

March 11, 2010

# International Trafficking in Women: Application of the Council of Europe Convention on Action Against Trafficking in Human Beings in Post-Conflict States and Creation of a European Court to Adjudicate Cases of Trafficking

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**International Trafficking in Women: Application of the Council of Europe Convention on  
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*International Law Review*

## **Abstract**

This Comment will argue that although the European Convention on Action Against Trafficking in Human Beings is a useful framework in post-conflict states and despite necessary modifications of the European Convention to achieve greater success in enforcement, prosecution, and victim participation, this Convention provides important implications for other post-conflict regions and should be applied in Sierra Leone. Although post-conflict states such as Albania and Bosnia and Herzegovina have increased prosecution of traffickers, the trafficking in women for sexual exploitation still exists to a high degree. Stronger enforcement mechanisms should be in place, including proper protection and rehabilitation of the victim to come forth as a witness. The Convention also should be amended to implement a regional internationalized court to adjudicate cases relating to trafficking in persons.

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## I. Introduction

Trafficking in persons is a way to enslave human beings by exploiting them, such as for sexual or labor purposes.<sup>1</sup> Despite fifteen years since the end of conflict in post-Soviet and post-Yugoslav states, trafficking in women is still rampant, and this issue has only recently been addressed by international conventions and domestic criminal codes.<sup>2</sup> The Council of Europe has reported over the last five years a significant presence of trafficking in persons, which continues to endanger the stability of the country and lives of women.<sup>3</sup> It is important to develop a legal framework for the enforcement of human rights in post-conflict states by investigating trafficking in women and by prosecuting the offenders.<sup>4</sup> Despite the increasing number of victims across the world and potential legal frameworks to combat this problem, international treaties and domestic legislation historically have failed to provide effective mechanisms to prevent trafficking in women and punish the traffickers.<sup>5</sup>

Since the recognition of this growing trend in trafficking in women in post-conflict states, governments have attempted to address trafficking concerns.<sup>6</sup> These concerns include law enforcement complicity, corruption of officials, and deficient political support in domestic

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<sup>1</sup> See U.N. Office of Drugs and Crime, GLOBAL REPORT ON TRAFFICKING IN PERSONS, 6, (Feb. 2009) [hereinafter Global Report], available at [http://www.unodc.org/documents/Global\\_Report\\_on\\_TIP.pdf](http://www.unodc.org/documents/Global_Report_on_TIP.pdf) (analyzing the judiciary as a mechanism to adjudicate slavery cases, such as trafficking in persons).

<sup>2</sup> See ALEXIS ARONOWITZ, HUMAN TRAFFICKING, HUMAN MISERY: THE GLOBAL TRADE IN HUMAN BEINGS 43 (2009) (explaining that trafficking in persons has become a growing concern in post-conflict states but has only recently been addressed).

<sup>3</sup> See ROBERTA ARNOLD, LAW ENFORCEMENT WITHIN THE FRAMEWORK OF PEACE SUPPORT OPERATIONS 82, 329 (2008) (describing how international peacekeepers in the Balkans after the dissolution of former Yugoslavia and its conflict created the demand for trafficking in women for sexual exploitation in Bosnia and Herzegovina).

<sup>4</sup> See *id.* at 314 (discussing the investigation of human rights violations in post-conflict states by international peacekeepers and arguing that impunity for these officials resulted in repatriation, not conviction).

<sup>5</sup> See U.N. Comm'n on the Status of Women, 50th Sess., *Trafficking in Human Beings – CEE and SE Europe*, 2, (Feb. 27-Mar. 10, 2006) [hereinafter U.N. Comm'n] (highlighting the definition of trafficking and measures taken to combat trafficking in women, such as television commercials and educational programs, to create awareness of the ever-growing problem of sexual and labor exploitation in eastern Europe).

<sup>6</sup> See Stacey Matthews, *International Trafficking in Children: Will New U.S. Legislation Provide an Ending to the Story*, 27 HOUS. J. INT'L. L. 649, 662 (2005) (describing instances of police complicity with trafficking in women by refusing to identify victims or paying for sexual services).

legislation and implementation of international instruments.<sup>7</sup> The process of trafficking women begins with the initial act of trafficking a person, then the subsequent enslavement, often sexual exploitation in Central and Eastern Europe, and the protection and rehabilitation of the victim herself.<sup>8</sup> The Council of Europe drafted the Convention on Action Against Trafficking in Human Beings (European Convention) to address a number of these issues, especially those faced by post-conflict states.<sup>9</sup> The European Convention establishes mechanisms to fight trafficking at each stage of the process.<sup>10</sup>

This Comment argues that this Convention is a useful framework in post-conflict states, and although modifications of the European Convention are necessary for greater success in enforcement, prosecution, and victim participation, this Convention provides important implications for other post-conflict regions.<sup>11</sup> It begins with a study of international instruments and programs prior to the Convention on Action Against Trafficking in Human Beings. Then, it addresses the relevant provisions in the European Convention and examines the background of post-conflict situations in Albania, Bosnia and Herzegovina, and Sierra Leone. Next, this

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<sup>7</sup> See *id.* at 662 (examining the lack of political will to combat trafficking, which went unnoticed); see also Anna Gekht, *Shared But Differentiated Responsibility: Integration of International Obligations in Fight Against Trafficking in Human Beings*, 37 DENV. J. INT'L L. & POL'Y 29, 29 (2008) (explaining the close nexus between lack of effective implementation of anti-trafficking measures by governments, which leads to an increase in the number of trafficked victims).

<sup>8</sup> See Gekht, *supra* note 7, at 29 (explicating the three phases of trafficking include complicity and assistance from the source state, through the transit country, to the destination).

<sup>9</sup> See Eur. Parl. Ass., *Campaign Against Trafficking in Women*, ¶ 8, Doc. No. 1545 (2002) [hereinafter Campaign], available at <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta02/erec1545.htm> (concerning the sharp increase in trafficking in women in post-conflict regions, especially in the Balkan states, due to a lack of rule of law and instability).

<sup>10</sup> See ARONOWITZ, *supra* note 2, at 160 (explaining that the European Convention is a binding treaty that directs states to implement mechanisms to combat trafficking through domestic legislation and enforcement with international assistance).

<sup>11</sup> See, e.g., Economic Community of West African States Declaration A/DC12/12/01 on the Fight Against Trafficking in Persons, 25th Ordinary Sess. of Authority of Heads of State and Government (Dec. 20-21, 2001) [hereinafter ECOWAS Declaration], available at [http://www.issafrica.org/AF/RegOrg/unity\\_to\\_union/pdfs/ecowas/6Dechutraf.pdf](http://www.issafrica.org/AF/RegOrg/unity_to_union/pdfs/ecowas/6Dechutraf.pdf) (recognizing the growing problem of trafficking women for sexual purposes across African states without effectively requiring the implementation of enforcement programs).

Comment analyzes the issues surrounding enforcement of the European Convention in these areas and implementation mechanisms carried out by these states. This Comment then predicts the implications of this Convention in other post-conflict states, such as Sierra Leone, and argues that an effective regional court is more appropriate to adjudicate trafficking cases. Finally, this Comment makes recommendations for the Convention and to other post-conflict regions.

## II. Background

The modern-day trafficking and subsequent enslavement of women flourished within the last thirty years.<sup>12</sup> As a response to the increase of this criminal activity, the international community, especially the United Nations (U.N.), has promulgated a series of programs and conventions in an attempt to criminalize and effectively combat trafficking.<sup>13</sup> These efforts, however, have not targeted a main source of organized crime activity, namely in post-conflict states.<sup>14</sup> These states suffer from weak political power and judicial functions, leading to ineffective enforcement of international and domestic criminal law.<sup>15</sup> The Council of Europe

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<sup>12</sup> See Karen E. Bravo, *Free Labor! A Labor Liberalization Solution to Modern Trafficking in Humans*, 18 TRANSNAT'L L. & CONTEMP. PROBS. 545, 547 (2009) (arguing that millions of people are trafficked each year due to globalization of trade and internationalization of economies).

<sup>13</sup> See, e.g., U.N. Convention Against Transnational Organized Crime, G.A. Res. 25, Annex I, at 44, U.N. GAOR, 55th Sess., Supp. No. 49, U.N. Doc A/45/49 (Vol.1) (2001) [hereinafter U.N. Transnational Crime Convention] (criminalizing organized crime activity by requiring amendments to domestic criminal codes to combat organized crimes and by emphasizing the importance of international support); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention Against Transnational Organized Crime, G.A. Res. 55/25, at 60, U.N. GAOR, 55th Sess., Annex 2, Supp. No. 49, U.N. Doc. A/45/49 (2001) [hereinafter U.N. Trafficking Protocol] (explicating mechanisms by which states can combat trafficking, such as providing training programs to law enforcement officials to recognize traffickers and assist victims).

<sup>14</sup> Interview with Janie Chuang, Professor, American University Washington College of Law (Aug. 31, 2009) (discussing the importance of the European Convention as the only relevant Convention that considers the weakened rule of law in post-conflict states).

<sup>15</sup> See Julie Marie Lopiccolo, *Where Are the Victims? The New Trafficking Victims Protection Act's Triumphs and Failures in Identifying and Protecting Victims of Human Trafficking*, 30 WHITTIER L. REV. 851, 863 (2009) (arguing that effective anti-trafficking legislation considers that in the weakened rule of law in post-conflict states leads to the proliferation of trafficking in women, and these women are not illegal immigrants, but rather victims).

Convention on Action Against Trafficking in Human Beings (European Convention) is the first to deal with a number of issues, including major problems faced by post-conflict states.<sup>16</sup>

Two of these states, Bosnia and Herzegovina and Albania, have ratified the Convention.<sup>17</sup> Although Bosnia and Herzegovina is a post-conflict Balkan state, while Albania is a post-Communist state, both have recently experienced violence in a region where since then, trafficking in women has flourished.<sup>18</sup> Below, this Comment discusses the implementation thus far of anti-trafficking measures since the ratification in 2008 and will analyze the success or failure of this implementation as such.

A. United Nations treaties and programs lacked effective enforcement mechanisms to combat trafficking in women in post-conflict states before the European Convention.

Trafficking in women is a growing problem in European post-conflict states because of economic hardship and political instability.<sup>19</sup> These problems lead to the development of organized crime networks that traffic women for sexual and labor exploitation.<sup>20</sup> These victims are subject to modern day enslavement, forced to remain with their owner until they escape or

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<sup>16</sup> Interview with Janie Chuang, *supra* note 14 (arguing that the European Convention is the most comprehensive instrument combating trafficking because it promotes the rule of law in post-conflict states and targets the criminals while protecting the victim).

<sup>17</sup> Council of Europe, Chart of Signature and Ratifications for Convention Against Trafficking in Human Beings, available at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=1&DF=11/20/2008&CL=ENG> (including Bosnia and Herzegovina and Albania as states that ratified the Convention).

