹⁰⁸ Additionally, the AU seeks to protect human rights outlined in the African Charter through multiple human rights-related judiciaries.¹⁰⁹

The AU attempted to create a Court of Justice, but instead deferred legal issues to AU agencies like the African Court on Human and Peoples’ Rights (“AfCHPR”) and the African Commission on Human and Peoples’ Rights (“ACHPR”).¹¹⁰ The AfCHPR and ACHPR both operate under the African Charter on Human and People’s Rights.¹¹¹ The AfCHPR furthers the goals of the ACHPR.¹¹²

The ACHPR was created in 1987 to interpret the African Charter on Human and Peoples’ Rights, which promotes human rights and freedom.¹¹³ Fifty-four out of the 55 AU member states

¹⁰⁶ *About the African Union*, AFRICAN UNION, <https://au.int/en/overview> (last visited May 9, 2023).

¹⁰⁷ *Member States*, AFRICAN UNION, https://au.int/en/member_states/countryprofiles2 (last visited May 9, 2023).

¹⁰⁸ Fred M. Shelley, *Governments Around the World: From Democracies to Theocracies* 405 (Fred Shelley ed., 2015).

¹⁰⁹ *About the African Union*, *supra* note 121.

¹¹⁰ *Id.*

¹¹¹ *Basic Information: the African Court in Brief*, AFRICAN COURT ON HUMAN AND PEOPLES’ RIGHTS, <https://www.african-court.org/wpafc/basic-information/#corevalues> (last visited May 9, 2023).

¹¹² *Id.*

¹¹³ *African Charter on Human and Peoples’ Rights*, AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS, <https://achpr.au.int/en/charter/african-charter-human-and-peoples-rights> (last visited May 9, 2023).

ratified the ACHPR, including Eritrea.¹¹⁴ The ACHPR interpretation of slavery differs from international human rights law, which will be discussed.

In contrast, the AfCHPR lacks credibility because it only has jurisdiction over the states that ratified the AfCHPR Protocol, which account for 34 of the 55 AU members.¹¹⁵ Additionally, Eritrea cannot be a defendant under the AfCHPR because Eritrea has not ratified AfCHPR Protocol.¹¹⁶ The AfCHPR further lost credibility when African court leaders granted immunity to other African leaders for war crime prosecution.¹¹⁷

- a. The ACHPR has grounds to hold Eritrea accountable, but it lacks legitimacy to do so.

The ACHPR heard over 200 cases of African countries either ignoring human rights abuses or denying their people due process rights such as (1) detentions without trial in South Sudan, (2) no punishment for a repeated child sex offender and abductor in Ethiopia, (3) torture and unfair punishment of a journalist in Egypt, and (4) cruel and inhuman punishment of a person in Uganda.¹¹⁸ The ACHPR compels member states to comply with its orders to seek justice for human rights victims.¹¹⁹ The ACHPR can order state-violators to cease committing violations, to repair damage to victims, and take adequate human rights measures.¹²⁰

¹¹⁴ *Id.*

¹¹⁵ *Basic Information: the African Court in Brief*, *supra* note 126.

¹¹⁶ *Welcome to the African Court*, AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS, <https://www.african-court.org/wpafc/welcome-to-the-african-court/> (last visited May 9, 2023).

¹¹⁷ *Basic Information: the African Court in Brief*, *supra* note 126, at 407.

¹¹⁸ *Lado James Paul, Ayume Dada & others v. Republic of South Sudan*, Communication No. 736/20, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.] (Dec. 3, 2021); *Equality Now and Ethiopian Women Lawyers Association v. Federal Republic of Ethiopia*, Communication 341/2007, Afr. Comm'n H.P.R. (Nov. 16, 2015); *Ayatulla Alaa Hosny v. Arab Republic of Egypt*, Communication No. 603/16, Afr. Comm'n H.P.R. (June 10, 2019).

¹¹⁹ *Id.*

¹²⁰ Roger-Claude Liwanga, *From Commitment to Compliance: Enforceability of Remedial Orders of African Human Rights Bodies* 41, Brooklyn Int'l L.J. 100, 102 (2015).