<sup>18</sup> See Jasna Vujin, *Human Trafficking in the Balkans: An Inside Report*, 4 INTERCULTURAL HUM. RTS. L. REV. 267, 268 (2009) (arguing that most of the 120,000 women and children trafficked into the European Union come from and travel through the Balkan states because these states lack rule of law while geographically neighbor wealthy western countries); see also Julie Mertus, *Human Rights of Women in Central and Eastern Europe*, 6 AM. U. J. GENDER & L. 369, 399 (1998) (discussing how large numbers of Albania women are trafficked by offenders conning victims into sexual slavery).

<sup>19</sup> See HUMAN RIGHTS WATCH, HOPES BETRAYED: TRAFFICKING OF WOMEN AND GIRLS TO POST-CONFLICT BOSNIA AND HERZEGOVINA FOR FORCED PROSTITUTION (2002), available at <http://www.unhcr.org/refworld/docid/3e31416f0.html> (describing the link between the lack of rule of law and political institutions to enforce anti-trafficking laws, especially in Bosnia and Herzegovina in the 1990s and 2000s).

<sup>20</sup> See *id.* (examining the history of trafficking women in Europe, particularly in post-conflict states such as Bosnia and Herzegovina that faced great hardship).

die.<sup>21</sup> In post-conflict states, especially in Central and Eastern Europe, most trafficked victims are women who suffer from sexual exploitation.<sup>22</sup>

International instruments in general, but specifically the Council of Europe's Convention on Action Against Trafficking in Human Beings, are important to combat trafficking by either urging or requiring State Parties to implement effective anti-trafficking measures.<sup>23</sup> These measures may include legislation criminalizing the practice, providing medical and psychological assistance at victim protection facilities, and creating law enforcement programs to identify victims and remove complicity.<sup>24</sup>

As a response to the post-conflict hardships regarding the lack of political and legal institutions, the U.N. has employed training programs since 2005 to educate international peacekeeping officers to promote the rule of law in post-conflict countries.<sup>25</sup> By creating awareness of trafficking in women for exploitation and fighting organized crime, the rule of law

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<sup>21</sup> See, e.g., *id.* (describing how trafficked women are forced to forfeit their passports and are physically and sexually violated to prevent women from escaping).

<sup>22</sup> See United Nations Office on Drugs and Crime, *TRAFFICKING IN PERSONS; ANALYSIS ON EUROPE*, 16, (2009), available at [http://www.unodc.org/documents/human-trafficking/Trafficking\\_in\\_Persons\\_in\\_Europe\\_09.pdf](http://www.unodc.org/documents/human-trafficking/Trafficking_in_Persons_in_Europe_09.pdf) (illustrating the widespread nature of sexual exploitation while cautioning that other forms of exploitation, such as forced labor, are also widespread but receive less attention).

<sup>23</sup> See Alexandra Amiel, *Integrating a Human Rights Perspective into the European Approach to Combating the Trafficking of Women for Sexual Exploitation*, 12 *BUFF. HUM. RTS. L. REV.* 5, 42 (2006) (contending that the Council of Europe Convention is a binding treaty that is more appropriate in the fight against trafficking women because it requires State Parties to implement measures to prevent trafficking, prosecute offenders, and protect victims).

<sup>24</sup> See, e.g., *TRAFFICKING IN PERSONS; ANALYSIS ON EUROPE*, *supra* note 22, at 6 (suggesting that anti-trafficking legislation did not criminalize all forms of trafficking until the implementation of U.N. trafficking instruments, but "related offences" can be used to prosecute traffickers, such as "sexual exploitation" and "soliciting prostitution").

<sup>25</sup> See, e.g., U.N. Operation in Somalia, *The Comprehensive Report on Lessons Learned from United Nations Operation in Somalia (UNOSOM): April 1992 – March 1995*, ¶ 52, (2003), available at <http://www.un.org/Depts/dpko/lessons/UNOSOM.pdf> (describing the lessons learned from the U.N. peacekeeping officers in Somalia and the necessary training programs for future operations); see ARONOWITZ, *supra* note 2, at 140 (describing methods the U.N. employed to train and support peacekeepers, such as educational programs aimed at forbidding solicitation of women for sexual purposes, and emphasizing emphasize the prevention of "sexual abuse" for all peacekeepers and specifically focus on an Anti-Trafficking Focal Point).

can be maintained in these states.<sup>26</sup> The U.N. also established an international convention to combat human trafficking; the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (U.N. Trafficking Protocol) created the universally accepted definition of trafficking in persons, which defines trafficking as a form of slavery.<sup>27</sup>

As a result of the initiative to combat trafficking, the Council of Europe created the Convention on Action Against Trafficking in Human Beings (European Convention), the first Council of Europe instrument that combats trafficking in persons.<sup>28</sup> This Convention accepts the U.N. definition of trafficking.<sup>29</sup> By considering the lack of rule of law in post-conflict states, the Convention acknowledges that many of the states are source and transit countries for trafficking, some of which states have ratified the Convention.<sup>30</sup> Traditionally, victims have had little legal assistance in countries to which they have been trafficked.<sup>31</sup> The European Convention is the first binding treaty to require states that ratify it to implement mechanisms for prevention of

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<sup>26</sup> See ARONOWITZ, *supra* note 2, at 140 (describing how the U.N. implemented one of these programs in 2007, aimed at combating complicity by peacekeeping officers in post-conflict states by consisting of training to prevent trafficking by identifying victims, providing support for these women, and investigating the offender through the United Nations Interregional Crime and Justice Research Institute (UNICRI) in the Balkans).

<sup>27</sup> See U.N. Trafficking Protocol, *supra* note 13 (defining trafficking as “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”)

<sup>28</sup> See Anke Sembacher, *The Council of Europe Convention on Action Against Trafficking in Human Beings*, 14 TUL. J. INT’L & COMP. L. 435, 453 (2006) (underscoring the comprehensive nature of the European Convention by arguing that it includes investigation and prosecution of criminals as well as protection of victims).

<sup>29</sup> See Council of Europe Convention on Action Against Trafficking in Human Beings art. 4 § 74, May 16, 2005, C.E.T.S. No. 197 [hereinafter European Convention] (defining trafficking in human beings in a holistic way by including all forms of sexual slavery, including “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”).

<sup>30</sup> See Sembacher, *supra* note 28, at 453 (showing how the European Convention may effectively support post-conflict states because many of these states have ratified, or at least signed, the Convention).

<sup>31</sup> See *id.* at 454 (stressing the importance of legal recourse for victims to effectively combat trafficking by convicting traffickers); see also Amiel, *supra* note 23, at 6 (comparing state interests in the prosecution of traffickers while protecting victims in the process).

trafficking, domestic criminal prosecution of traffickers, and for state assistance of trafficked victims, which is particularly useful for post-conflict states.<sup>32</sup>

The Council of Europe Convention emphasizes the importance of support for trafficked victims with psychological assistance and legal information.<sup>33</sup> The Convention further requires signatories to protect victims against intimidation by eliminating prosecution of these women for their forced illegal migration and exploitation.<sup>34</sup> It requires the criminalization of trafficking and domestic prosecution of offenders.<sup>35</sup> It further requires states to protect victims by obliging countries to identify trafficked women as victims, to implement a thirty day reflection period before a victim can be expelled, and to provide temporary residence permits.<sup>36</sup> Mechanisms to achieve these goals include education and training support for law enforcement officials and to combine forces to assist victims with psychological and physical healing.<sup>37</sup>

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<sup>32</sup> See ARONOWITZ, *supra* note 2, at 160 (arguing that the European Convention is an important step in the fight against trafficking in persons in post-conflict states because it provides appropriate guidelines for unstable governments to adopt).

<sup>33</sup> See European Convention, *supra* note 29, art. 12 § 1 (showing how psychological assistance can rehabilitate the victim to prevent re-victimization).

<sup>34</sup> See *id.* at art. 28 (concluding that re-victimization is commonplace and that victims' fear of the traffickers leads to fewer investigations and convictions); see JEREMY MCBRIDE, ACCESS TO JUSTICE: FOR MIGRANTS AND ASYLUM SEEKERS IN EUROPE 75 (2009) (citing the European Convention art. 26, arguing that this provision is an important step in recognizing the victim of trafficking, not merely considering her an accomplice).

<sup>35</sup> See MCBRIDE, *supra* note 34, at 23 (contending that criminalizing trafficking in persons allows traffickers to be convicted under criminal laws with harsher punishments).

<sup>36</sup> European Convention, *supra* note 29, art. 13; see Rosa Raffaelli, *The European Approach to the Protection of Trafficking Victims: The Council of Europe Convention, the EU Directive, and the Italian Experience*, 10 GERMAN L.J. 205, 210 (2009) (arguing that identification of victims is one of the most important steps in the investigation of trafficking in women).

<sup>37</sup> See Raffaelli, *supra* note 36, at 210 (suggesting that training programs for law enforcement to identify and deal with victims will help in the recovery process); see also European Convention, *supra* note 29, art. 10 (providing requirements to assist victims upon identification so that they can better recover, such as allowing them to remain in a country for a specified period so that they can recuperate and perhaps testify against their offenders).

B. The overarching cause of an increase in trafficking in persons in post-conflict states is the lack of rule of law.

Post-conflict states face a lack of rule of law initiatives, partly due to limited economic resources after violence and armed conflict take place.<sup>38</sup> Women especially face more hardships in the wake of armed conflict and deal with higher unemployment rates and lower income levels.<sup>39</sup> This lack of resources has provided a haven for the increase in organized crime that flourishes in unstable states, which has led to an increase in human trafficking.<sup>40</sup> States in Central and Eastern Europe that faced violence suffer from few economic resources.<sup>41</sup> Therefore, there are three main sources that promote trafficking in women, including victims under poor “economic, political and social conditions,” men and women who pay for these victims, and organized crime networks to utilize the supply and demand relationship.<sup>42</sup>

*1. Central and Eastern post-conflict European states suffer from highly developed trafficking rings that exploit women for sexual and labor purposes.*

The Albanian Civil War of 1997 resulted in hundreds of deaths and led to the revival of the Socialist Party after the fall of communism in the early 1990s.<sup>43</sup> The U.N. sent its peacekeeping operation teams into Albania to quell the political violence.<sup>44</sup> Since the armed

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<sup>38</sup> See ARONOWITZ, *supra* note 2, at 138 (investigating why post-conflict states lack effective enforcement mechanisms of the law, including general instability).

<sup>39</sup> See Muna Ndulo, *The United Nations Responses To The Sexual Abuse And Exploitation Of Women And Girls By Peacekeepers During Peacekeeping Missions*, 27 BERKELEY J. INT'L L. 127, 159 (2009) (outlining the various international instruments that combat discrimination and sexual violence against women during and post-armed conflict); see also *id.* at 43 (describing the realities of discrimination against women generally and its effect post-conflict).

<sup>40</sup> See Fara Gold, *Redefining the Slave Trade: The Current Trends in the International Trafficking in Women*, 11 U. MIAMI INT'L & COMP. L. REV. 99, 113 (2003) (arguing that organized crime leaders are mostly responsible for the continuation of trafficking in women, especially for sexual exploitation).

<sup>41</sup> See ARNOLD, *supra* note 3, at 76 (examining why organized crime flourishes in post-conflict states and how it creates an intricate web to successfully traffic women).

<sup>42</sup> See Vujin, *supra* note 18, at 268-69 (explaining how post-conflict countries, especially in the Balkan region, face hardship economically, politically, and socially that leads to extreme poverty particularly for women).

<sup>43</sup> See *Albanian Civil War (1997)*, GLOBALSECURITY.ORG, 2009 [hereinafter *Albanian Civil War*], <http://www.globalsecurity.org/military/world/war/albania.htm> (detailing the ravages of civil war in Albania in the wake of the fall of the communist bloc).

<sup>44</sup> See *id.* (describing Operation Alba that re-established rule of law mechanisms in Albania post-conflict).

conflict, Albania has seen a sharp increase in trafficking women for sexual and labor exploitation to Central European countries and locations, such as Kosovo and Macedonia, as well as Western European countries, such as France, the Netherlands, and Italy.<sup>45</sup> The Albanian Ministry of Labor and Social Affairs concluded that post-conflict, the unemployment rate reached forty percent, and almost three quarters of the population lived in poverty.<sup>46</sup> Although Albania's criminal code considers trafficking for sexual and labor exploitation illegal, all of the prosecutions in trafficking cases involved the sexual exploitation of women.<sup>47</sup>

Albania has taken steps to combat trafficking, including the ratification of the European Convention, which entered into force in Albania on February 1, 2008.<sup>48</sup> To implement this Convention, in 2007, Albania's government prosecuted forty-nine cases but only convicted seven violators, while in 2008, the government prosecuted twenty-two and convicted twenty-six.<sup>49</sup> In 2008, Albania implemented training programs for law enforcement officers, judges, and social workers involved in combating trafficking.<sup>50</sup> Both international and domestic organizations participated in the creation of Albania's victim protection hotline at the end of 2007, provided for trafficked women to call for assistance.<sup>51</sup> Furthermore, the government

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<sup>45</sup> See ARONOWITZ, *supra* note 2, at 192 (demonstrating how women are trafficked from eastern Europe to western Europe).

<sup>46</sup> See JANA ARSOVSKA, TRAFFICKING IN AND SMUGGLING OF PEOPLE FROM/VIA ALBANIA: PAST AND PRESENT CRIMINAL DEVELOPMENTS 1 (2007) (explaining that in post-conflict states, instability creates high unemployment and no wages which pushes traffickers to exploit women).

<sup>47</sup> See U.S. Dep't of State, Office to Monitor and Combat Trafficking in Persons, TRAFFICKING IN PERSONS REPORT, 60 (June 2009) [hereinafter TIP Report], available at <http://www.state.gov/g/tip/rls/tiprpt/2009/> (examining the current situation of trafficking women in Albania, which describes thousands of female victims brought into Albania each year).

<sup>48</sup> Council of Europe, ALBANIA, (2009), available at [http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Profiles/ALBANIAProfile\\_en.asp](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Profiles/ALBANIAProfile_en.asp).

<sup>49</sup> See TIP REPORT, *supra* note 47, at 60 (comparing the statistics of prosecution rates of offenders in Albania).

<sup>50</sup> See *id.* at 60 (examining national action plans against trafficking and their implementation).

<sup>51</sup> See GLOBAL REPORT, *supra* note 1, at 233 (explicating the victim assistance programs including shelters, medical care, and temporary residences permits the Albanian government has utilized to combat trafficking).

initiated awareness campaigns to fight trafficking in women, but these programs did not focus specifically on eliminating the demand for sexual and labor exploitation.<sup>52</sup>

Not only did violence occur in Albania, allowing for the flourishing of trafficking rings, but since the conflict in former Yugoslavia ended, Bosnia and Herzegovina has seen a sharp increase in trafficking women for sexual exploitation.<sup>53</sup> Some of the human trafficking was directly linked to the peace support operations (PSOs), which were intended to combat organized crime and trafficking in persons, especially women, in post-conflict countries by implementing and enforcing the rule of law.<sup>54</sup> PSOs in post-conflict countries provide support by overseeing the restoration of stability and capacity-building measures, such as supporting political and judicial development to prevent future armed conflict.<sup>55</sup> The use of U.N. peacekeeping forces was found to be, however, the direct link to the creation and rise of trafficking and forced prostitution of women in Bosnia and Herzegovina (BiH).<sup>56</sup>

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<sup>52</sup> See Matthews, *supra* note 6, at 662 (discussing forms of law enforcement corruption, such as complicity or ignoring trafficking as well as the direct participation in the process); see also TIP REPORT, *supra* note 47, at 61 (looking at recent developments in victim protection, such as creating awareness campaigns and providing victim hotlines).

<sup>53</sup> See THE POLITICAL ECONOMY OF NEW SLAVERY 91-92 (Christien van den Anker ed., 2004) (estimating that “between 750 and 1,000 trafficked women and girls are subjected to sexual slavery”).

<sup>54</sup> See generally, MARTEN ZWANENBURG, ACCOUNTABILITY OF PEACE SUPPORT OPERATIONS 7-8 (Christopher Greenwood & Timothy L.H. McCormack eds., 2005) (examining the responsibilities of peacekeeping officers and the implementation of international humanitarian law); see also ARNOLD, *supra* note 3, at 76 (showing how international assistance with the rule of law can effectively combat trafficking).

<sup>55</sup> See ARONOWITZ, *supra* note 2, at 138 (showing how the lack of rule of law creates a gap for traffickers to exploit women).

<sup>56</sup> See van den Anker, *supra* note 53, at 91-92 (introducing a case in the United Kingdom by Kathryn Bolkovac, who was an officer with the U.N. Mission to Bosnia and Herzegovina (UNMiBH) and who was fired as an employee after revealing the participation in trafficking women for sexual exploitation by other U.N. peacekeepers); see also *id.* at 139 (examining the direct link between the U.N. peacekeepers and the increase in trafficking in women due to corruption among peacekeepers assisting traffickers as well as the demand by peacekeepers to pay for sexual services).

Bosnia and Herzegovina acts as a source and transit country for traffickers to exploit women mostly for sexual purposes.<sup>57</sup> To combat this problem, the government ratified the European Convention on January 11, 2008.<sup>58</sup> Although the Bosnian government failed to investigate trafficking rings in the past, the Bosnian criminal code now forbids trafficking for sexual and labor exploitation, and officials investigated ninety-four cases in 2008, resulting in thirty-four convictions, a higher conviction rate than in past years.<sup>59</sup> Fourteen of these convicted traffickers never served their sentences, however, and corrupt law enforcement officers failed to identify victims or directly participated in paying for sexual services.<sup>60</sup> Through international organizations, twenty-nine identified trafficked women received assistance at local shelters in 2009, whereas in 2008, only twenty-two received assistance.<sup>61</sup> The government created a hotline for victims to call to receive assistance but failed to initiate awareness-raising campaigns to fight the demand for these services.<sup>62</sup> Bosnia and Herzegovina implemented training programs for the international peacekeepers located within its borders to prevent further sexual and labor exploitation and has taken positive steps to combat trafficking in women.<sup>63</sup>

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<sup>57</sup> See TIP REPORT, *supra* note 47, at 83 (comparing statistics of trafficking for the purpose of sexual exploitation versus other forms, such as labor and organ); see also GLOBAL REPORT, *supra* note 1, at 239 (stating that all trafficked women identified in 2005 and 2006 were for sexual exploitation).

<sup>58</sup> Council of Europe, BOSNIA-HERZEGOVINA, (2009), *available at* [http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Profiles/BOSNIAHERZProfile\\_en.asp](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Profiles/BOSNIAHERZProfile_en.asp).

<sup>59</sup> See GLOBAL REPORT, *supra* note 1, at 239 (asserting that a professional team was developed to investigate and prosecute trafficking in persons, especially in women, cases specifically); see also TIP REPORT, *supra* note 47, at 83 (stating that “[t]he Government of Bosnia prohibits trafficking for sexual and labor exploitation through Article 186 of its criminal code”).

<sup>60</sup> See TIP REPORT, *supra* note 47, at 83 (explicating the problems of corruption among law enforcement personnel that contributes to the difficulty in combating trafficking in women).

<sup>61</sup> See GLOBAL REPORT, *supra* note 1, at 239 (identifying victims shelters across Bosnia and Herzegovina to support trafficked women); see also *id.* at 83 (emphasizing the importance of both identifying and supporting victims).

<sup>62</sup> See TIP REPORT, *supra* note 47, at 84 (describing one mechanism to assist victims).

<sup>63</sup> See *id.* at 84 (analyzing training of law enforcement officers which leads fewer trafficked victims).

2. *African post-conflict states also suffer from the growth in the trafficking in women industry due to limited resources to rebuild the rule of law.*

Sierra Leone is a source and transit state for trafficking women for sexual and labor abuse, with many victims taken to other states in West Africa as well as to Western European countries.<sup>64</sup> In 2005, Sierra Leone enacted the Anti-Trafficking in Persons Act, which prohibits all types of trafficking, but unfortunately, few convictions have resulted from this statute.<sup>65</sup> In 2008, the Sierra Leonean government investigated little more than nineteen trafficking in women cases, but half of these investigations led to convictions.<sup>66</sup> Sierra Leone does not comply with minimum standards to maintain victim assistance shelters, but rather it sends these women to the International Organization for Migration (IOM) shelter, the only care facility for trafficked victims that sees merely a fraction of all victims.<sup>67</sup> To prosecute offenders, the Special Court of Sierra Leone (SCSL) as of February 2009 has convicted two former rebels for child trafficking but failed to address trafficking in women for sexual and labor exploitation.<sup>68</sup>

Sierra Leone's growth in human trafficking is also due to U.N. peacekeeping officials who participated in the sexual and labor exploitation of women while the country was coming out of both internal and transnational armed conflict.<sup>69</sup> The U.N. PSOs in Sierra Leone under the U.N. Mission in Sierra Leone (UNAMSIL) were accused of raping a twelve-year-old girl and

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<sup>64</sup> See *id.* at 255 (highlighting the transnational nature of trafficking women through African states).

<sup>65</sup> See GLOBAL REPORT, *supra* note 1, at 108 (underlining the Family Support Unit and Criminal Investigation Division that were created along with the anti-trafficking legislation); see also *id.* at 256 (describing the Anti-Trafficking in Persons Act).

<sup>66</sup> See TIP REPORT, *supra* note 47, at 256 (discussing the thirty-eight trafficking in persons cases generally in 2008 with only twelve resulting in convictions).

<sup>67</sup> See *id.* at 256 (stressing that investigation may not lead to convictions without witnesses and witness protection); see also GLOBAL REPORT, *supra* note X, at 108 (mentioning the lack of convictions in 2007).