AU member states purposefully fail to comply with ACHPR orders.¹²¹ Non-compliance is caused by the lack of sanctions, no judicial enforcement mechanisms in local areas, lack of domestic court participation in enforcement, misuse of sovereignty of judicial issues, and the politicization of the post adjudicative stage.¹²² The ACHPR fails to remedy non-compliance because there are no enforcement mechanisms.¹²³

Article 5 of the ACHPR charter states “every individual shall have the right to the respect of the dignity inherent in a human being...all forms of exploitation and degradation of a man particularly slavery...shall be prohibited.”¹²⁴ There are no express exceptions of slavery in the ACHPR Charter.¹²⁵ The ACHPR heard few cases on slavery, one being *Malawi African Association v. Mauritania*, in which the Commission clarified that unpaid slave work violates the right to human dignity.¹²⁶ The other case was *Rabah v. Mauritania*, in which the plaintiff alleged lack of fair trial in Mauritanian court for slavery allegations.¹²⁷ The Commission dismissed this case after finding the plaintiff’s claims were baseless.¹²⁸

The ACHPR called for the Eritrean government to end its indefinite conscription system.¹²⁹ Consequently, Eritrea denied the ACHPR’s requests for visits and ignored the

¹²¹ *Id.* at 102.

¹²² *Id.* at 103.

¹²³ *Id.* at 102.

¹²⁴ The Afr. Comm’n H.P.R. Charter art. 5.

¹²⁵ *Id.*

¹²⁶ *Malawi Afr. Ass’n v. Mauritania*, Communication No. 54/91, Afr. Comm’n H.P.R. (May 11, 2000).

¹²⁷ *Rabah v. Mauritania*, Communication No. 197/97, Afr. Comm’n H.P.R. (June 4, 2004).

¹²⁸ *Id.*

¹²⁹ Amnesty Int’l, *A catalogue of human rights violations continue in Eritrea despite commitments made during UN human rights review*, RELIEFWEB (June 25, 2014), <https://reliefweb.int/report/eritrea/catalogue-human-rights-violations-continue-eritrea-despite-commitments-made-during-un>.

Commission's recommendations.¹³⁰ Eritrea's refusal to follow its AU obligations shows that no accountability measures are being taken against Eritrea.¹³¹ Hence, Eritrea's commitment to the ACHPR has little value as the ACHPR does not have proper disciplinary measures for non-compliance.

- b. Analysis: the weaknesses of the ACHPR are so pervasive as to render it ineffective, despite having substantive ability to hold Eritrea accountable.

Here, international human rights law differs with the AU's interpretation of slavery, in that the African Charter on Human and Peoples' Rights does not have exceptions to the prohibition of slavery.¹³² Meanwhile in international human rights law, those who engage in military service are exempt from protections against slavery.¹³³ Because of the relaxed language in the ACHPR Charter and lack of judicial precedent in ACHPR cases, Eritrea would likely be seen as a violator of Article 5 of the ACHPR Charter.¹³⁴ In *Malawi African Association*, the Commission's clarification furthers the notion that Eritrea engaged in slavery of its people, as it engaged in extremely low-paid forced labor.¹³⁵

Even though Eritrea likely engages in ACHPR-defined slavery, the ACHPR is so limited in its effectiveness that it cannot adequately support Eritrean slaves.¹³⁶ The AU suffers limitations in regard to legitimacy, jurisdiction, and enforcement of provisions; Eritrean slaves cannot rely on the AU to protect them because Eritrea can just ignore ACHPR decisions without retribution. So far, it seems the goals of the AU are more performative than practical in sanctioning or punishing the Eritrean government.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² See The Afr. Comm'n H.P.R. Charter art. 5.

¹³³ See International Covenant on Civil and Political Rights art. 8.

¹³⁴ See The Afr. Comm'n H.P.R. Charter art. 5.

¹³⁵ See *Malawi Afr. Ass'n*, Comm'n No. 54/91 (May 10, 2000).

¹³⁶ See The Afr. Comm'n H.P.R. Rights Charter art. 5.

The ACHPR's calling on the Eritrean government to end definitive conscription is no different than naming and shaming: an intergovernmental organization, the AU, shames a country, Eritrea, for their undesirable actions and calls on them to change.¹³⁷ Naming and shaming in this case, has been ineffective for Eritrea to stop its practice of slavery. This seems performative and counterintuitive, as publishing reports is helpful for the world to understand the atrocities regarding Eritrean slavery but are useless if no one is using the information in the reports to actually hold perpetrators accountable. Naming and shaming may cause other countries to view their relations with Eritrea, but research is lacking.