<sup>68</sup> See *id.* at 256 (describing the case related to the crimes against humanity, such as forced labor, at the SCSL).

<sup>69</sup> See Fionnuala Ni Aolain, *Conceptualizing Violence: Present and Future Developments in International Law: Panel II: Adjudicating Violence: Problems Confronting International Law and Policy on War Crimes and Crimes Against Humanity: Radical Rules: The Effects of Evidential and Procedural Rules on the Regulation of Sexual Violence in War*, 60 ALB. L. REV. 883, 887 (1997) (scrutinizing the lack of legal recourse for victims of sexual violence during armed conflict and the potential accountability at the International Criminal Tribunal for the former Yugoslavia); see also ARNOLD, *supra* note 3, at 330 (discussing sexual violence during and after armed-conflict).

gang raping an adult woman.<sup>70</sup> Although international organizations in Sierra Leone attempted to implement anti-trafficking measures, government officials failed to carry out these guidelines by refusing to allocate resources to the 2007 national action plan, a government plan to combat human trafficking.<sup>71</sup> Although Sierra Leone ratified an outdated U.N. convention relating to women's rights, it has not ratified the U.N. Trafficking Protocol, which provisions are described above.<sup>72</sup> As party to the regional institution, Economic Community of Western African States (ECOWAS), Sierra Leone is required to comply with the decision by the ECOWAS Community Court of Justice (CCJ), *Hadijatou Mani Koraou v. The Republic of Niger*, in which case the CCJ found Niger responsible for its failure to prevent and prosecute trafficking cases.<sup>73</sup> Sierra Leone is also party to the ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security, which establishes a body to oversee the conflict resolution and peace operations in African states.<sup>74</sup> ECOWAS applies training programs for the international peacekeepers sent to these locations.<sup>75</sup>

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<sup>70</sup> See ARNOLD, *supra* note 3, at 330 (examining how in response, the U.N. Security Council passed Resolution 1436 in 2002 to emphasize the importance of training programs for peacekeepers and accountability mechanisms, such as domestic prosecution of a state's nationals who commit these crimes).

<sup>71</sup> See TIP REPORT, *supra* note 47, at 256 (criticizing the Sierra Leonean government's failure to implement anti-trafficking initiatives).

<sup>72</sup> See Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 34 U.N. GAOR, Supp. No. 21 (A/34/46), at 193, U.N. Doc. A/RES/34/180, 1249 U.N.T.S. 14, reprinted in 19 I.L.M. 33 (1979) (listing states that have ratified and signed CEDAW, an outdated U.N. Convention that only recognizes trafficking in women); see *id.* at 256 (reporting on Sierra Leone's international obligations on trafficking in persons).

<sup>73</sup> See *Koraou v. Niger*, ECW/CCJ/JUD/06/08, ¶ 84 (Economic Community of Western African States, Community Court of Justice Oct. 27, 2008), available at [http://www.unhcr.org/refworld/publisher,ECOWAS\\_CCJ,,496b41fa2,0.html](http://www.unhcr.org/refworld/publisher,ECOWAS_CCJ,,496b41fa2,0.html) (referencing Article 15 of the ECOWAS Treaty, which establishes the CCJ decisions "shall be binding on the Member States, the Institutions of the Community and on individuals and corporate bodies"); see also Ryszard Piotrowicz, *The Legal Nature of Trafficking in Human Beings*, 4 INTERCULTURAL HUM. RTS. L. REV. 175, 178 (2009) (quoting the CCJ's argument that "the defendant becomes responsible under international as well as national law for any form of human rights violations of the applicant founded on slavery because of its tolerance, passivity, inaction and abstention with regard to this practice").

<sup>74</sup> See Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security, art. 1, 3, 6, 24, 44, Dec. 10, 1999, ECOWAS Doc. A/P10/12/99 [hereinafter Mechanism Protocol], available at [http://www.iss.co.za/af/regorg/unity\\_to\\_union/pdfs/ecowas/ConflictMecha.pdf](http://www.iss.co.za/af/regorg/unity_to_union/pdfs/ecowas/ConflictMecha.pdf) (mandating through

In addition to training programs to combat trafficking, Sierra Leone signed the Declaration on the Fight Against Trafficking in Persons, which encourages states to enact anti-trafficking legislation, to create training programs for law enforcement officers, and to provide victim assistance shelters for rescued women.<sup>76</sup> The Declaration further promotes the Protocol related to conflict resolution and post-conflict peacekeeping by emphasizing the importance of its ratification.<sup>77</sup>

C. Trafficked victims have little opportunity for legal recourse in domestic and internationalized courts because of limited resources or insufficient conventions.

The European Court of Human Rights (ECtHR) applies the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention of Human Rights or ECHR).<sup>78</sup> The ECtHR holds states, not individuals, liable for their failure to prevent, prosecute, or protect residents within their borders from human rights violations contained in the ECHR.<sup>79</sup> According to the ECHR, enslavement is one human right, against which states are required to protect.<sup>80</sup> In *Siliadin v. France*,<sup>81</sup> the ECtHR found that Mrs. B had enslaved a young woman trafficked from Togo to France by Mrs. D.<sup>82</sup> The ECtHR found against France, arguing

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article 44(e) that the ECOWAS will support post-conflict states by providing support to “vulnerable persons, including . . . women and other traumatized groups in the society”).

<sup>75</sup> *See id.* at art. 30 (recognizing past sexual and physical abuse of peacekeepers and enforcement officers, stating that the ECOWAS will provide training programs to these officers in international humanitarian and human rights laws).

<sup>76</sup> *See* ECOWAS Declaration, *supra* note 11 (providing encouragement to Member States to provide victim protection assistance, such as medical and psychological support for trafficked women).

<sup>77</sup> *See id.* (pressing upon states “to ratify forthwith the ECOWAS Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security”).

<sup>78</sup> *See* European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 1, Nov. 4, 1950, 213 U.N.T.S. 222 [hereinafter ECHR], *available at* <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf> (listing all violations of the ECHR under the jurisdiction of the ECtHR).

<sup>79</sup> *See id.* at art. 4 (charging states with the responsibility to uphold the European Convention on Human Rights).

<sup>80</sup> *See id.* at art. 4 (including enslavement as a violation of human right).

<sup>81</sup> 43 Eur. Ct. H.R. 16 (2006).

<sup>82</sup> *See id.* at 16 (describing how Mrs. D purchased and trafficked the young woman to France and then sold her to Mrs. B).

that France as a State failed to uphold the ECHR, specifically article 4, the prohibition of slavery and forced labor.<sup>83</sup>

While the ECtHR has jurisdiction only over states, the International Criminal Tribunal for the former Yugoslavia (ICTY) has jurisdiction over individuals who committed crimes against humanity.<sup>84</sup> These crimes against humanity, however, must be in relation to the war in the former Yugoslavia since 1991, and the violations of international humanitarian law.<sup>85</sup> Enslavement is one instance of a crime against humanity, but only if the enslavement occurred in armed conflict and was against a civilian population.<sup>86</sup>

Although the ICTY may only hear crimes in relation to one armed conflict, the International Criminal Court (ICC) may hear cases that are the “most serious crimes of concern to the international community,” including crimes against humanity generally.<sup>87</sup> A crime constitutes a crime against humanity when it is part of “a widespread or systematic attack directed against any civilian population, with knowledge of the attack . . . .”<sup>88</sup> Slavery, including sexual enslavement, constitutes a crime against humanity so long as the slavery meets the above

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<sup>83</sup> *See id.* (arguing that France failed to take the necessary steps to investigate and prosecute Mrs. B for the enslavement of the young woman).

<sup>84</sup> *See* Statute of the International Criminal Tribunal for the former Yugoslavia, art. 1, 5, 7, S.C. Res. 827, Annex (1993) [hereinafter ICTY Statute], *available at* [http://www.icty.org/x/file/Legal%20Library/Statute/statute\\_sept09\\_en.pdf](http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf) (supporting the notion of individual accountability by allowing the prosecution of war criminals but only relating to the specified armed conflict).

<sup>85</sup> *See id.* (describing all resolutions by the U.N. Security Council through the 2008 update to the Statute of the ICTY).

<sup>86</sup> *See id.* at art. 5 (listing the types of crimes against humanity under the jurisdiction of the ICTY).

<sup>87</sup> *See* Rome Statute of the International Criminal Court, art. 5(1) & art. 5(1)(b), 2187 U.N.T.S. 90 (Jul. 1, 2002) [hereinafter Rome Statute], *available at* [http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome\\_Statute\\_English.pdf](http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf) (listing the crimes that the ICC may hear, including crimes of genocide, crimes against humanity, war crimes, and crimes of aggression).

<sup>88</sup> *See id.* at art. 7(1) (outlining the possible crimes that constitute a crime against humanity, including “(a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” or other “inhumane acts” characterized by the ICC).

requirements.<sup>89</sup> The ICC holds individuals accountable for their crimes that are under the Court's jurisdiction.<sup>90</sup>

### III. ANALYSIS

The Council of Europe Convention on Action Against Trafficking in Human Beings is the most effective international anti-trafficking agreement because this Convention targets the problems of post-conflict states, such as a transitional economy, increase in poverty, and weakened rule of law.<sup>91</sup> Post-conflict states lack proper law enforcement mechanisms to combat and prevent trafficking in women due to a lack of police officers, judicial recourse, and detention centers.<sup>92</sup> The European Convention has important implications for other post-conflict regions where it can be applied to assist in the development of prevention measures, investigation and prosecution of offenders, and protection of trafficked victims.<sup>93</sup> Courts both in the international community and in post-conflict states lack the judicial recourse to effectively prosecute all offenders who traffic women despite the European Convention's positive step forward in assisting post-conflict states.<sup>94</sup>

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<sup>89</sup> *See id.* at art. 7(1)(c) & art. 7(1)(g) (defining the types of sexual slavery, including forced prostitution, one result from trafficking in women).

<sup>90</sup> *See id.* at art. 25(1)-(4) (defining "individual criminal responsibility" as allowing for the criminal prosecution of a particular person).

<sup>91</sup> *See* Parliamentary Assembly of the Council of Europe, VIOLENCE AGAINST WOMEN IN EUROPE, Doc. 8902, (2000) [hereinafter PACE], available at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc00/EDOC8902.htm> (responding to Recommendation 1450 that notes the spike in trafficking in women in post-conflict states where peacekeepers participate in trafficking and where the rule of law is weakened).

<sup>92</sup> *See id.* (arguing that the lack of rule of law leads to "reduced supervision of borders" and an influx of organized crime networks that operate trafficking rings).

<sup>93</sup> *See id.* (supporting the Council of Europe initiative to combat trafficking with prevention measures, prosecution of offenders, and protection of victims).

<sup>94</sup> *See* ICTY Statute, *supra* note 84, at art. 1, 5, 7 (noting individual accountability but only in relation to the armed conflict, not crimes as part of non-armed conflict).