V. Universal Jurisdiction

Universal jurisdiction allows parties to sue under domestic courts for an international crime.¹³⁸ National courts can prosecute persons who commit crimes against humanity, torture, and other atrocities.¹³⁹ There is no statute of limitations, victims do not have to be residents of where the case is held, and the "crimes could have been committed anywhere."¹⁴⁰ Universal jurisdiction is employed when domestic courts elsewhere have an interest in the foreign issue because the foreign crimes are so pervasive.¹⁴¹ The following cases do not explicitly state that they employ universal jurisdiction, but an argument can be made that the plaintiffs attempted to utilize universal jurisdiction.

- a. An attempted case against the European Union.

¹³⁷ See Amnesty Int'l, *supra* note 144.

¹³⁸ *What is Universal Jurisdiction?*, THE CENTER FOR JUSTICE & ACCOUNTABILITY, <https://cja.org/what-we-do/litigation/legal-strategy/universal-jurisdiction/> (last visited May 9, 2023).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

Human Rights for Eritreans, a Netherlands-based group, sued the EU in Amsterdam district court because the EU financed forced labor in Eritrea.¹⁴² Forced labor is a violation of customary international law.¹⁴³ The project regarded construction of a road that would connect Eritrea and Ethiopia's borders, with the intention to promote peace between the regions.¹⁴⁴ However, the project workers were slaves of the National Service.¹⁴⁵ The EU defended itself by arguing they oversaw the work and they employed heavy equipment to make the conscripts' work easier.¹⁴⁶ In reality, the European Parliament had little information into how the money was used, so the EU blamed Eritrea for not being more transparent.¹⁴⁷ The case does not explicitly state universal jurisdiction was employed.¹⁴⁸

EU funded the road-building project with €95 million.¹⁴⁹ The EU wanted to create jobs and curb African migration to Europe.¹⁵⁰ This was declared as “emergency” funding, so it was not subject to strict EU oversight.¹⁵¹ The EU had an overall Eritrea budget of €200 million.¹⁵²

Investigations into Eritrea are difficult for foreigners. UN ambassadors are heavily escorted within Eritrea, yet UN reporters are not allowed into the country.¹⁵³ the Eritrean

¹⁴² *Eritrean organization summons the EU due to use of forced labor*, FOUNDATION HUMAN RIGHTS FOR ERITREANS (May 13, 2020), https://kvdl.com/uploads/Case-Summary_Eritrea-Road-building_FIN_13May2020.pdf.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Martina Stevis-Gridneff, *Eritreans Sue E.U. Over Use of Forced Labor Back Home*, THE NEW YORK TIMES (May 13, 2020), <https://www.nytimes.com/2020/05/13/world/europe/eritrea-eu-lawsuit-forced-labor.html>.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

government engages in independent monitoring of the foreigners on Eritrean soil; slight foreigner non-compliance to Eritrean rules can lead to prohibition into the country.¹⁵⁴ Although outside investigation is difficult, the EU Commission was aware that forced labor would be used for the project.¹⁵⁵

The Eritrean fund established by the EU Emergency Trust Fund for Africa is technically separate from the EU budget, which causes issues in jurisdiction.¹⁵⁶ Plaintiff Human Rights for Eritrea, an Amsterdam-based organization, sued the EU under United Kingdom Courts (because that is where the trust fund is held) and argued they sued under Dutch National Courts as well.¹⁵⁷ The plaintiffs sought jurisdiction under the Dutch National Court because of the European Union's base in the Hague, Netherlands.¹⁵⁸ The EU defended there was no jurisdiction in the U.K. court because the EU budget was separate from the EU Africa trust fund.¹⁵⁹ Plaintiffs countered, arguing if European Courts were inadequate, then there would be no discernable remedy for actions against the EU, therefore checks and balances could not be achieved.¹⁶⁰

A few months after the lawsuit commenced, the EU announced it would cease funding the project and instead diverted funds to other projects in Eritrea.¹⁶¹ As a result, the plaintiff

¹⁵⁴ Dion De Vries, *Fundamental questions of accountability: EU sued for forced labor in Eritrea*, EUROPE EXTERNAL PROGRAMME WITH AFRICA (May 15, 2020), <https://www.eepa.be/?p=3840>.