A. The Council of Europe Convention is the best way to implement anti-trafficking measures because the Convention includes mechanisms to impose the rule of law that post-conflict states lack.

As a transnational concern, it is important for the international community to address trafficking in women by emphasizing cooperation among states.<sup>95</sup> Cooperation is important so that governments, enforcement officers along the borders, and international organizations to protect victims can coordinate resources to combat an inter-jurisdictional crime.<sup>96</sup> The European Convention addresses post-conflict problems, such as lack of judicial resources, inadequate law enforcement training programs, and insufficient border control, by incorporating international support to assist weak states in creating anti-trafficking measures.<sup>97</sup> By utilizing the Convention to complement past international instruments, including the U.N. Trafficking Protocol, it is more likely to effectively implement law enforcement mechanisms where there is international cooperation in a post-conflict state due to the additional funding, manpower, and expertise.<sup>98</sup> The Council of Europe Convention is more effective in combating trafficking than other international instruments because prior conventions merely addressed prosecution measures against traffickers without adopting preventative or protective frameworks.<sup>99</sup> Instead, the

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<sup>95</sup> See National Program for Prevention and Counteraction of Trafficking in Human Beings and Protection of the Victims, Bulgaria (2008) (describing that “[t]he transnational character of the phenomenon requires joint efforts of all institutions working against human trafficking on national, regional and international levels”).

<sup>96</sup> See PACE, *supra* note 91 (emphasizing the importance of international instruments to assist national governments in combating trafficking because of the nature of the transnational crime).

<sup>97</sup> See *id.* (recognizing the advances of the Council of Europe in requiring states to implement mechanisms to combat trafficking, such as border protections and training programs for law enforcement).

<sup>98</sup> See, e.g., Federico Lenzerini, *International Legal Instruments on Human Trafficking and a Victim-Oriented Approach: Which Gaps are to be Filled?*, 4 INTERCULTURAL HUM. RTS. L. REV. 205, 227 (2009) (arguing that it is essential to incorporate the international community in the fight against trafficking in women because trafficking is a transnational problem that is fostered in a state that lacks mechanisms to enforce the rule of law and its criminal code).

<sup>99</sup> See Raffaelli, *supra* note 36, at 206 (explaining what the U.N. Protocol lacked and how the European Convention fills these gaps).

European Convention incorporates the “three-Ps approach,” which includes prevention of trafficking, prosecution of traffickers, and protection of victims.<sup>100</sup>

Further, the European Convention is more appropriate to fight trafficking in post-conflict states by requiring them to implement training programs for international peacekeepers to prevent, prosecute, and protect.<sup>101</sup> Prior instruments, such as the U.N. Trafficking Protocol, referenced above, fail to address the situation in post-conflict states by merely suggesting that states “consider implementing measures” to protect victims and to adopt anti-trafficking legislation.<sup>102</sup> The U.N. Protocol in particular does not address the lack of resources in post-conflict states by stating that state parties shall implement policies and programs and strengthen border protections without describing how weak states accomplish these tasks.<sup>103</sup> These specifications are important in post-conflict states because international assistance is not only helpful, but also necessary to provide additional resources, such as funding, manpower, and expertise, to countries without an effective rule of law.<sup>104</sup>

By emphasizing the importance of international cooperation in the fight against trafficking women, the European Convention harnesses the resources that post-conflict states

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<sup>100</sup> See *id.* at 206 (describing the innovation of the European Convention to oblige states to implement measures to prevent, prosecute, and prevent).

<sup>101</sup> See European Convention, *supra* note 29, art. 296-97 (compelling states to require that “[t]his training must be provided [to] persons and services liable to have contact with trafficking victims, such as . . . soldiers or police on international peace-keeping missions.”).

<sup>102</sup> Interview with Janie Chuang, *supra* note 14 (arguing that most of the trafficking in women comes out of central and eastern Europe after the fall of communism and the transnational armed conflict in the 1990s); see, e.g., U.N. Trafficking Protocol, *supra* note 13, art. 6-7 (stating that “each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases [and] shall give appropriate consideration to humanitarian and compassionate factors”).

<sup>103</sup> See, e.g., U.N. Trafficking Protocol, *supra* note 13, art. 9, 11 (explicating that states shall implement these anti-trafficking measures “to the extent possible” without suggesting mechanisms to provide international assistance).

<sup>104</sup> See, e.g., European Convention, *supra* note 29, art. 32 (providing that “Parties shall co-operate with each other, in accordance with the provisions . . . for the purpose of preventing and combating trafficking in human beings; protecting and providing assistance to victims; investigations or proceedings concerning criminal offences established in accordance with this Convention”).

lack, especially money, human resources, and the enforcement of the rule of law to prevent, prosecute, and protect.<sup>105</sup> The U.N. effectively cooperated with the Council of Europe provisions on combating trafficking by providing training programs to international peacekeepers in post-conflict territory, as evidenced by the 2007 program to educate peacekeepers.<sup>106</sup> This cooperation illustrates U.N. support of the Council of Europe's Convention as well as the Convention's success in incorporating international assistance to combat trafficking in women by imposing the rule of law with funding for adequate domestic courts, providing non-corrupt law enforcement officers, and guiding legislators in anti-trafficking laws.<sup>107</sup>

B. Post-conflict states that are signatories to the European Convention have taken positive steps to implement the Convention and combat trafficking in women, but they continue to lack proper law enforcement mechanisms due to limited police officers, judicial recourse, and detention centers.

Despite weaknesses in the enforcement of the rule of law in Albania, the government has improved anti-trafficking measures and has partly implemented the European Convention since its ratification.<sup>108</sup> Since Albania has made improvements in identifying trafficked women, it properly conforms to this provision in the Convention.<sup>109</sup> As evidenced by the rise in the number of convicted traffickers, Albania has effectively executed the European Convention's policy

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<sup>105</sup> See Raffaelli, *supra* note 36, at 210 (arguing that international support strengthens the rule of law in weak states); *see also id.* at art. 1 (defining the purpose of this Convention to include the promotion of "international cooperation on action against trafficking in human beings").

<sup>106</sup> See ARONOWITZ, *supra* note 2, at 140 (arguing that including other international efforts to combat trafficking in persons is important to effectively combat transnational trafficking).

<sup>107</sup> *See, e.g., id.* (emphasizing the importance of international cooperation that leads to effective anti-trafficking measures transnationally).

<sup>108</sup> *See* TIP REPORT, *supra* note 47, at 60 (describing the anti-trafficking initiatives in Albania in 2008 and into 2009).

<sup>109</sup> *See id.* at 60 (illustrating the newly-developed forms of victim identification in Albania); *see* GLOBAL REPORT, *supra* note 1, at 233 (showing the measures to support victims including pro bono medical care and psychological recovery at local shelters).

toward mandatory domestic prosecution of offenders.<sup>110</sup> The government's attempts to improve protection of victims conform to the European Convention's guidelines by identifying five times as many trafficked women in 2008 as in 2007, as well as by establishing a number of hotlines and shelters for these women.<sup>111</sup> By supporting local facilities to protect victims and re-victimization, these policies adhere to Convention guidelines to expand protection measures, providing medical and psychological assistance at specific clinics or facilities.<sup>112</sup> In 2008, the Albanian government applied the Convention provision relating to international cooperation by successfully collaborating with the global community to utilize foreign resources and by promoting prevention and awareness campaigns.<sup>113</sup> Fulfilling European Convention requirements to protect victims is necessary to prevent re-victimization of the women after they escape, to successfully rehabilitate women with pro bono psychological and physical medical care, and to ensure that victims remain in the country to act as a witness against the offender.<sup>114</sup>

Despite these advances, Albania failed to address the demand for sexual and labor exploitation and therefore, has not fully implemented the European Convention.<sup>115</sup> Inasmuch as the government failed to forcefully prosecute both violators and corrupt government officials engaged in this practice, Albania has not properly implemented the provisions relating to

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<sup>110</sup> See *id.* at 60 (showing the increase in investigation, prosecution, and conviction mechanisms in trafficking cases).

<sup>111</sup> See GLOBAL REPORT, *supra* note 1, at 233 (describing the increase in number of victim assistance facilities since 2008).

<sup>112</sup> See TIP REPORT, *supra* note 47, at 61 (stressing the importance of support for trafficked victims to prevent intimidation and re-victimization).

<sup>113</sup> See *id.* at 61 (exemplifying the decrease in trafficking in women with international assistance).

<sup>114</sup> See, e.g., *id.* (illustrating the important provisions that are necessary to effectively combat trafficking, especially in post-conflict states, such as national programs to train law enforcement officers and to provide medical care to victims).

<sup>115</sup> See Martina Vandenberg, *Complicity, Corruption, and Human Rights: Trafficking in Human Beings*, 34 CASE W. RES. J. INT'L L. REV. 99, 113 (2003) (providing instances of law enforcement personnel paying for sexual services from traffickers of women); see also *id.* at 61 (disparaging the lack of campaigns aimed at removing the demand for sex workers, perhaps by implementing training programs).

prosecution.<sup>116</sup> Albania failed to rigorously investigate, prosecute, and convict traffickers in 2008 because of the lack of political will to create anti-trafficking legislation and to allocate resources to combat trafficking in women, as well as the lifting of sentences for convicted offenders.<sup>117</sup> It is important to both prosecute the traffickers and limit the demand for trafficked women, such as by criminalizing those who pay for sexual or labor services, to attack organized crime from an economic perspective, and to reduce the amount of money given to the traffickers.<sup>118</sup> Although Albania conformed to Convention provisions relating to prevention and protection of victims, it failed to consider prosecution. Therefore, Albania has not fully implemented the Convention.

Similarly in Bosnia and Herzegovina, the demand for trafficking in women for sexual exploitation was directly caused by the influx of peacekeepers, who were entrusted to provide law enforcement measures in a post-conflict region.<sup>119</sup> Since the European Convention entered

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<sup>116</sup> See TIP REPORT, *supra* note 47, at 60 (examining the concerns that “remained regarding whether the government vigorously prosecuted labor trafficking offenders and public officials who participated in or facilitated human trafficking”).

<sup>117</sup> Embassy of the United States in Albania, TRAFFICKING IN PERSONS REPORT – ALBANIA (2008), *available at* [http://tirana.usembassy.gov/08pr\\_0604.html](http://tirana.usembassy.gov/08pr_0604.html) (analyzing the development, or lack thereof, in anti-trafficking mechanisms in Albania, including medical assistance for victims and prosecution of offenders); *see, e.g.*, United States Agency for International Development, THE STATE OF EFFORTS IN ALBANIA TO COMBAT TRAFFICKING OF PERSONS 2007-2008, 25 (2008), *available at* [http://albania.usaid.gov/spaw2/uploads/files/Press\\_Release/SAT\\_Rpt\\_CAAHT\\_Eng.pdf](http://albania.usaid.gov/spaw2/uploads/files/Press_Release/SAT_Rpt_CAAHT_Eng.pdf) (examining developments of USAID’s projects in Albania to combat trafficking, such as international support for victim protection and law enforcement programs).

<sup>118</sup> Robert Gaudet, Jr., Adrienne Kepner, Eileen Meier, [FN1] Nancy Abudu, Ani E. Ajemian, Lawrence G. Albrecht, Dana Renee Bucy, Christian De Vos, Nancy S. Elmilady, Natalie S. Feher, Josh D. Friedman, Jeff Graham, Hanah Grene, Mireya Maritza Peña Guzmán, Emina Hadzic, Kalani Hawks, Frances Katz, Faiza Patel King, David James Knight, Joi Leonard, Erin McClarty, Cheryl McLandrich, Cassandra Melton, Tina Minkowitz, Anne Marie Morris, Nikhil Narayan, Andrew Novak, Erin Louise Palmer, Dianne Post, Jeremy Sarkin, Scott Shackelford, Genessa Stout, Anna Vidiaev, *Human Rights*, 43 INT’L LAW. 861, 863-64 (2009) (arguing that the reduction in trafficked women in Norway is due to the penalties against those who purchase services from prostitutes, not penalizing the prostitutes themselves).

<sup>119</sup> See HOPES BETRAYED, *supra* note 20 (portraying vividly the actions by international peacekeepers in Bosnia and Herzegovina that was the direct link to the creation of the trafficking in women rings); *see, e.g.*, Vandenberg, *supra* note 115, at 113 (describing how law enforcement personnel actively participate in the trafficking in women by paying for sexual services); *see also* ARONOWITZ, *supra* note 2, at 139-40 (underlining the negative effects of international peacekeepers and contending that the bribery and corruption of law enforcement officials allows the practice of trafficking in women to continue).

into forced in Bosnia and Herzegovina, the government has improved its prevention and protection practices.<sup>120</sup> Bosnia and Herzegovina complied with provisions relating to protection of trafficked victims by providing facilities and psychological support, such as temporary residence permits for victims to remain in the state to recover and to act as a witness against their trafficker.<sup>121</sup> Bosnia and Herzegovina also effectively prevented trafficking, as evidenced by the sharp reduction in number of victims thus far in 2009.<sup>122</sup> These improvements are necessary because victim protection distinguishes voluntary illegal immigration from trafficked women who may travel voluntarily but consequently are enslaved.<sup>123</sup>

Despite these advances in developing anti-trafficking measures, however, Bosnia and Herzegovina failed to incorporate other provisions of the European Convention.<sup>124</sup> The country's inadequate training programs for post-conflict peacekeepers and local law enforcement officers fail to address the problem that directly caused trafficking in women for sexual and labor exploitation.<sup>125</sup> Training programs of law enforcement are crucial to the implementation of the rule of law in post-conflict states and to the proper care given to victims in need of psychological and medical assistance since programs teach domestic officials how to identify and care for

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<sup>120</sup> See TIP REPORT, *supra* note 47, at 83 (reporting an increase in funding anti-trafficking initiatives that comply with the European Convention).

<sup>121</sup> See International Organization for Migration, ENHANCING THE PROTECTION OF AND ASSISTANCE TO VICTIMS OF TRAFFICKING THROUGH TEMPORARY RESIDENCE PERMITS, (2009), *available at* <http://www.iom.int/jahia/Jahia/pid/2010> (arguing the importance of temporary residence permits as a main source of victim protection to prevent prosecution as an illegal migrant and to strengthen investigation against traffickers); *see also* GLOBAL REPORT, *supra* note 1, at 233 (reporting the victim assistance programs including NGO facilities that provide medical care and government temporary residences permits).

<sup>122</sup> See TIP REPORT, *supra* note 47, at 83 (investigating the number of trafficked victims identified thus far in 2009).

<sup>123</sup> See Bravo, *supra* note 12, at 555 (analyzing the United States Trafficking Victims Protection Act that considers trafficked persons as victims, not as illegal immigrants, ensuring the recovery of these women and prosecution of offenders).

<sup>124</sup> See TIP REPORT, *supra* note 47, at 84 (describing the minimal conformity with effective law enforcement official training programs to identify victims and prosecute offenders).

<sup>125</sup> See *id.* at 84 (commenting on the lack of training programs to combat corruption among law enforcement officials).

victims, while assisting in funding and construction of medical and care facilities.<sup>126</sup> Bosnia and Herzegovina also did not conform to Convention standards by failing to improve the measures to prosecute traffickers, as evidenced by the number of reports indicating that corrupted officials assist traffickers.<sup>127</sup> The government failed to conform to the Convention in its prosecution of offenders by suspending the sentences of nearly half of the convicted traffickers in 2008.<sup>128</sup> These issues of corruption limit success in prevention of trafficking and prosecution of offenders, which allows the practice to continue.<sup>129</sup> It is important for Bosnia and Herzegovina to focus on the investigation and prosecution of both complicit law enforcement officials and traffickers to effectively implement all provisions of the Convention.<sup>130</sup>

C. Sierra Leone's anti-trafficking measures are inadequate due to the failure to directly target sexual enslavement and cultural stigmas associated with trafficking women for sexual enslavement.

Sierra Leone has improved implementation of anti-trafficking mechanisms as shown by the slight increase in prosecutions of offenders in 2008.<sup>131</sup> Still, however, the Sierra Leonean government fails to effectively implement its own criminal code against trafficking in persons because of limited resources after the internal and transnational conflict that occurred in the 1990s.<sup>132</sup> Government action in anti-trafficking measures has been inadequate due to the

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<sup>126</sup> See Lenzerini, *supra* note 98, at 227 (contemplating the importance of training programs described in the U.N. Trafficking Protocol, which include the protection of the rights of trafficked women).

<sup>127</sup> See TIP REPORT, *supra* note 47, at 83 (conceding that despite these improvements in combating trafficking, corruption still exists among law enforcement officers and little has been done to reduce corruption reports).

<sup>128</sup> See *id.* at 83 (condemning the lack of punishment against convicted traffickers by suspending sentences).

<sup>129</sup> See Bravo, *supra* note 12, at 549 (describing how the complicity and corruption of law enforcement officials, especially those monitoring borders, leads to the promotion of trafficking in women by refusing to investigate offenders).

<sup>130</sup> See *id.* (analyzing how by combating corruption, officials may better recognized victims and investigate traffickers that leads to their conviction).

<sup>131</sup> See GLOBAL REPORT, *supra* note 1, at 108 (describing the thirty-one trafficked women who received assistance at the IOM shelter in Freetown in 2006); see also TIP REPORT, *supra* note 47, at 256 (highlighting the minimal increase in the rate of investigations from 2007 to 2008).

<sup>132</sup> *Contemporary Practice of the United States Relating to International Law: Brief Notes*, 102 A.J.I.L. 894, 900 (John R. Crook ed., 2008) (mentioning and describing the civil armed conflict in Sierra Leone in the 1990s).

government's total reliability on international organizations to identify and protect trafficked women, and therefore, much fewer victims receive care than are trafficked.<sup>133</sup> It is necessary for the government to implement its own support to identify and protect victims so that Sierra Leone can continue its transition to a developed state that can enforce its own criminal laws.<sup>134</sup> Despite minimum attempts to protect trafficked women from re-victimization in 2008, Sierra Leone is unsuccessful in effectively protecting victims by failing to provide awareness campaigns to combat trafficking.<sup>135</sup> It is important for Sierra Leone to implement these anti-trafficking measures because effective legislation and anti-trafficking programs require "widespread criminal and regulatory regime [especially] targeting sex trafficking."<sup>136</sup> Directly targeting trafficking in women through legislative reform and effective law enforcement is particularly important in African states, where victims feel ostracized from their community if they admit to sexual enslavement or rape.<sup>137</sup>

The Sierra Leonean government is likely to be prosecuted by the ECOWAS Community Court of Justice if Sierra Leone as a State neglects to adequately prevent and prosecute cases

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<sup>133</sup> See GLOBAL REPORT, *supra* note 1, at 108 (describing the limited number of identified victims, prosecutions, and anti-trafficking initiatives in Sierra Leone); see also TIP REPORT, *supra* note 47, at 256 (assessing the limited resources the Sierra Leonean government allocates towards anti-trafficking programs and reporting on the single shelter available to victims in Sierra Leone in Freetown, inaccessible to women in rural areas with insufficient infrastructure).

<sup>134</sup> See Lakhdar Brahimi, STATE BUILDING IN CRISIS AND POST-CONFLICT COUNTRIES, 3, (7th Global Forum on Reinventing Government Building Trust in Government 26-29 June 2007, Vienna, Austria), available at <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN026305.pdf> (studying methods to rebuild states after armed conflict, such as reconstruction of infrastructure, to establish a stable and peaceful state).

<sup>135</sup> See TIP REPORT, *supra* note 47, at 256 (criticizing the lack of nationwide awareness campaigns to prevent trafficking in women).

<sup>136</sup> See Janet Halley, *Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law*, 30 MICH. J. INT'L L. 1, 90 (2008) (discussing the concept of including trafficking in women as a form of both sexual slavery and sexual violence and arguing that trafficked victims are subjected to "serial" rape).

<sup>137</sup> See John D. Haskell, *The Complicity and Limits of International Law in Armed Conflict Rape*, 29 B.C. THIRD WORLD L.J. 35, 75 (2009) (arguing that victims of rape and sexual enslavement have little legal recourse in Rwandan national courts because victims must testify publicly, which is inconsistent with the cultural sensitivities and stigmas associated with rape).

involving trafficking in persons, especially women.<sup>138</sup> Due to Sierra Leone's minimum resources devoted to combating the growing trend to traffic women for sexual and labor exploitation, the country's actions are consistent with Niger's violation of the African Charter of Human and People's Rights by failing to take steps to eliminate forms of slavery.<sup>139</sup> Part of Sierra Leone's failure is due to the insufficient instruments, such as the Declaration on the Fight Against Trafficking in Persons that deals with trafficking in women.<sup>140</sup> This failure results despite references to anti-trafficking mechanisms and the Mechanism to implement post-conflict peacekeeping because the Declaration merely encourages states to adopt training programs for officers and to enact domestic anti-trafficking legislation.<sup>141</sup>

In combination, the Declaration and the Protocol on peacekeeping minimally produce the anti-trafficking mechanisms that the European Convention achieves.<sup>142</sup> Therefore, a more effective ECOWAS instrument combating trafficking would be a binding Convention on member states that explains effective measures post-conflict states reasonably can adopt, while encouraging international cooperation to assist in the transition to peace.<sup>143</sup> Further, a more effective process to fight trafficking in women includes not only the prosecution of a slave

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<sup>138</sup> See, e.g., *Koraou v. Niger*, ECW/CCJ/JUD/06/08, ¶ 84 (Economic Community of Western African States, Community Court of Justice Oct. 27, 2008), available at [http://www.unhcr.org/refworld/publisher,ECOWAS\\_CCJ,,,496b41fa2,0.html](http://www.unhcr.org/refworld/publisher,ECOWAS_CCJ,,,496b41fa2,0.html) (finding the Republic of Niger liable for its failure to prevent, investigate, and prosecute trafficking in persons cases).