¹⁵⁵ Martina Stevis-Gridneff, *How Forced Labor in Eritrea is Linked to E.U.-Funded Projects*, THE NEW YORK TIMES (Jan. 8, 2020), <https://www.nytimes.com/2020/01/08/world/europe/conscription-eritrea-eu.html?action=click&module=RelatedLinks&pgtype=Article>.

¹⁵⁶ Dion De Vries, *European Union sued over forced labor in Eritrea in two courts*, EUROPE EXTERNAL PROGRAMME WITH AFRICA (May 15, 2020), [eepa.be/?p=3844](https://www.eepa.be/?p=3844).

¹⁵⁷ *Id.*

¹⁵⁸ De Vries, *supra* note 184.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

withdrew the case.¹⁶² The EU is still funding Eritrea's National Service through means other than building roads.¹⁶³

b. A Canadian lawsuit was the only mechanism for Eritrean slaves to receive justice. Canadian mining company, Nevsun Resources, breached customary international law by engaging in the forced labor of Eritrean conscripts in an Eritrean mine.¹⁶⁴ Eritrean refugees who worked in the mine sued Nevsun, seeking damages for "forced labour, slavery, cruel, inhuman or degrading treatment, and crimes against humanity."¹⁶⁵ Nevsun moved to strike the case on the basis that the Canadian government cannot rule on foreign government actions.¹⁶⁶ The court dismissed Nevsun's motion.¹⁶⁷ Canadian domestic law adopts customary international law, so Canadian courts would have jurisdiction to hear cases of Canadian company breaches of international law.¹⁶⁸ The case does not explicitly state that universal jurisdiction was employed.¹⁶⁹

Nevsun owned 60% of a mine in Eritrea called Bisha mineral mine.¹⁷⁰ A 2013 Human Rights Watch report found Nevsun exploited government-assigned workers, by subjecting them to inadequate pay, unsafe housing, and poor conditions.¹⁷¹ Such conditions include being beat by

¹⁶² *Id.*

¹⁶³ *Eritrea forced labor lawsuit withdrawn as E.U. promises no more roads*, FREEDOMUNITED (Sept. 24, 2020), <https://www.freedomunited.org/news/eritrea-forced-labor-lawsuit-withdrawn-as-eu-promises-no-more-roads/>.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Nevsun Res. Ltd. v. Araya*, 1 SCR 166 (2020).

¹⁷⁰ Laetita Bader, *Canadian Firm Can be Sued for Alleged Eritrea Abuses*, HUMAN RIGHTS WATCH (Mar. 5, 2020 10:29 AM), <https://www.hrw.org/news/2020/03/05/canadian-firm-can-be-sued-alleged-eritrea-abuses>.

¹⁷¹ *Id.*

sticks, baking in the sun, working twelve hour days, and being tortured for non-compliance.¹⁷²

Workers' lives were threatened if they disobeyed orders and complained to Nevsun representatives.¹⁷³ When Nevsun built the Bisha mine in 2008, they were aware of worker conditions and they refused to use preventative measures.¹⁷⁴

The case was settled privately and the details remain confidential.¹⁷⁵ However, its affects in Canada are long-lasting.¹⁷⁶ Because of *Nevsun Resources Ltd. v. Araya*, the Canadian Supreme Court (the highest court in Canada) ruled customary international law is incorporated into Canadian domestic law, giving Canada jurisdiction for violations of customary international law that take place outside its borders.¹⁷⁷ This applies to states and corporations that violate international customary law.¹⁷⁸

- c. While universal jurisdiction is not perfect, it is the most successful method to achieve justice for Eritrean slaves.

Universal jurisdiction has proven to be the most effective in supporting Eritrean slaves, however there is more to have been done. So far, only three former Eritrean slaves have achieved justice, as seen in *Nevsun Resources*.

- i. Universal jurisdiction is not perfect: the EU case.