<sup>139</sup> See *id.* at ¶ 84 (holding that Niger was not responsible for the violator's, the slave owner, actions, but was held accountable for the unwillingness to support the victim with a judicial remedy).

<sup>140</sup> See ECOWAS Declaration, *supra* note 11 (calling upon states to implement the ECOWAS Initial Plan of Action Against Trafficking in Persons 2002-2003).

<sup>141</sup> See *id.* (acknowledging the need to target trafficking in women in African states without requiring signatories to implement effective measures, especially in post-conflict states).

<sup>142</sup> See European Convention, *supra* note 29, art. 1-47 (identifying and thoroughly describing techniques for states, especially post-armed conflict, to effectively implement anti-trafficking measures while emphasizing international cooperation to provide resources to weakened governments to promote the rule of law).

<sup>143</sup> See *id.* at art. 1-47 (recalling the recommendation 1545 by the Council of Europe Parliamentary Assembly to establish a particular program in post-conflict states, especially in the Balkans, where the rule of law is weakest).

owner, but also the trafficker of the victim, while seeking medical and psychological care for the victim's recovery.<sup>144</sup>

D. Courts of both the international community and post-conflict states lack the mechanisms to effectively prosecute all offenders who traffic women.

Regional courts dealing with human rights violations have considered trafficking in persons as a way to enslave an individual, and therefore, trafficking is a human rights abuse and has been treated as such.<sup>145</sup> The European Court of Human Rights (ECtHR) is an inadequate court to prosecute trafficking in persons cases because it only utilizes the European Convention on Human Rights (ECHR) without recognizing other trafficking conventions or protocols.<sup>146</sup> By relying solely on the ECHR, the ECtHR cannot examine whether states have adequately implemented European Convention provisions, especially relating to the identification and protection of victims, as well as the investigation and prosecution of offenders.<sup>147</sup> Further, the ECtHR only finds for or against states for failure to properly comply with the European Convention on Human Rights, which does not address the concept of individual liability and accountability at the international level, only domestically.<sup>148</sup> The Council of Europe

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<sup>144</sup> See *id.* (requiring signatories to protect, not prosecute, the trafficked victims, while convicting both the traffickers and slave owners to reduce sexual exploitation and forced labor).

<sup>145</sup> See Piotrowicz, *supra* note 73, at 178-79 (defining trafficking in persons and subsequent ownership as enslavement).

<sup>146</sup> See, e.g., *Siliadin v. France*, 43 Eur. Ct. H.R. 16, 16 (discussing the enslavement of one person as a human rights abuse as defined in the European Convention on Human Rights (ECHR)); see generally, Gekht, *supra* note 7, at 37 (referencing article 4 of the ECHR, which provides that the prohibition against enslavement is a non-derogable right); see also ECHR, *supra* note 78, art. 4 (defining freedom from enslavement as a fundamental human right).

<sup>147</sup> See ECHR, *supra* note 78, art. 19 (establishing the European Court of Human Rights to only uphold the European Convention on Human Rights).

<sup>148</sup> See, e.g., *Siliadin*, 43 Eur. Ct. H.R. at 16 (arguing that the possession by Mrs. D and Mrs. B of the victim constitutes slavery but focusing less on the argument that Mrs. D enslaved the woman by trafficking her).

contemplated individual accountability by declaring that the ECtHR needs to find states liable for failure to hold individuals accountable, but this contemplation is not enough.<sup>149</sup>

Human trafficking is a form of slavery because it involves the ownership of one person by another, especially of a woman for sexual and labor exploitation and abuse.<sup>150</sup> Although the International Criminal Tribunal for the former Yugoslavia (ICTY) acknowledged that trafficking in persons is a form of slavery, it is an inadequate court to prosecute the majority of trafficking cases because its mandate includes crimes committed against a population in relation to the armed conflict.<sup>151</sup> This limited mandate does not include the trafficking cases where the victim is enslaved for profit generally, and therefore, most victims could not seek redress at the ICTY, especially after the violence in Bosnia and Herzegovina subsided.<sup>152</sup>

The International Criminal Court (ICC) is also inadequate to prosecute the majority of trafficking in persons cases, despite the fact that the ICC statute includes enslavement as a crime against humanity and that trafficking cases potentially may be adjudicated.<sup>153</sup> The ICC is a more appropriate court to prosecute trafficking cases than the ECtHR because the ICC holds

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<sup>149</sup> See European Convention, Explanatory Report, ¶ 44, C.E.T.S. 197 (May 3, 2005) (discussing the importance of holding individuals responsible for their criminal actions in accordance with the European Convention on Human Rights).

<sup>150</sup> See Piotrowicz, *supra* note 73, at 178-79 (citing the history of Nazi Germany's use of trafficking Jews, gypsies, and other non-Arians for the enslavement of these people in the form of labor exploitation, resulting in serious human rights violations); *see generally*, Conny Rijken, TRAFFICKING IN PERSONS: PROSECUTION FROM A EUROPEAN PERSPECTIVE 74-79 (2003) (defining the sexual and labor exploitation of trafficked victims as a form of enslavement).

<sup>151</sup> *See generally*, Piotrowicz, *supra* note 73, at 177-78 (referring to the International Criminal Tribunal for the former Yugoslavia (ICTY) case, Prosecutor v. Kunarac, that concluded that trafficking for sexual exploitation is enslavement and therefore a violation in a person's human rights); *see also* Prosecutor v. Kunarac, Case No. IT-96-23-T & IT-96-23/1-A, Judgment, ¶ 118 (June 12, 2002) (recognizing that trafficking is a way to enslave a person through sexual and labor exploitation and abuses).

<sup>152</sup> *See, e.g.*, Kunarac, Case No. IT-96-23-T & IT-96-23/1-A, Judgment, ¶ 118 (prosecuting the individual for crimes related to the armed conflict in the former Yugoslavia).

<sup>153</sup> *See* Piotrowicz, *supra* note 73, at 178 (referring to Article 7.2.c of the ICC statute which states that trafficking in persons is a form of slavery and therefore crime against humanity because "the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children").

individuals accountable for their actions.<sup>154</sup> Support for ICC adjudication of trafficking cases includes the recognition of trafficking as an international crime and transnational concern, as well as recognition of trafficking as one of the most serious crimes.<sup>155</sup> Since the ICC requires that enslavement of a person, perhaps due to trafficking of an individual, must be considered a crime against humanity, however, the ICC would be unable to prosecute the majority of trafficking cases out of post-conflict states.<sup>156</sup> It is difficult to prosecute most trafficking cases because as a crime against humanity, proving that trafficking women is widespread or systematic and against a civilian population is a high evidentiary standard, and sex crimes, especially trafficking, is rarely investigated fully at the international level.<sup>157</sup> Thus, although the ICC could be a mechanism to prosecute trafficking in women for exploitation as a serious crime with individual liability, the ICC can only prosecute the worst of the most serious crimes, which may result in only a few convictions.<sup>158</sup>

The European Convention, too, fails to provide individual accountability on traffickers who violate domestic criminal law because the Convention prescribes the responsibility onto the

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<sup>154</sup> See Gekht, *supra* note 7, at 59-60 (emphasizing the importance of individual accountability); see also U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, June 15-June 17, 1998, Rome Statute of the International Criminal Court, art. 7(2)(c) U.N. Doc A/CONF.183/9 (July 17, 1998) [hereinafter U.N. Diplomatic Conference] (including individual accountability to hold not only the state responsible).

<sup>155</sup> See Gekht, *supra* note 7, at 59-60 (outlining the argument for the International Criminal Court as a mechanism to prosecute traffickers); see also Jennifer M. Smith, *An International Hit Job: Prosecuting International Crime Acts as Crimes Against Humanity*, 97 GEO. L. J. 1111, 1139 (2009) (arguing that trafficking in women constitutes a crime against humanity).

<sup>156</sup> See U.N. Diplomatic Conference, *supra* note 154 (defining slavery as “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children”); see also Gekht, *supra* note 7, at 59-60 (defining enslavement as a crime against humanity requires that trafficking leads to slavery, or continuous ownership of a person, and is the “widespread and systematic” attack on a group of people).

<sup>157</sup> See Haskell, *supra* note 137, at 57, 67 (arguing that prosecutors at the ICC fails to adequately investigate and prosecute sexual crimes, such as trafficking in women for sexual exploitation and subsequent enslavement, and this failure represents the complicity of the international community).

<sup>158</sup> Dr. Mohamed Y. Mattar, *The International Criminal Court (ICC) Becomes a Reality: When Will the Court Prosecute The First Trafficking in Persons Case?*, THE PROTECTION PROJECT, July 9, 2002, available at <http://www.protectionproject.org/commentary/icc.htm> (questioning whether the International Criminal Court will begin prosecuting offenders for trafficking women).

state to prevent, prosecute, and protect with its own resources, albeit with international cooperation.<sup>159</sup> By explicitly directing states and domestic authorities to investigate trafficking cases, the Convention leaves a gap for states to allow the abuse of trafficking women for exploitation to continue because of the weakened rule of law initiatives in post-conflict states.<sup>160</sup> It is difficult to petition for redress in other regional courts in Europe, as detailed above,<sup>161</sup> as well as in the victims' domestic courts where few resources limit the number of investigations, prosecutions, and subsequent convictions.<sup>162</sup>

#### **IV. Recommendations**

The Council of European Convention on Action Against Trafficking in Human Beings should be amended to include a judicial system to fight trafficking because domestic courts lack the resources to effectively investigate, prosecution, and convict the number of traffickers. The European Convention should also expand domestic requirements for the protection of victims and should clarify these requirements because trafficked women need full rehabilitation and freedom from fear of re-victimization to act as a witness in the prosecution of offenders. These lessons learned from the European Convention should be applied in the Economic Community of West African States (ECOWAS) because the ECOWAS Directive on anti-trafficking measures is insufficient to assist post-conflict states in the application of the rule of law.

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<sup>159</sup> Alice Edwards, *Traffic in Human Beings: At the Intersection of Criminal Justice, Human Rights, Asylum/Immigration and Labor*, 36 DENV. J. INT'L L. & POL'Y 9, 10 (2007) (describing the legal intricacies of accountability under international human rights norms and law).

<sup>160</sup> Press Release, Freedom House, Study: Slow and Uneven Progress in Balkan Democratization, (April 26, 2004), available at <http://www.freedomhouse.org/template.cfm?page=70&release=45> (arguing that the recent reforms in the bi-federation in Bosnia and Herzegovina still face a weakened rule of law post-armed conflict and corruption issues).

<sup>161</sup> See, e.g., CCPR Human Rights Comm'n., General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 24, 2006) (describing the obligations of international human rights law to state parties and the obligations of individuals under criminal law).