Although the EU retracted its funding of the road-building projects, there is more the EU could have done to protect slaves. The EU diverted funding to elsewhere in Eritrea but offers no

¹⁷² *Canada mining firm accused of slavery abroad can be sued at home, supreme court rules*, THE GUARDIAN (Feb. 28, 2020), <https://www.theguardian.com/world/2020/feb/28/canada-nevsun-eritrea-lawsuit-human-rights-slavery>.

¹⁷³ *Id.*

¹⁷⁴ Bader, *supra* note 200.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

additional oversight, being prone to corruption.¹⁷⁹ The solution is to compel specific performance of the EU to more oversight on such projects, rather than leaving Eritrea dry of potential development and ending such projects.

Eritreans deserve development, not the government. The EU's diverted funds that were meant for the road-building project also need oversight, but information lacks as to the use and manner the funds were spent. EU oversight of Eritrean projects would be difficult because the Eritrean government is not cooperating with foreign investigators. As stated earlier, there are numerous difficulties in conducting investigations in Eritrea, but offering to fund projects conditional on foreign oversight is imperative to Eritrea's development. This is elaborated in the "recommendations" section of this text.

Because this case was withdrawn, this case has no legal effect on international criminal law.¹⁸⁰ Additionally, it is difficult to determine whether universal jurisdiction was employed because this case went undecided.¹⁸¹ Regardless, because the plaintiff is a human rights defender trying to sue the EU in Dutch/U.K. domestic courts for violations in Eritrea, this could be an attempted universal jurisdiction case.¹⁸²

- ii. Universal jurisdiction is the most successful method in achieving justice for Eritrean slaves: the Canadian case.

Eritrea is under no obligation to end its practices, as the Canadian decision did not bind the Eritrean government to any legal obligation. Additionally, this case likely does not affect how Eritrea will conduct business with foreign entities. The only drawback Eritrea could face from this decision is they lose potential business from Canadian organizations.

¹⁷⁹ See De Vries, *supra* note 184.

¹⁸⁰ See *Id.*

¹⁸¹ See *Id.*

¹⁸² See *What is Universal Jurisdiction?*, *supra* note 168.

The Plaintiff likely argued universal jurisdiction in this matter.¹⁸³ Although case law does not clarify, the three Eritrean refugees likely employed universal jurisdiction against *Nevsun*, as they brought an international crime to the Canadian domestic criminal court. This was possible because Canadian domestic law automatically incorporated international law into itself, so Canada had specific legal grounds for such a suit and can hold perpetrators accountable for crimes that take place outside of Canadian borders.¹⁸⁴ This case had tremendous effect in Canada, establishing Canadian courts can hear cases outside of state doctrine. *Nevsun* proves countries can effectively incorporate international law into their state doctrine and enforce international criminal within their borders. Therefore, because of the establishing precedent of *Nevsun*, Canada has likely incorporated universal jurisdiction for customary international law.

VI. Recommendations

This paper outlined methods and their effectiveness of holding violators of slavery accountable under the law. Considering such methods, the following passage will cover potential recommendations and solutions with the goal to obtain justice for Eritrean conscripts. The following recommendations will consist of (1) the AU building its legitimacy, and (2) conditional programs that compel Eritrean compliance with outsiders' investigative methods.

Before getting into recommendations, readers must understand that not all methods are worth analyzing. For example, it is not worth getting into potential recommendations for the ICC because the ICC heard few cases on slavery and thus has not established much precedent on the matter. Additionally, it is not worth getting into recommendations for the UNSC as little

¹⁸³ *See Id.*

¹⁸⁴ *See Id.*; *see also* Bader, *supra* note 200.

information is given to why the UNSC rejected the ICC referral resolution. This text only explores recommendations that are relatively achievable by the international legal community. Exploring recommendations for the AU would be achievable because they would be in the AU's interest. Similarly, recommendations for justice seekers using universal jurisdiction are attainable because they benefit both sides of the suit.

First, the AfCHPR and ACHPR need to build its legitimacy. This proposal would require the AfCHPR to stop granting immunity to African leaders from prosecution. The proposal also requires the AfCHPR to merge with the ACHPR because the AfCHPR is limited in the member states it has authority over and because the AfCHPR's goal is to further the policies of the ACHPR. The ACHPR could also compel states to follow its orders by issuing enforcement mechanisms for non-compliance. A proposal under the AU would be achievable because the ACHPR allows for a wide range of individuals/groups to file suit in its jurisdiction and because Eritrea violates AU human rights law. Also, the ACHPR allows for individuals, non-governmental organizations, and African intergovernmental organizations to sue violators.¹⁸⁵

However, this proposal is very ambitious. It is much easier said than done to facilitate the merger of two intergovernmental organizations and to maintain the support from African leaders when ceasing to grant immunity to them. Additionally, states could pull out of their ratification of the AU Charter for Human and Peoples' Rights once they know will be subject to enforcement mechanisms for non-compliance.

Second, conditional programs for projects, like the EU roadbuilding project, could have been utilized for the better interests of the EU and the Eritrean laborers. The EU pulling out of

¹⁸⁵ *How to File a Case*, AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS, <https://www.african-court.org/wpafc/how-to-file-a-case/> (last visited May 9, 2023).

funding for the road building project ended up hurting Eritreans because (1) the EU diverted the money elsewhere in Eritrea with no oversight, (2) the purpose of the road building project was to facilitate peace between Eritrea and Ethiopia but now the EU diversion of funds likely elongated the process to build the road, (3) the EU pulling out of the project likely affected the Eritrean's access to construction equipment, meaning Eritreans would have to resort to hard labor without proper equipment for projects, and (4) the EU was not held accountable for their prior acts under the lawsuit because they pulled out of the project. These issues could have been avoided had the EU employed a conditional funding program.

The program is as follows: the EU continues funding Eritrean projects conditional that the EU has access to adequate oversight in such projects. Because the EU is funding Eritrea with approximately €200 million and because Eritrea is a small country that relies on imports from EU countries such as Italy and Germany, Eritrea would not be quick to turn down such a large amount of funding.¹⁸⁶ Such proposal benefits Eritrea in that they can continue receiving funding for projects that promote peace with Ethiopia and they can continue to use heavy construction equipment provided by the EU. This proposal would also benefit the justice seekers in that they would gain more investigative access to Eritrea and the justice seekers can hold the EU accountable for previous slavery violations. Lastly, this proposal would benefit Eritrean conscripts in that they can use construction equipment and outsiders could use the information they obtain from their investigations to seek further justice for Eritreans. This program would

¹⁸⁶ *Germany and Eritrea*, THE OBSERVATORY OF ECONOMIC COMPLEXITY, <https://oec.world/en/profile/bilateral-country/deu/partner/eri>; *Italy and Eritrea* (last visited May 9, 2023); *Italy and Eritrea*, THE OBSERVATORY OF ECONOMIC COMPLEXITY, <https://oec.world/en/profile/bilateral-country/ita/partner/eri#:~:text=The%20main%20products%20that%20Italy,to%20%2411.5M%20in%202021> (last visited May 9, 2023).

also be achievable because it relies on universal jurisdiction, which has been the most effective method in seeking justice for Eritrean slaves.

However, there are weaknesses to such proposal. Such proposal does not account for the plaintiff withdrawing their claim against the EU because the EU pulled out of the project. The proposal also assumes that Eritrea will adhere to the conditional program; depending on the ego of the administration, Eritrea may not adhere to such program. If Eritrea does not adhere to the program, then the results would be no different than the EU pulling out of the project.

VII. Conclusion

While most of the world ended widespread slavery many years ago, Eritrea is falling behind despite its young country status. The instability of Eritrea requires an international legal effort to stop practices of enslavement because Eritrean slaves cannot hold the country accountable themselves. Ending slavery in Eritrea is a step towards the eradication of slavery around the world, especially for newly vulnerable countries. The victims of such practices deserve to be free, and the world does not want to condone slavery by failing to act on the problem.

While there are several methods to hold the Eritrean government accountable and finding Eritrean slaves justice, only few are effective. Procedural and substantive hurdles prevent the UNSC, ICC, and AU from holding Eritrea accountable. However, the flexibility of universal jurisdiction proves to be an effective method of achieving justice for Eritreans as shown in the *Nevsun* case. Even if proven methods under universal jurisdiction have had small effect on Eritrean slaves, any justice is welcome for the victims.