<sup>162</sup> See ARONOWITZ, *supra* note 2, at 43, 138 (analyzing the lack of resources and increase in instability in post-conflict states that lack strong rule of law enforcement mechanisms).

- A. A judicial system should be created to fight trafficking because domestic courts lack the resources to effectively investigate, prosecute, and convict the number of traffickers.

International assistance should play a larger role domestically in post-conflict states because these countries still lack the necessary resources to effectively initiate and implement anti-trafficking measures. International organizations like the U.N. have the resources to develop and implement law enforcement training.<sup>163</sup> Despite improvements in the quality of training to both international peacekeepers and domestic police officers, border enforcement officers should receive additional, adequate training and support controls from these international institutions to better monitor borders.<sup>164</sup>

Inasmuch as post-conflict states lack resources for effective law enforcement despite this training, the international community should assist states in directing and implementing law enforcement training programs.<sup>165</sup> International support should assist states with limited resources to improve their inadequate training programs by developing protocol to identify and protect victims. By supporting post-conflict development, states will be better able to rebuild their political, judicial, and police branches to become self-reliant.<sup>166</sup>

In addition to international support, the European Convention should include an article relating to the appropriate remedies available in the state domestically because failure to adhere

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<sup>163</sup> See *supra* Part III.A (arguing that international assistance is important to provide funding, manpower, and legal expertise to post-conflict states that are subjected to corrupt law enforcement officials).

<sup>164</sup> See Lindsey King, *International Law and Human Trafficking*, TOPICAL RESEARCH DIGEST: HUMAN RIGHTS AND HUMAN TRAFFICKING 2008, at 89, available at <http://www.du.edu/korbel/hrhw/digest/trafficking/InternationalLaw.pdf> (arguing that higher quality and more widespread training is necessary to continue the effort in combating trafficking in persons).

<sup>165</sup> See, e.g., *id.* at 89-90 (describing how “UN.GIFT is to help build awareness of the issue and provide technical assistance. The assistance would include: draft legislation, manuals for various law enforcement agencies and victims, and fact-sheets for raising awareness. States, such as the United States, have already begun implementing awareness programs for law enforcement officers. Additionally, NGOs throughout the world play a crucial role in raising awareness about and monitoring human trafficking.”).

<sup>166</sup> See Brahim, *supra* note 134, at 3 (emphasizing the importance of self-sustaining states and international support for development in post-conflicts).

to the Convention requirements does not result in automatic judicial procedure for remedies.<sup>167</sup>

Although victims may petition for a case in violation of article 4 of the ECHR before the European Court of Human Rights, the ECHR has prosecuted but one trafficking in persons case in *Siliadin v. France*.<sup>168</sup> Due to a lack of individual accountability at the ECtHR, however, a regional court focused on trafficking in persons, especially women, should be established that holds individuals responsible for all steps in the process.<sup>169</sup>

Although both the ICTY and ICC provide individual liability, neither has availability to prosecute the majority of trafficking cases.<sup>170</sup> Further, the application of international law is especially difficult in a post-conflict state due to the lack of the effective rule of law measures, and these domestic courts are unable to apply international laws, such as from the European Convention.<sup>171</sup> Therefore, to prosecute traffickers, the European Convention should be amended to include a regional internationalized court or other judicial system with international assistance that investigates, prosecutes, and convicts traffickers.

B. Expansion of domestic requirements for the protection of victims should be clarified because trafficked women need full rehabilitation and freedom from fear of re-victimization to act as a witness in the prosecution of offenders.

A difficulty in the enforcement of anti-trafficking programs and national action plans is the problem of finding the traffickers due to the victims' possibility of re-victimization once

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<sup>167</sup> See MCBRIDE, *supra* note 34, at 75 (arguing how “[t]here is no provision in the Convention regarding remedies at the national level for breach of these or other provisions in it”).

<sup>168</sup> See, e.g., *Siliadin*, 43 Eur. Ct. H.R. 16, 16 (convicting the State for failure to investigate the enslavement of a woman by her owner and trafficker).

<sup>169</sup> See Tom Obokata, TRAFFICKING OF HUMAN BEINGS FROM A HUMAN RIGHTS PERSPECTIVE 34 (Martinus Nijhoff 2006) (concluding that “non-State actors do not have legal obligations under international human rights law”).

<sup>170</sup> See *supra* Part III.D (arguing that internationalized courts do not have the capacity to investigate and prosecute the majority of trafficking persons cases due to their focus on armed conflict or only the most serious crimes).

<sup>171</sup> See King, *supra* note 164, at 89 (showing how even if a post-conflict state enacts domestic legislation in accordance with its international treaty obligations, the ground forces may not always effectively enforce these laws without assistance).

extradited out of their destination state.<sup>172</sup> Although the European Convention requires a thirty-day “reflection period,” the reflection period should be extended to three months because this length of time is more appropriate to fully rehabilitate a trafficked woman.<sup>173</sup> A three-month reflection period likely will contribute to enhanced cooperation of the victims as witnesses for the prosecution of traffickers because victims can recover both physically and psychologically as well as remain in the country for the duration of the trial proceedings.<sup>174</sup>

After the reflection period, the European Convention should specify the length of time a “renewable residence permit” should be extended to trafficked women because these permits provide the opportunity for victims to remain in the foreign country to testify for the prosecution.<sup>175</sup> The Convention should specify whether the temporary residence permit could be transferred to a permanent permit without directing states to choose one policy or another.<sup>176</sup> The European Convention should allow trafficked victims to receive resident permits even if some victims will not cooperate in the prosecution due to risk of re-victimization once they return home.<sup>177</sup>

The Convention should direct states to give victims the right to an appeal after a domestic court denies victim status and to provide protection for both the witness, i.e., the victim and the victim’s family.<sup>178</sup> The specified right to an appeal is necessary because the Convention emphasizes the importance of, but does not require, a heightened standard for trafficked

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<sup>172</sup> See *id.* at 89 (describing the difficulty in convicting traffickers without rehabilitated witnesses).

<sup>173</sup> See Raffaelli, *supra* note 36, at 210-11 (illustrating ways to promote victim rehabilitation).

<sup>174</sup> See *id.* at 211 (demonstrating how victims who are recovered and feel safe are more willing to put themselves through a criminal trial).

<sup>175</sup> See *id.* at 211 (providing a mechanism to ensure the victim is safe and able to testify against her trafficker).

<sup>176</sup> See *id.* at 211 (arguing that a lack of stance by the European Convention leaves room for state failure to implement appropriate victim protection measures).

<sup>177</sup> See *id.* at 210-11 (detailing how victims “may be at risk of suffering further harm if repatriated”).

<sup>178</sup> See *id.* at 211-12 (contending that an appeals process is necessary to fully protect victims’ rights).

victims.<sup>179</sup> It should specify this standard without leaving the decision to post-conflict states and should address these problems for further clarification.<sup>180</sup> It is important to specify these standards so that State Parties do not overlook procedural rights for victims.

C. The lessons learned from the European Convention should be applied in the Economic Community of West African States because the ECOWAS Directive on anti-trafficking measures is insufficient to assist post-conflict states in the application of the rule of law.

Considering differences in culture, lessons should be learned from the European Convention that can be applied to the Economic Community of West African States (ECOWAS). The Convention should be implemented in the post-conflict situation of Sierra Leone because it appropriately addresses the problems in post-conflict states, as detailed above. The government should take steps to rigorously investigate and make a good faith effort to prosecute criminals who traffic women to avoid prosecution by the ECOWAS CCJ.<sup>181</sup> Specifically, Sierra Leone should increase resources allocated towards the investigation and prosecution of traffickers and towards training programs for law enforcement officers to identify and protect victims.<sup>182</sup> Resources could come in the form of support from the international community, such as funding for medical care facilities, legal expertise for judicial institutions, and implementation of law enforcement programs to reduce corruption.<sup>183</sup>

In addition to the European Convention, Sierra Leone should implement the recommendations by the Declaration on the Fight Against Trafficking in Persons by implementing training programs for law enforcement officials and enacting national legislation

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<sup>179</sup> See *id.* at 211-12 (contending that an appeals process is necessary to fully protect victims' rights).

<sup>180</sup> See *id.* at 212 (disapproving of the European Convention's failure to include these measures as requirements for state implementation).

<sup>181</sup> See *supra* Part III.C (questioning whether Sierra Leone's anti-trafficking policies are consistent with sufficient investigation and prosecution of trafficking cases).

<sup>182</sup> See TIP REPORT, *supra* note 47, at 256 (describing the lack of resources given to anti-trafficking programs).

<sup>183</sup> See PACE, *supra* note 91 (arguing the importance of international assistance to provide post-conflict states resources to improve the rule of law).

to combat trafficking.<sup>184</sup> The Sierra Leonean government should also establish more support facilities besides the IOM shelter in Freetown where victims in rural areas may visit for medical and psychological treatment.<sup>185</sup> Further, the national and local authorities should cooperate both with each other and with neighboring states to document identified trafficked women, to coordinate police forces, and to share resources.<sup>186</sup> Sierra Leone should encourage international support for these anti-trafficking initiatives so that it can rebuild its institutional functions politically, judicially, and socially. These functions are important because political will and judicial strength are necessary to investigate and prosecute traffickers.<sup>187</sup> It is important for Sierra Leone to adequately provide medical and psychological care to victims to recover from both the trauma and social stigma, while gathering evidence to prosecute the trafficker.<sup>188</sup>

## V. Conclusion

The Council of Europe Convention on Action Against Trafficking in Human Beings provides an important legal framework for post-conflict states and their anti-trafficking legislation. Both Albania and Bosnia and Herzegovina have made great strides while implementing the requirements of the Convention, but these states continue to face a lack of resources post-armed conflict. Sierra Leone, although not a member of the Council of Europe, should consider the European Convention in its implementation of anti-trafficking measures because these measures effectively incorporate the problems in post-conflict scenarios. Modifications of the European Convention are necessary for greater success in enforcement,

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<sup>184</sup> See *supra* Part III.C (arguing that the ECOWAS Declaration merely recommends anti-trafficking mechanisms without requiring its implementation).

<sup>185</sup> See TIP REPORT, *supra* note 47, at 256 (stating that only one shelter currently exists in Sierra Leone).

<sup>186</sup> See *id.* at 256 (describing the lack of transnational cooperation in the fight against trafficking).

<sup>187</sup> See Matthews, *supra* note 6, at 662 (examining how the lack of political power reduces the number of anti-trafficking legislation and the number of development programs to identify victims and prosecute offenders).

<sup>188</sup> See Haskell, *supra* note 137, at 75 (discussing the social and cultural stigmas associated with trafficking in women, especially for sexual exploitation, and the lack of consideration of witness protection when gathering evidence).

prosecution, and victim protection. Better victim protection measures, international support, and a regional trafficking judicial system should be enhanced or created to effectively eradicate trafficking in persons, especially in women for sexual and labor exploitation.